Financial Services Future Regulatory Framework Review Phase III Consultation

Submission to HM Treasury by the Finance Innovation Lab February 2022

Introduction

The Finance Innovation Lab[1] is a UK-based charity working to build a financial system that serves people and planet – one that's democratic, sustainable, just and resilient. We support the growth of purpose-driven financial institutions, including through Lab Fellowship, the world's first incubator to support financial innovators putting social or environmental purpose at the heart of their work.[2] We work with major UK banks, through strategic partnerships with them and their staff to support greater action on climate change. We also coordinate the Transforming Finance Network of civil society organisations focussed on financial sector policy.[3]

We welcome this consultation and agree with the Economic Secretary, John Glen MP, that the Financial Services Future Regulatory Framework Review provides "a once-in-a-generation opportunity to ensure that, having left the EU, the UK establishes a coherent, agile, and internationally respected approach to financial services regulation that is right for the UK".[4]

On Friday 4th February, we co-signed a civil society joint statement that welcomed the government's commitment to build a financial sector that is Net Zero-aligned and acts in the interests of communities and citizens, creating jobs, supporting businesses, and driving sustainable economic growth across the country.[5] The statement also raised concerns about some important aspects of the government's proposals, many of which we expand on in this response to the Phase III of the Financial Services Future Regulatory Framework Review.

In late January 2022, we commissioned a UK-wide nationally representative survey to understand what the British public felt should be a priority for a new regulatory framework for financial services. The most popular priority, selected by nearly half of the population (44%), was that the financial system is safe and stable to ensure there isn't another financial crisis. This was followed by protecting consumers from scams and exploitation, which was selected by nearly a third (30%) of the population, and ensuring everyone has access to essential financial services they need (e.g. cash), which was selected by around the same amount (28%). Only 1-in-10 (9%) felt that the international competitiveness of the finance sector should be a priority.[6] This research shows that the British public think UK regulators should focus on the future stability of the financial system, consumer protection and on financial inclusion. We believe that the government should take this into account when making the final decisions on these proposals.

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[1] Finance Innovation Lab (2022) 'About Us'.https://financeinnovationlab.org/about-us/why/

[2] Finance Innovation Lab (2022) 'Fellowship'.https://financeinnovationlab.org/our-work/fellowship/

[3] Finance Innovation Lab (2022) 'Transforming Finance'. https://financeinnovationlab.org/transforming-finance/

[4] UK Parliament (2021) 'Statement made on 9 November 2021'. https://questions-statements.parliament.uk/written-statements/detail/2021-11-09/hcws382

[5] Finance Innovation Lab (2022) 'Civil society responds to treasury's proposed financial sector reforms'. https://financeinnovationlab.org/insights/financial-services-future-regulatory-framework-joint-statement/

[6] The research data is based on a survey carried out by Opinium Research. Total sample size was 2,008 adults and the fieldwork was carried out between 25th- 28th January 2022. The figures have been weighted and are representative of all UK adults (aged 18+).

We support the overarching aims of the proposed new regulatory framework and believe that it presents several opportunities to uphold the UK's reputation and success as a world-leading financial centre. The proposed new framework could achieve this in the following ways:

★ **An opportunity for the UK to be a world leader in the battle against climate change**

  It is encouraging to see the environmental goals supported by the government and builds on the successes of COP26, which presented the UK as a world leader committed to fighting climate change. While the consultation proposes how the UK can deliver this through financial regulation, we do not think it goes far enough. We urge the government to introduce statutory objectives that oblige regulators to align the financial system and its regulation with the UK's net-zero target and carbon budgets, as well as the 1.5 degrees temperature goals of the Paris Agreement and Glasgow Climate Pact.

★ **An opportunity to create a step change in the public accountability of finance**

  It is of the utmost importance that the UK regulators maintain their independence and gather balanced input from a wide range of stakeholders. Good policy and regulation requires the views of the whole of society, including the marginalised and most vulnerable, to be taken into account. While current arrangements, and those proposed in the consultation, aim to achieve this, we believe that more can be done and would like to see the government enhance its current proposals to ensure that consumer groups and civil society have fair representation and influence during regulatory policy development. We set out proposals for how to do this below.

