

THE FINANCIAL SERVICES PRACTITIONER PANEL

FEBRUARY 2012

BRIEFING ON THE FINANCIAL SERVICES BILL 2012

This briefing is provided by the Financial Services Practitioner Panel, which is an independent statutory Panel for the FSA under the Financial Services and Markets Act (see the end of this paper for further details). The views in this paper are also supported by the FSA's Smaller Businesses Practitioner Panel.

The main focus of this briefing is on practitioner engagement in the new regulatory system, but we are also commenting on the approach of the Memorandum of Understanding between the PRA and the FCA, and the Bill's treatment of UK competitiveness in financial services.

1. PRACTITIONER ENGAGEMENT IN THE NEW REGULATORY PROCESSES

The Government has been clear that the aim of the Financial Services Bill is to improve financial regulation by embedding judgement, focus and accountability into the UK regulatory system. As the body set up under FSMA to represent the interests of practitioners in policy debates with the FSA, we fully support these aims and we endorse the view that UK financial services will work better with a strong and effective regulatory system. However, we are concerned that some of the people who know best how to analyse whether new regulatory policies will be effective, are potentially being sidelined in key aspects of the new system.

There are three areas of concern in the new Bill:

1. The duty to consult the Practitioner Panel and indeed other Panels for the FCA is being weakened;
2. There is no statutory duty for the PRA to set up a Practitioner Panel or other Panels;
3. The new Markets Panel for the FCA needs to have a responsibility to engage on markets regulation aspects in the Bank, as well as the FCA.

We have raised these matters in our previous responses to consultations. However, the following explains the concerns, and suggests ways in which the Bill might be amended to address those concerns.

1. The Duty to Consult the Panels for the FCA is being weakened

For the FCA, the current Bill is the same as FSMA in that the FCA "must consider representations" that are made by the Panels. However, the FCA now only has the requirement to publish in such manner as it thinks fit, responses to the representations, rather than the previous requirement to respond in writing with reasons for rejecting suggestions from any of the Panels – including the Consumer Panel.

We believe that under the new legislation, the FCA could choose to ignore certain suggestions from the Panels. We would like to see the following amendment:

IR Duty to consider representations made by the Panels

(1) The FCA must consider representations that are made to it in accordance with arrangements made under section 1M.

(2) If the Authority disagrees with a view expressed, or proposal made, in the representation, it must give the Panel a statement in writing of its reasons for disagreeing.

(3) The FCA must from time to time publish in such manner as it thinks fit responses to the representations.

2. There is no statutory duty for the PRA to set up Panels

Although the PRA's consultation arrangements allow the PRA to set up such panels as the PRA thinks fit, there is no obligation on the PRA to set up any regular consultation mechanism. It therefore leaves the PRA to decide whether or not to consult on certain policy changes. We believe that there is a very strong argument for a Practitioner Panel for the PRA. The key arguments for a practitioner panel at the PRA are as follows:

- To help the PRA to avoid any unreasonably detrimental impact or unintended consequences on firms, without going as far as making the PRA accountable to the industry (which appears to be the concern around "regulatory capture");
- With similar Panels at both the FCA and PRA, the Panels would be able to investigate the coordination of regulatory requirements between the two regulators – as it is often the cumulative impact of regulation that proves to be significant and in a "twin peak" structure this is extremely important;
- Cross-sectoral membership of such a statutory panel provides useful cross-fertilisation and perspective while focusing on effective regulation;
- Panel members can sign ongoing confidentiality requirements, allowing early debate on the pros and cons of new policy developments;
- Panels achieve the Government's transparency requirements for debate with industry in a much more structured way than through ad hoc groupings, with the ability to record discussions through publication of annual reports and other means;
- A regular forum enables members to look ahead to the impact of regulatory developments and pro-actively highlight potentially adverse impact or prudential risks, including the early identification of matters of concern arising from international developments;
- For the PRA to set up various different consultation mechanisms will be time consuming and potentially inefficient. It may also miss an opportunity to have industry input precisely when it could be most beneficial.

We have not been convinced by the counter arguments: the idea that such a Panel would indicate "regulatory capture" cannot be substantiated when similar Panels are being proposed for the FCA, and clearer transparency mechanisms can be put in place for a regular Panel than for ad hoc consultations. The argument that prudential issues are more straightforward and less open to interpretation by firms than conduct issues by the FCA is also difficult to sustain: for example, discussions on the proportionality of implementation of prudential requirements on smaller PRA-regulated firms, and the interpretation of macro-prudential requirements would benefit from discussions with the industry.

We suggest the following amendments to the Bill, which allow an additional safeguard to ensure that the PRA is not accountable to the industry:

2K The PRA's general duty to consult

(2) Those arrangements ~~may~~ **should** include the establishment of ~~such panels as the PRA thinks fit~~ **a Practitioner Panel to provide a regular forum for policy debate with a cross section of senior representatives of those firms regulated by the PRA and to consider the cumulative impact of regulation by the PRA and FCA on firms.**

2L Duty to consider representations

(1) The PRA must consider representations that are made to it in accordance with arrangements made under section 2J, **but the PRA will not be accountable to practitioners for its decisions having considered the representations.**

3. The new Markets Panel for the FCA needs to have a responsibility to engage on markets regulation aspects in the Bank, as well as the FCA.

