

This is a response to the Consultation Paper "A new approach to financial regulation: building a stronger system". It is given on behalf of the judges of the Tax and Chancery Chamber ("the T&CC") of the Upper Tribunal. We do not wish to respond except in relation to Question 7 which raises the question whether reference to the Upper Tribunal from a decision of the PRA should be restricted to a challenge on the same basis as a judicial review in the Administrative Court or whether it should be an appeal on the merits as is the current position in relation to references from the FSA.

This appears to be a re-run of the debate which took place in 1998 when the FSA and HMT wished to adopt the more restricted approach to references to FINSMAT. Their proposals were defeated in Parliament for sound reasons which, in our view, apply as much today in relation to the PRA as they did then in relation to the FSA. We do not consider that it is sufficient protection for persons to be entitled to seek permission to bring an application for the equivalent of judicial review where there can be the most serious consequences for the person affected.

Further, whether the right to apply for judicial review complies sufficiently with Article 6 ECHR and the Human Rights Act 1998 in these circumstances is something which in our view is open to serious doubt. We consider that there is a real need for some judicial body (and the T&CC is the obvious choice) to be able to examine cases on their merits paying due regard to regulatory policy.

As we understand it, references from the Financial Conduct Authority to the Upper Tribunal will be dealt with on the merits as with the current system of references from the FSA. It is not proposed that the references should be restricted to challenges on limited judicial review grounds. We agree with this approach.

Mr Justice Warren

Royal Courts of Justice
Strand
London WC2A 2LL

12 April 2011

Technology Strategy Board

Driving Innovation

Financial Regulation Strategy
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

13 April 2011

Dear Sirs,

A new approach to financial regulation: building a stronger system

The Financial Services strategy of the Technology Strategy Board identifies the regulatory framework as an important driver for the financial services industry and highlights risk (including systemic risk) as a key strategic theme to address through innovations in technology, know-how and behaviour in support of our objective of seeking to support the maintenance of the UK's globally competitive position in financial services and the promotion of growth in the industry at levels that are sustainable over the longer term. The changes to the regulatory framework as set out in your consultation document, particularly the establishment of the Financial Policy Committee with objectives focused on "the identification of, monitoring of, and taking of action to remove or reduce, systemic risks with a view to protecting and enhancing the resilience of the UK financial system", are therefore actions that we support. The more detailed implementation mechanisms set out in the paper are not matters on which we would wish to comment as they are outside the scope of our strategy and their suitability and adequacy are more appropriate for individual firms and academics to reflect upon.

However, it is our view that there is an apparent gap in the consultation document between the financial stability objectives of the new bodies, particularly the FPC, and the powers and tools of those bodies that can be used to remove or reduce systemic risks. This gap relates not to the powers and tools themselves, but to the way in which the FPC will be able to determine where and how systemic risk may become apparent (for example building within 'the system' or occasioned by external shocks to 'the system') and how it may determine how and where to exercise its powers and tools most effectively in response to systemic risks.

In order that the FPC can carry out its functions effectively, we believe that it is important that the FPC should have access to adequate data and analysis that can provide it with the information from which to make a proper determination about systemic risk. This should, we believe, go beyond the simple aggregation of micro-prudential regulatory data that it might receive from the PRA and FCA, to include market data – even at a transactional level – that may come direct from firms or data providers, as well as data which may come from market infrastructure providers such as execution venues, CCPs, settlement systems and payment systems that may similarly come direct or through the Bank of England. Just as the Monetary Policy Committee relies upon staff at the Bank of England and other external resources to provide it with economic data and analysis, we believe that the FPC will need to place reliance upon staff at the Bank or elsewhere to provide vital support. (Another relevant parallel is the US Financial Stability Oversight Council, which will rely up on data and analysis from the Office of Financial Research to support its activities in identifying risks and responding to emerging

Technology Strategy Board

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threats to financial stability.) In the case of the FPC, we consider it likely that it will also be necessary for there to be significant IT resources available to seek to model the inter-connectedness of institutions and the complexities of markets in order to ensure that emergent risks can be identified and to carry out simulations to assess the likely effectiveness of the tools at its disposal to ensure financial stability.