★ **An opportunity to improve consumer protections and steer the UK away from financial crisis**

  The British public want financial regulation to ensure that financial services are safe and stable, and steer the industry away from repeating the mistakes that led to the global financial crisis 2007/08. They also want everyone to have access to the essential financial services they need, as well as feeling confident that they are protected against scams and exploitation. We believe that this consultation presents an opportunity to achieve this by increasing regulatory attention to improving consumer protection and financial inclusion, and rejecting the proposed statutory objectives for regulators to promote "international competitiveness".

★ **An opportunity to promote long-term sustainable growth of the UK economy**

  The UK financial services industry plays an important role in people's lives. We believe that this consultation presents an opportunity to provide regulators with the power to ensure that the sector maximises its contribution to the real economy, to levelling up, and to its long term ecological sustainability. Amending the proposed secondary growth objective to promote long-term, sustainable and UK-wide economic growth, will ensure that UK regulators can further support financial stability and consumer protections, while maintaining a globally competitive sector.

Summary of recommendations

1. Introduce statutory objectives that oblige regulators to align the financial system and its regulation with the 1.5 degrees temperature goals of the Paris Agreement, and include provisions for nature.
2. Introduce a statutory duty for regulators to promote financial inclusion. At a minimum, this could happen by introducing a cross-cutting 'must have regard to' financial inclusion to the Financial Conduct Authority's remit.
3. Do not introduce a statutory objective, not even a secondary one, for regulators to promote the growth of the finance industry or its 'international competitiveness'.
4. Introduce a 'long-term, sustainable and real economic growth' objective for the Financial Conduct Authority and the Prudential Regulatory Authority.
5. Empower and adequately resource a new financial services joint committee of parliamentarians from both houses to provide in-depth scrutiny over legislation and regulation.
6. Require statutory registration of all lobbyists, disclosure of lobbyists who have previously been public officials involved in developing finance policy, and require all lobbyists to report monthly on communications with government and regulators, including written communications.
7. Require the Financial Conduct Authority and Prudential Regulation Authority's statutory panels to consist of a maximum of 50% industry representatives and at least 50% public interest representatives. Require the regulators to increase public engagement.
8. Do not introduce a new power for HM Treasury to require the regulators to review their rules when necessary.
9. Specify, in the new statutory requirement for cost benefit analysis, that the regulator must take into account the consumer view and document how this was accounted for.
10. The new Cost Benefit Analysis Panel should provide comment post-publication and represent a multitude of stakeholders, including the most vulnerable in society.

If you would like to discuss this response in more detail, please don't hesitate to contact:

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Response

Question 1: Do you agree with the government's approach to add new growth and international competitiveness secondary objectives for the Prudential Regulation Authority and the Financial Conduct Authority?

We strongly oppose the government's proposal to introduce statutory objectives for regulators to promote "international competitiveness". This is for three main reasons:

1) It risks eroding regulatory independence.
2) It creates the conditions for the next financial crisis and threatens the success of the UK's financial services sector through a weakening of regulatory standards and effectiveness.
3) It increases risks faced by consumers by lowering protections.

Regulation's ultimate purpose is to ensure that the financial services sector is able to maximise its contribution to the economy, society, and long term ecological sustainability. If a new secondary growth objective was defined as "long-term, sustainable growth and real economic growth", that equally distributed economic benefits throughout the whole of the UK, rather than growth for the financial sector alone, then we would be able to support it.

1) Erodes regulatory independence

Maintaining regulatory independence should be a top priority for the government, as any undue influence will not only lead to poor regulation but also divert attention from the regulators' core objectives to maintain financial stability and market integrity, and protect consumers.

Balanced input from industry and civil society advocates, with the regulators acting in the public interest and maintaining independence, is more likely to produce well-designed regulation that delivers better outcomes. As Charles Randell, Financial Conduct Authority Chair, said in a 2018 speech, "constant regulatory change can sap the confidence of the public and industry in the regulatory process" and it can also "damage competition" as the "largest firms with the best lobbyists often seek to influence the process".[7] The proposed new competitive objective may therefore negatively affect the development of future regulation, with the regulator having to take into account its impact on the international competitiveness of firms, which will be championed by the industry lobby.

There are many organisations whose job it is to promote financial services, including the City of London's Lord Mayor and industry associations, not to mention the firms themselves. Asking regulators to take on this task too risks eroding their independence and changing the relationship between the regulator and the firms they are supervising. This has the potential to not only be detrimental to UK citizens and businesses but also will weaken public confidence in the regulators.The British public do not want their regulators to be closely aligned with the industries they are supposed to be regulating, as our opinion poll survey shows. Further, it will not help the UK's international reputation if the financial regulators are seen to be working for the industry rather than the public interest.