The Government and the Joint Committee on the Bill both recognised that the regulation of markets will be divided between the FCA and the Bank of England: “much of the trading infrastructure that the FCA regulates will rely on clearing and settlement infrastructure which the Bank regulates.” The Bill allows cooperation between the two organisations on information exchange. We would like to see the new Markets Panel have a specific responsibility to monitor cooperation in this area and suggest an amendment to the Bill as follows:

To insert into **1P The Markets Practitioner Panel**

(7) The Bank must consult with The Markets Practitioner Panel on the regulation of clearing and settlement infrastructure when the FCA agrees that proposed changes will have an impact on the regulation of trading infrastructure. The Markets Practitioner Panel will be able to request information from the Bank via the FCA to enable them to provide appropriate advice to the FCA.

2. MEMORANDUM OF UNDERSTANDING FOR PRA AND FCA

Although we recognise that the PRA and FCA are being set up by the Government specifically to look at different aspect of financial services regulation, as practitioners, we believe it is vital to ensure effective coordination between the regulators. If there is no coordination, firms may end up in the difficult position of being asked to undertake potentially conflicting activities by the different regulators, or – particularly for smaller firms – being burdened by uncoordinated requests for similar information. There might be serious cost implications of this but more importantly regulation could be suboptimal in terms of its effectiveness and the industry has always supported strong regulations (as evidenced by the Practitioner Panel surveys every two years-these are available on the Panel website).

We have registered with the FSA that all the Panels – including the Consumer Panel – have been concerned that the draft MOU proposed by the FSA and Bank can be seen as overly negative. Our view is that the discussion ought to start from a principle of joint cooperation between the two regulatory agencies wherever possible, and adopt an approach which has a clear rationale for areas where there should not be cooperation, rather than the current view which seems to run the risk of doing the opposite.

3. UK COMPETITIVENESS

Ongoing financial stability needs the support of an industry which is competitive in the global marketplace and so we believe that UK legislation should take into account that UK firms compete in a global environment. The PRA and FCA should have to take into account the relative competitive impact on UK industry of regulatory demands in this country.

A particular aspect is the cost and burden of regulation in the UK. We are concerned that in the new system, no one organisation has the responsibility to review the cumulative impact of costs on the financial services industry. As well as a likely increase in cost resulting from two regulators rather than one, there have been significant cost increases for firms from contributions to the FSCS and Money Advice Service in particular recently. We believe that the Treasury or Treasury Select Committee should have responsibility to consider the justification for the overall cost and burden on industry from regulatory requirements. An analysis of the UK regulatory costs in recent years and the plans for the “twin peaks” regulators suggests that regulatory costs are increasing very rapidly.

ROLE AND REMIT OF THE PRACTITIONER PANEL

1. The role of the Practitioner Panel is to advise the Financial Services Authority on its policies and practices from the point of view of the regulated community. It has statutory status under the Financial Services and Markets Act 2000 (FSMA). As such, the Practitioner Panel is given access to the FSA's plans for new regulatory policies, and so is able to provide an important sounding board for the FSA before the ideas have been made public.
2. Members of the Practitioner Panel are drawn from the most senior levels of the industry, with the appointment of the Chairman being formally approved by the Treasury, to ensure independence from the FSA. The members are chosen to represent the main sectors of the financial services industry as regulated by the FSA. The Panel currently has senior practitioners from the retail and investment banks, building societies, insurance companies, investment managers, financial services markets, custodians and administrators.
3. The Chairman of the FSA's Smaller Businesses Practitioner Panel (SBPP) sits ex officio on the Practitioner Panel to ensure co-ordination, but debate on issues specifically affecting smaller firms are covered by that Panel.
4. The names of the members of the Practitioner Panel as at 1st February 2012 are as follows

Russell Collins (Chairman)	Partner, Deloitte LLP
Graham Beale	Chief Executive, Nationwide Building Society
Joe Garner	Head of UK Retail Bank & Deputy Chief Executive, HSBC Bank plc
Paul Geddes	Chief Executive, RBS Insurance
Colin Grassie	CEO, Deutsche Bank UK
Mark Harding	Group General Counsel, Barclays Bank PLC
Simon Hogan	Managing Director, Institutional Equity Division, Morgan Stanley
Garry Jones	Group Executive Vice President & Head of Global Derivatives, NYSE Euronext
Guy Matthews	Chief Executive, Sarasin Investment Funds (SBPP)
Helena Morrissey	Chief Executive Officer, Newton Investment Management
John Pollock	Group Executive Director, Protection & Annuities Legal & General
Malcolm Streatfield	Chief Executive, Lighthouse Group
Paul Swann	President & Chief Operating Officer, ICE Clear Europe
Doug Webb	Chief Financial Officer, London Stock Exchange Group