We also believe that it is important for the FPC, either directly or through the Bank, to receive input from academic sources as it seeks to carry out its responsibilities. This input should come from a wide variety of disciplines, as the studies of advanced mathematics, computer science, game theory and psychology might all provide important new understandings and information relating to modelling and simulating complexity in dynamic financial markets – and indeed science beyond areas traditionally associated with finance may have much to offer, as illustrated by recent work published by Andrew Haldane (of the Bank of England) and Lord May drawing parallels between ecology, infectious diseases and systemic risk.

The Impact Assessment states (paragraph 32 on page 11) that “there should be no significant additional ongoing costs in respect of functions transferred to the Bank of England or arising from the activities of the Financial Policy Committee (FPC)”. Whilst the direct costs of transferring existing activities from the FSA to the PRA and of having a new FPC may not be significant, we believe that provision should be made for the costs of staff and IT systems necessary to support the function of the FPC, which may be significant and will involve costs for the Bank, the PRA and the FCA as well as for financial sector firms. In a report commissioned by the Financial Services Knowledge Transfer Network, sponsored by the Technology Strategy Board and prepared by Paradigm Risk and JWG (“Achieving Supervisory Control of Systemic Risk”), a detailed argument was put forward for the need to establish a blueprint and roadmap for good systemic risk control, comprising:

- The design principles required for a new information road system
- A supervisory information inventory and gap assessment
- An adaptable and future-proof target operating model
- A clear migration path, timeline and governance models and
- A transparent assessment of costs, commercial models and tariff measures.

The Technology Strategy Board and the Financial Services Knowledge Transfer Network would be pleased to discuss these issues further with officials at HM Treasury, the Bank of England and the FSA in order to support the successful development of a detailed roadmap for systemic risk monitoring to meet the objectives set out in the consultation paper.

With kind regards

Nigel Walker
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14 April 2011

By email: financial.reform@hmtreasury.gsi.gov.uk

We have read with interest the Government's consultation on 'A new approach to financial regulation: building a stronger system'. Tesco supports a strong competition framework and also understands the importance of a prudent regulatory environment. We do however have some specific points to make on the draft proposals to introduce a new power of direction over unregulated parent entities in certain circumstances (consultation question 25).

The proposal as currently drafted is unclear in its intention. It seems to suggest that that the supervisor will have a power of direction against an ultimate parent company, but it does not define what these powers might be. If this is the correct interpretation of the proposal, then we would have some significant concerns about how this might affect Tesco plc. We would want to be consulted further on the detail of what these powers would involve and under which circumstances they would be applied.

It would be helpful for example, if the proposals could make a clear distinction between a bank holding company, whose sole or primary asset is the equity investment in a bank and a holding company that is a substantial trading business in its own right. It is the possibility of the supervisor's powers extending to our stores business that most concerns us. The new financial regulator will not have the relevant experience to address wider non-financial impacts of regulation on consumers of the parent company. We would also argue that any such powers should be included in legislation, not just regulation, so that they can be properly scrutinised.

Encouraging new entrants will be crucial in increasing competition in the retail banking sector. Some of these new entrants, such as Tesco Bank, may have different business models from more traditional retail banks and any regulation must therefore be flexible enough to recognise this, or risk acting against the interests of a competitive industry.

I would be grateful for clarification on this matter and would be happy to discuss this further if it would be helpful.

Yours Sincerely

Katherine Edwards
Group Regulatory Affairs Director



Response to Consultation by HM Treasury

A new approach to financial regulation: building a stronger system

14 April 2011

Introduction

1. TheCityUK is an independent membership body, established in June 2010, promoting the UK financial and related professional services industry. TheCityUK's key areas of activity include:
 - promoting the UK-based industry as a world leader offering unrivalled service and expertise to partners around the world;
 - creating a partnership for a sustainable industry: demonstrating the industry's role in enabling growth and prosperity in the wider UK economy; and
 - using research, evidence, insight, data and analysis to meet the needs of its members and to provide the evidence to support our promotional objectives.

The Chairman of TheCityUK is Stuart Popham, formerly Senior Partner at Clifford Chance.