2) Creates the conditions for the next financial crisis

[7] Financial Conduct Authority (2018) 'Rolling the rock: The cycle of deregulation, crisis and regulation' https://www.fca.org.uk/news/speeches/rolling-rock-cycle-deregulation-crisis-and-regulation

Just a decade ago, UK Parliament acknowledged that a focus on competitiveness by regulators had contributed to the global financial crisis 2007/08 – the cataclysmic event that cost the world economy $10 trillion[8] and saw millions lose their savings, homes, and jobs. In the words of Andrew Bailey in 2019 (then the CEO of the Financial Conduct Authority, and today the Governor of the Bank of England), the regulator "was required to consider the UK's competitiveness, and it didn't end well, for anyone." We do not wish to see the UK's post-Brexit future end up in a similar way.

As noted above, regulation's ultimate purpose is not to enhance growth or profitability of the financial sector, but rather to ensure that the sector is able to develop in such a way as to maximise its contribution to the economy and society and its long term ecological sustainability. The strength, robustness and effectiveness of regulation must always be the top priority. The same is true for innovation, which may provide societal benefits when it allows, for example, greater opportunities to make sustainable investments, but can also create serious risks, as we saw with the greatly increased opacity and complexity of the system created by much 'innovation' in advance of the global financial crisis.

This is particularly important given the evidence that excessive growth of the financial sector can be bad for the real economy.[9] [10] We believe it was right that such a requirement was removed from regulators in 2012,[11] recognising that it can undermine system stability, and its reintroduction would undermine the progress made over the past decade to ensure the UK has the right regulation in place to avoid another financial crisis.

We are very supportive of well run and regulated UK firms achieving international success and do not believe that the current statutory objectives of the regulators hinder their ability to do so. Under the current structure, the Financial Conduct Authority has a proportionality principle and a 'have regard to' competitiveness, that can both be used to promote competitiveness without the need to introduce a potentially risky new statutory objective.[12] In addition, the current competition objective for the Financial Conduct Authority intends to promote 'effective competition that increases efficiency and productivity is likely to make UK financial markets and firms an attractive proposition internationally.' As Financial Conduct Authority Chair, Chris Randell, said in 2018, the UK's "standards of regulation should support the confidence that global clients and overseas regulators can have in the firms we authorise."[13] [14] As of January 2022, fears that the UK financial sector would lose its competitive edge due to Brexit[15] have been unfounded as London remains the top spot for financial and professional services in terms of overall offer when compared to other global destinations, including New York, Singapore, Hong Kong, Paris and Frankfurt. In

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[8] Chatham House (2018) 'The Lasting Effects of the Financial Crisis Have Yet to Be Felt', 12 January/.. https://www.chathamhouse.org/2018/01/lasting-effects-financial-crisis-have-yet-be-felt

[9] BIS Working Papers No 490 (2015) 'Why Does Financial Sector Growth Crowd out Real Economic Growth?'. https://www.bis.org/publ/work490.pdf

[10] IMF Working Paper, no. WP 12/161 (2012) , 'Too Much Finance?'. https://www.imf.org/external/pubs/ft/wp/2012/wp12161.pdf.

[11] The Financial Markets and Services Act 2000 required the FSA to 'have regard to' "the international character of financial services and markets and the desirability of maintaining the competitive position of the United Kingdom." This duty was not passed on to the FSA's successors by the 2012 Financial Services Act.

[12] HM Treasury (2021) 'Recommendations for the Financial Conduct Authority', 3 March. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/972445/CX_Letter_-_FCA_Remit_230321.pdf

[13] Financial Conduct Authority (2018) 'Rolling the rock: The cycle of deregulation, crisis and regulation' https://www.fca.org.uk/news/speeches/rolling-rock-cycle-deregulation-crisis-and-regulation

[14] Financial Conduct Authority (2017) 'FCA Mission: Our Approach to Competition'. https://www.fca.org.uk/publication/corporate/our-approach-competition.pdf

[15] House of Lords European Union Committee (2017–19) 'Brexit: the future of financial regulation and supervision'. https://publications.parliament.uk/pa/ld201719/ldselect/ldeucom/66/66.pdf

2021, UK financial services exports increased and the UK's trade surplus remains higher than in all other global financial centres[16]

We believe a positive vision of the UK as the world's most trusted and respected financial centre, based on leadership on social and environmental outcomes, and unimpeachable integrity and transparency, is the future. The alternative, a remit to enhance 'competitiveness' for its own sake, would be a significant step backwards, leading the regulator to be torn in different directions as firms can always make the case that de-regulation is needed to become 'competitive.' Since regulatory quality is a determining factor in the success of a financial centre, the objective could in fact work against the UK finance sector's international competitiveness. The Chancellor's laudable aim for the UK to be the world's first net-zero financial centre would be undermined if the risk of instability deters the private investment urgently required to fund a just climate transition. We agree with the sentiments of Financial Conduct Authority CEO Nikhil Rathi, that it would be far better for the UK to focus on maintaining high regulatory standards than to introduce a competitiveness mandate.[17]

3) Increased risks faced by consumers by lowering protections

We believe that the introduction of a new international competitiveness objective will come at the expense of other Financial Conduct Authority objectives, such as 'promoting effective competition' and 'protecting customers'. We agree with the government that these two objectives are critically important for effective regulation of financial services.

There is an inherent risk that the introduction of an international competitiveness objective will come into conflict with these by shifting the focus to international success rather than the domestic market. We agree with Financial Conduct Authority Chair Charles Randell, who, at a recent Treasury Select Committee session on the work of the Financial Conduct Authority, said "we are not regulating for consumers in Zurich or Singapore, we are actually regulating for consumers in Totnes or Tottenham" and "it would be a big ask of our society to say that the interests of consumers . . . and market integrity should be traded off against the interest of the financial services sector."[18]

The focus on competitiveness as an end in itself is already squeezing space for action on the areas where positive changes are urgently required. For instance, while reforms designed to promote the UK's role in the global fintech market are being fast-tracked, the first major opportunity to review credit union legislation since 1972 (a sector which could provide responsible alternatives to high-cost credit) has been postponed. The Lab's work[19] has revealed that the recent review of the fintech sector (the 'Kalifa Review') saw pages focussed on financial inclusion deleted from the final report as a result of its focus on competitiveness. Furthermore, environmental campaigners are concerned that new regulations that could help to reduce the finance sector's impact on climate change will be blocked if they are perceived to undermine competitiveness.

[16] City of London (2022) 'London leads global financial rankings for the second year running', 27 January. https://news.cityoflondon.gov.uk/london-leads-global-financial-rankings-for-the-second-year-running/

[17] Reuters (2020) High standards will keep London competitive, incoming FCA chief says, 22 July. https://www.reuters.com/article/uk-britain-regulator/high-standards-will-keep-london-competitive-incoming-fca-chief-says-idUKKCN24N22D?edition-redirect=uk

[18] House of Commons Treasury Committee (2021) Oral evidence: The work of the FCA, HC 146, 8 December. https://committees.parliament.uk/oralevidence/3177/pdf/

[19] Finance Innovation Lab (2021) 'The Government must listen to civil society on the future of fintech', 28 April. https://financeinnovationlab.org/the-government-must-listen-to-civil-society-on-the-future-of-fintech/

The government could show international leadership in other ways; it is unacceptable that the market systematically excludes people from accessing financial products and services essential to participating in society. For example, with the rise of fintech and 'personalised' services, insurance has become harder to access for people in poverty or facing vulnerable circumstances.[20] To address this problem, regulators must be given a mandate to take responsibility for ensuring that the financial system is inclusive. This is why we recommend that instead of introducing an competitiveness objective, the government should introduce a statutory objective for the Financial Conduct Authority to promote financial inclusion, or, at a minimum, introduce a cross-cutting 'must have regard to' financial inclusion to the Financial Conduct Authority's remit.

A 'long-term, sustainable and real economic growth' objective

We are not in favour of policy that promotes growth in a way that would lead to the unlimited and unchecked growth of financial services. This could lead to a reduction in focus on the sector's main aim of providing finance to support the sustainable development of the real economy – the economy excluding the financial sector

However, we do believe that this consultation presents an opportunity to introduce an objective that delivers 'long-term, sustainable and real economic growth' objectives for the Financial Conduct Authority. This, we believe, can orient regulation of financial services towards creating a sector that is able to maximise its contribution to the economy, society, and long term ecological sustainability.

Question 2: Do you agree that the regulatory principle for sustainable growth should be updated to reference climate change and a net zero economy?