TheCityUK Advisory Council, which has 42 members from across the industry and the country, is chaired by Sir Win Bischoff, Chairman of Lloyds Banking Group.

2. TheCityUK welcomes the opportunity to respond to HM Treasury's consultation document, 'a new approach to financial regulation: building a stronger system.' In this response, TheCityUK builds on the response to the first consultation by the International Regulatory Strategy Group (IRSG) in October 2010.
3. TheCityUK is primarily concerned with the international attractiveness of the UK as a place to do business and the role of the UK financial and professional services industry in facilitating growth. This response focuses on the importance of balanced statutory objectives for the new regulatory bodies, and of effective coordination in the EU and further afield. This corresponds to the questions in the consultation document regarding objectives and international cooperation, specifically questions 3, 5, 11 and 32.

Balanced statutory objectives

4. The economic costs that arise from instability in the financial system are understandably at the front of mind at the present juncture. Whilst there is a clear need for changes to the regulatory regime to address shortcomings exposed during the financial crisis, in the recent Budget and the Plan for Growth the Government has correctly identified the need to develop a business environment that supports economic growth as its most important priority.

5. The statutory objectives of the new regulatory bodies should place an obligation on them to consider the balance between enhanced financial stability and well-managed risk taking which is required to support sustained economic growth. As currently proposed, TheCityUK believes that the objectives place insufficient emphasis on economic growth, and the competition and innovation that will be needed in financial services if growth is to be facilitated.
6. TheCityUK makes the following recommendations to redress this balance within the statutory objectives and regulatory principles.
 - The FPC statutory objective should make positive reference to the importance of the consideration of economic growth, by placing a requirement on the Committee “to consider the impact of its actions on the medium and long-term growth of the UK economy”. TheCityUK and its members believe that such a requirement would better align the objectives of the FPC with equivalent international bodies, such as the ESRB.
 - The regulatory principles for the PRA & FCA should include an obligation to have regard to the impact of their actions on competition in the market for financial services. Regulatory action should not negatively impact on competition between regulated firms in the UK, nor on competition between UK and overseas-based firms competing to provide financial services internationally.
 - Regarding the regulatory principle of proportionality between costs and benefits of regulation, TheCityUK recommends that the costs, as well as the benefits, of a burden or restriction should be considered in “general terms” to reflect the broad economic impact of regulation: on financial firms; their customers; the financial system; and the UK economy.

International coordination

7. It is vital that the UK, which is the leading global exporter of financial services, is effective in shaping the international system of financial regulation. Government, the financial services industry and businesses and consumers throughout the UK would be best served by an international environment which matches the UK’s longstanding economic philosophy: welcoming competition, open markets, well-managed risk-taking and innovation; within a framework of high professional standards and financial stability.
8. TheCityUK welcomes the recognition (Chapter 7) that effective coordination between different bodies representing the UK on European and international fora is essential. TheCityUK’s membership is concerned that the proposed Memorandum of Understanding may not be sufficient to give the UK a strong voice and appropriate influence on the European and international stage. We recommend that an international coordination committee should be established, tasked with taking forward and expanding on the work of the FSA’s International Division, to meet the following objectives.
 - Enable clear ownership and responsibility for any single issue to be clearly allocated: overlap or ‘underlap’ is undesirable in the UK’s international representation just as in domestic regulation.

- Enable strategic objectives and the full extent of “the UK position” to be agreed in advance of EU or international negotiations, so that authority can be delegated to the UK representative to negotiate freely within the bounds of the agreed objectives.
- Ensure that when determining international objectives Government and regulatory bodies harness the views, knowledge and skills of financial industry practitioners in the UK. We should make the greatest use of the UK’s deep financial services knowledge and experience to shape the international system of financial regulation.

TheCityUK encourages the Government to consult further with financial services firms as detailed proposals on the governance of international coordination are formed. The procedure for incorporating the views of industry practitioners into the UK’s strategic objectives, via market consultation, will be of particular interest.