Financial regulation should aim to maximise the sector's contribution to the economic, environmental, and social goals of the UK, such as achieving net zero and limiting global warming to 1.5 degrees and levelling up. Globally, policymaking best practice increasingly acknowledges the importance of focussing on the outcomes that the financial system is intended to produce.[21]

The UK has taken positive steps to include climate concerns in financial regulation, this proposal being an example of how far the debate had progressed. We were encouraged by the remit change recommended by HM Treasury, and accepted by the Bank of England, for the Financial Policy Committee to act with a view to building the resilience of the UK financial system to the risks from climate change and support the government's ambition of a greener industry, using innovation and finance to protect the environment and tackle climate change. [22]

We agree with the government's assessment that the UK's regulatory regime could be strengthened in relation to climate change. However, we believe that these proposals fall short of what is required to "rewire the global financial system for net zero".[23] The

[20] Fair by Design and Institute and Faculty of Actuaries (2021) 'The Hidden Risks of Being Poor: the poverty premium in insurance'. https://www.actuaries.org.uk/system/files/field/document/IFoA_Hidden_Risks_of_Being_Poor_Final.pdf

[21] Dikau and Volz (2021) 'Central Bank Mandates, Sustainability Objectives and the Promotion of Green Finance'. https://www.sciencedirect.com/science/article/pii/S092180092100080X

[22] HM Treasury (2021) 'Recommendations for the Financial Conduct Authority', 3 March. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/972445/CX_Letter_-_FCA_Remit_230321.pdf

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[23] edie (2021) 'COP26: Rishi Sunak vows to make UK "world's first net-zero financial centre"', 3 November. https://www.edie.net/news/11/COP26--Rishi-Sunak-vows-to-make-UK--world-s-first-net-zero-financial-centre-

government's proposal would require regulators only to 'have regard to' the principle that economic growth should be consistent with the UK's 2050 Net Zero target. We argue that regulators should have a statutory objective that positively requires them to take action to help achieve the UK's emissions reduction targets (including interim targets) and Paris Agreement commitments of limiting global warming to 1.5 degrees.

As it stands, regulators acknowledge the potential for climate change to create catastrophic financial risks, but they fail to address the fact that financial services firms bring about environmental harm. For instance, UK banks, asset managers, and investors other financial institutions, are responsible for nearly double the UK's annual carbon emissions[24] and have direct links to rainforest deforestation.[25] Furthermore, HM Treasury's Dasgupta Review indicates how vital ecosystem services are in underpinning the health of the economy, while fundamental to achieving climate ambitions. The Government has since responded to the review by committing to deliver a 'nature positive' future.[26] Tackling climate change and nature loss are critical outcomes that regulators should prioritise on its own terms, particularly given the scale and urgency of the crisis.

The proposal to amend the existing regulatory principles to ensure that sustainable growth should occur in a way that is consistent with the government's commitment to achieve a net zero economy by 2050 is, we believe, inadequate. As noted in the consultation, "regulators are not required to act to advance their regulatory principles; instead they must take them into account when pursuing their statutory objectives". Indeed, the government used this very rationale when arguing for international competitiveness to be elevated to statutory level. If the government considers this an ineffective method to 'support competitiveness in line with the government's vision for the sector', then it leads us to believe that it would be similarly so in our vision, and the vision necessary, for the government's environmental goals.

Question 3: Do you agree that the proposed power for HM Treasury to require the regulators to review their rules offers an appropriate mechanism to review rules when necessary?

We do not agree that the proposed power for HM Treasury to require the regulators to review their rules offers an appropriate mechanism to review rules when necessary. We believe that such power would fundamentally change the relationship between the government and the regulators and damage the independence of the latter, as well as the transparency of the regulatory process.

We have grave concerns that the proposals set out in this consultation will place undue influence in the hands of industry lobbyists, who have much greater resources and lobbying capability than consumer groups and civil society. This risks upsetting the necessary balance of input that is required for regulators to act within the public interest as the bigger the firm, the more powerful the lobbyists. There is, therefore, a risk that placing the proposed powers

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[24] Greenpeace UK and WWF UK (2021) 'The Big Smoke: the global emissions of the UK financial sector'. https://www.greenpeace.org.uk/news/uk-banks-and-investors-responsible-for-nearly-double-the-uks-annual-carbon-emissions-report-finds/

[25] WWF (2016) 'Banking on the Amazon: How the finance sector can do more to avoid tropical deforestation'. https://www.wwf.org.uk/sites/default/files/2016-11/Banking%20on%20the%20Amazon%20(English)%20-%20WWF%20Nov%202016.pdf

[26] HM Treasury (2021) 'Government commits to nature-positive future in response to Dasgupta review', 14 June. https://www.gov.uk/government/news/government-commits-to-nature-positive-future-in-response-to-dasgupta-review

with HM Treasury could erode the independence of regulation in the UK, which has the potential to not only be detrimental to UK citizens and businesses but also to damage the UK's reputation on the global stage.