9. The key EU policy issues itemised in Box 7.B are generally confined to issues of prudential regulation. It is a growing feature of the EU and international approach to regulatory issues that financial regulatory issues may arise in a wide variety of frameworks, including mutual recognition arrangements, taxation agreements, agreements on data protection or data exchange and free trade agreements. It will be essential for the coordination arrangements between and among the Government and the regulatory agencies to be able to cover such regulatory issues in whatever framework they may arise. Only if this is clearly acknowledged from the outset will the objectives set out in paragraph 7.30 be achieved.

A new approach to financial regulation: building a stronger system

**HM Treasury
consultation 2011**

**Response of
The Trading Standards Institute**

April 2011

April 2011

The Trading Standards Institute welcomes this opportunity to respond to the HM Treasury consultation "A new approach to financial regulation: building a stronger system"

The Trading Standards Institute is the UK national professional body for trading standards professionals working in both the private and public sectors.

Founded in 1881, TSI has a long and proud history of ensuring that the views of our over 3,000 Members are represented at the highest level of government, both nationally and internationally.

TSI provides accredited courses on regulations and enforcement which deliver consistent curriculum, content, knowledge outcomes and evaluation procedures, with the flexibility to meet local authority, business and operational needs.

In compiling this response, TSI has included the views of our Lead Officer on Banking and Financial Services, Nicki Rose. If you require clarification on any of the points raised in the response, please do not hesitate to contact Nicki at email lobankingandfinance@tsi.org.uk or by telephone on 0845 608 9525.

TSI does not regard this response to be confidential and is happy for it to be published.

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A new approach to financial regulation: building a stronger system – HM Treasury

Trading Standards Institute response – April 2011

1 What are your views on the likely effectiveness and impact of these instruments as macro-prudential tools?

At this point in time it is practically impossible to comment on the success or otherwise of the proposed macro-prudential tools. The assumptions made about the creation of the specialist regulators are not testable and, even in the event of another threatened crisis with significant consumer detriment, it will be impossible to quantify the effect of the macro-prudential tools in isolation from other measures.

If the assumptions about the effectiveness are correct there are practical issues that need to be embedded in the new regulatory infrastructure to ensure that the regulators work together to effectively tackle any risks which arise. Any lack of coherent action in relation to identified problems may only lead to further detriment.

2 Are there any other potential macro-prudential tools which you believe the interim FPC [Financial Policy Committee] and the Government should consider?

The Trading Standards Institute has no comment to make.

3 Do you have any general comments on the proposed role, governance and accountability mechanisms of the FPC?.

The Trading Standards Institute has no comment to make.

4 Do you have any comments on the proposals for the regulation of systemically important infrastructure?

The Trading Standards Institute has no comment to make.

5 What are your views on the (i) strategic and operational objectives and (ii) the regulatory principles proposed for the PRA [Prudential Regulation Authority]?

The Trading Standards Institute has no comment to make.

6 What are your views on the scope proposed for the PRA, including Lloyd's, and the allocation mechanism and procedural safeguards for firms conducting the 'dealing in investments as principal' regulated activity?

The Trading Standards Institute has no comment to make.

7 What are your views on the mechanisms proposed to make the regulator judgement-led, particularly regarding: rule-making; authorisation; approved persons; and enforcement (including hearing appeals against some decisions on more limited grounds for appeal)?

It is difficult to comment fully on the judgement-led mechanisms without further details. It is essential that any system is transparent and does not lead to uncertainty for firms.

8 What are your views on the proposed governance framework for the PRA and its relationship with the Bank of England?

The Trading Standards Institute has no comment to make.

9 What are your views on the accountability mechanisms proposed for the PRA?

The Trading Standards Institute has no comment to make.

10 What are your views on the Government's proposed mechanisms for the PRA's engagement with industry and the wider public?

The proposed mechanisms seem appropriate. It seems reasonable that the main consumer representation should be through the FCA [Financial Conduct Authority] and that no separate consumer panel be established specifically in relation to prudential issues.

11 What are your views on the (i) strategic and operational objectives and (ii) the regulatory principles proposed for the FCA?

The objectives and principles set out are laudable. However, there are concerns over whether these objectives will be able to be met. For businesses there will be some overlap of regulation between prudential and conduct issues which will continue to produce a level of uncertainty in some areas. There are concerns that unless resources are effectively allocated the objectives will be unattainable.

There is also a concern that the principles of openness and disclosure and the importance of transparency do not lead to undesirable consequences. For example, the very fact that a company is noted as being under investigation by a regulator can sometimes have unfortunate economic consequences for the business in question, even though those investigations may result in no action. We endorse the importance of the CFEB [Consumer Financial Education Body], but would note that it not currently widely recognised by consumers. It is hoped that when the CFEB becomes the Money Advice Service there will be increased consumer recognition.

There are specific issues which may arise that may require detailed guidance to be issued. In particular, the Office of Fair Trading has issued very specific guidance in relation to issues such as Debt Collection practices. A large number of complaints are received in

relation to debt collection and consumer detriment. It will be detrimental to both good business and consumers if, under the regulatory principles, the retail credit sector is covered by a handbook-type regime that does not incorporate this kind of guidance.

12 What are your views on the Government's proposed arrangements for governance and accountability of the FCA?

We welcome the proposal to legislate for a Practitioner, Smaller Business Practitioner and Consumer Panel. We would also welcome the proposals in relation to the requirement for a substantive analysis in the event of a regulatory failure.

13 What are your views on the proposed new FCA product intervention power?

There is some concern that the more proactive approach to product intervention could impact on consumer choice and competition. Some products in the sub-prime market may appear to be unattractive to the majority of consumers. However, the limited choice of products available to the financially excluded could mean that a total ban on products of a certain type would further restrict the access of the most vulnerable to financial products.

Product intervention may also be inappropriate at UK level if non-UK product providers are still able to offer products that UK registered financial institutions are unable to offer. This could allow financial institutions from other EU Member States to gain a competitive advantage, and could result in decreased consumer protection as consumers find it more difficult to pursue remedies across borders.

14 The Government would welcome specific comments on:

the proposed approach to the FCA using transparency and disclosure as a regulatory tool;

the proposed new power in relation to financial promotions; and

the proposed new power in relation to warning notices.

The use of transparency and disclosure has the potential to be a powerful regulatory tool, but must be used with caution – see **Question 11** above.

The new power in relation to financial promotions may have effect in relation to self regulation within the industry. It may also serve to increase consumer confidence if consumers are aware of the outcomes of their complaints.

There is a concern that many retail financial promotions only occur at local level. Indeed, financial promotions may appear only on business premises and not be published in any way. There is no indication as to how the FCA intends to monitor these promotions across all sectors. Experience shows that a considerable amount of consumer detriment occurs at local level. Without local monitoring and knowledge, the idea of a strong enforcement function is considerably undermined.

15 Which, if any, of the additional new powers in relation to general competition law outlined above would be appropriate for the FCA? Are there any other powers the Government should consider?

The Trading Standards Institute has no comment to make.

**16 The Government would welcomes specific comments on:
the proposals for RIEs and Part XVIII of FSMA; and
the proposals in relation to listing and primary market regulation.**

The Trading Standards Institute has no comment to make.

17 What are your views on the mechanisms and processes proposed to support effective coordination between the PRA and the FCA?

The Trading Standards Institute has no comment to make.

18 What are your views on the Government's proposal that the PRA should be able to veto an FCA taking actions that would be likely to lead to the disorderly failure of a firm or wider financial instability?

The Trading Standards Institute has no comment to make.

19 What are your views on the proposed models for the authorisation process – which do you prefer, and why?

Please see **Question 21**

20 What are your views on the proposals on variation and removal of permissions?

Please see **Question 21**

21 What are your views on the Government's proposals for the approved persons regime under the new regulatory architecture?

The actual internal mechanisms by which authorisation / variation of permissions / approved persons occurs is largely a matter for the regulators to consider. The important aspect is that the authorisation process should appear seamless for the end user and that applications are dealt with in a timely manner. It is also vital that consumers are able to access relevant information and that the information accessed is clear and meaningful.

If the FCA is to take over retail credit, there needs to a mechanism by which local knowledge of traders can be communicated and used to inform the decision making processes.

22 What are your views on the Government's proposals on passporting?

The Trading Standards Institute has no comment to make.

23 What are your views on the Government's proposals on the treatment of mutual organisations in the new regulatory architecture?

The main concern is that regulatory burdens on mutuals offering sources of credit to the financially disadvantaged should not be overly heavy.

24 What are your views on the process and powers proposed for making and waiving rules?

The Trading Standards Institute has no comment to make.

25 The Government would welcome specific comments on proposals to support effective group supervision by the new authorities – including the new power of direction; and proposals to introduce a new power of direction over unregulated parent entities in certain circumstances?

The Trading Standards Institute has no comment to make.

26 What are your views on proposals for the new authorities' powers and coordination requirements attached to change of control applications and Part VII transfers?

The Trading Standards Institute has no comment to make.

27 What are your views on the Government's proposals for the new regulatory authorities' powers and roles in insolvency proceedings?

The Trading Standards Institute has no comment to make.

28 What are your views on the Government's proposals for the new authorities' powers in respect of fees and levies?

The Trading Standards Institute has no comment to make.

29 What are your views on the proposed operating model, coordination arrangements and governance for the FSCS?

The Trading Standards Institute has no comment to make.

30 What are your views on the proposals relating to the FOS, particularly in relation to transparency?

The Trading Standards Institute has no comment to make.

31 What are your views on the proposed arrangements for strengthened accountability for the FSCS, FOS and CFEB?

The Trading Standards Institute has no comment to make.

32 What are your views on the proposed arrangements for international coordination outlined above?

The Trading Standards Institute has no comment to make.

Trading Standards Institute, April 2011

UNCLASSIFIED

Thank you for inviting me to respect on the further consultation document.

We note that you have made an error as to when the consultation replies are required - being the year you have entered. I hope that greater care is being taken in reading our responses.

I wish to comment on Box 5-k Question 28 as follows : I await with interest how the fee structure will be set so that the majority of the fees are carried by large insurance broking firms with multiple offices rather than the current arrangement where fees can amount to a large proportion of a smaller company's income. The fees for regulatory bodies in the financial sector must not stifle the smaller family run insurance brokerages in this country. In doing so this could pass a further burden on the FSCS and these are the firms that are the ones that are likely to help stimulate and maintain the financial recovery.

Yours sincerely

Greg Hill

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date 14 April 2011

Dear Sir

A new approach to financial regulation: building a stronger system

We are writing in response to your consultation document with the above title, published on 17 February 2011. In particular we would like to comment on paragraphs 5.54 to 5.58 of the consultation document and question 23, which deal with the treatment of mutual societies in the new regulatory architecture.

By way of introduction, we are the leading law firm for providers of social housing, the vast majority of whom are industrial and provident societies.

There is a strong tradition in the social housing sector for providers of social housing to be constituted as industrial and provident societies. Social housing providers have traditionally favoured the industrial and provident society model because of its clear not for profit reputation and focus on community benefit.

The social housing sector is very large. The National Housing Federation, for instance, represents some 1200 organisations, providing 2.5 million homes to over 5 million people. In our view the size of the sector merits consideration of the regulatory needs of industrial and provident societies as a separate matter from your consideration of the regulatory structure of the financial sector.

Accordingly, we welcome your suggestion to separate the registration of societies as legal entities from the prudential regulation of building societies, credit unions etc. In our view it would not be right to shape the regulation of societies by taking the prudential regulation of societies that provide financial services as the starting point. The prudential regulation with which your consultation document is concerned is simply not relevant to our clients.

However, we have our doubts about the possibility of transferring the regulation of societies that do not provide financial services to a 'sector led body' that would become responsible for registration. In our view, Companies House is the most appropriate entity to take on this role. The registration of industrial and provident societies is very close to its existing remit as the registrar of companies and much of the organisation infrastructure to assume the role will already

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be in place. We also note that Companies House already has a branch office in London, so it may be possible to transfer the FSA's existing mutual societies team at a relatively low cost. With Companies House taking on this role we would expect that there will be scope for a more efficient service, with Companies House's response times comparing favourably to those of the FSA and ha ability to access documents registered with the Companies House online at any time.

We would be happy to discuss our thoughts on this subject with you in more detail.

Yours faithfully

A handwritten signature in blue ink, appearing to read "Jan-Willem Jonker PP Eura Tama".

Jan-Willem Jonker