There are also a number of unanswered questions in this proposal that risk making it harmful to transparency. For example, who defines 'public interest'? How is the independent person to conduct the review appointed? How is 'exceptional circumstances' defined? If HM Treasury defines the public interest, what is deemed an exceptional circumstance, and appoints the independent reviewer, then through this proposal the government risks politicising and compromising the independence of the UK's financial regulators. We therefore believe that this proposal negatively changes the relationship between government and regulator, placing unjustifiable power in the hands of the government, and should, therefore, be rejected.

Question 4: Do you agree with the proposed approach to resolve the interaction between the regulators' responsibilities under FSMA and the government's overseas arrangements and agreements?

We recognise that the interaction between the regulators' responsibilities under FSMA and the government's overseas arrangements and agreements should be considered. We do however, have concerns that if in certain circumstances financial regulation is undermined by trade agreements, this could lead to the erosion of regulatory independence and the dilution of standards that are so important to uphold. A comparison can be made with food standards post-Brexit, which many fear may be compromised by the importation of animal and agricultural products of a lower standard than currently permitted in the UK. We would not wish to see the standard of financial regulation reduced under any circumstance.[27]

Further, any consultation between the regulators and HM Treasury with regards to setting rules and general approaches to supervision must be transparent and include a broad set of stakeholders. As noted in our response to Q.9, transparency is central to creating a democratically accountable financial sector policy and maintaining regulatory independence. It is a prerequisite for stakeholder engagement, combating corruption, and ensuring public trust.

Question 5: Do you agree that these measures require the regulators to provide the necessary information to Parliament on an appropriate statutory basis to conduct its scrutiny?

We agree that Parliament should play a greater role in scrutinising the work of the regulators, and also the Treasury. Robust parliamentary scrutiny is necessary for democratically accountable financial sector policy making. However, given the size and importance of the finance sector, and the extent of the changes underway, we believe that this will require the dedicated attention of a new committee, supported with significant independent resources (similar to how the Public Affairs Committee is supported by the National Audit Office), in order to be effective.

This committee should be able to debate any new legislation, probe the selection of senior leaders appointed to regulatory institutions, have the capacity to respond to regulatory

[27] The Guardian (2021) UK ministers gain power to allow lower-standard food imports, 19 January. https://www.theguardian.com/environment/2021/jan/19/uk-ministers-gain-power-to-allow-lower-standard-food-imports

consultations, and undertake reviews of the effectiveness and impacts of regulation. Critically, this committee should represent all facets of public interest in the financial sector and not be dominated by representatives with ties to the finance industry, which would pose a conflict of interest. The All-Party Parliamentary Group on Financial Markets & Services recently called for greater Parliamentary oversight of financial services regulation, including the creation of a new Joint Committee of Parliamentarians from both Houses with a specific remit for financial services, to allow for more detailed and sustained oversight of regulators.[28]

Question 6: Do you agree with the proposals to strengthen the role of the panels in providing important and diverse stakeholder input into the development of policy and regulation?

The government correctly states that "Any policymaking process risks being deficient if it does not draw sufficiently on the views, experience and expertise of those who may be impacted by regulation." Following withdrawal from the EU, the UK has an opportunity to demonstrate leadership in addressing the gross imbalance in stakeholder engagement with financial regulation by public interest groups (including consumer groups, civil society organisations, and SMEs) versus industry representatives. As few as 10% of submissions to EU agency public consultations represent non-business interests.[29]

Improvements to stakeholder participation are crucial, in particular ensuring effective participation from a diversity of perspectives, especially those representing the broader public, and those with expertise in the social and environmental impacts of finance.[30] It is critical to consider carefully how marginalised and under-represented groups can be supported to participate. This is particularly important given the evidence of how the financial system discriminates against people of colour, for example.[31] Providing resources for civil society groups representing citizens and social and environmental concerns to engage will be important. Public interest groups face issues of capacity which can undermine their ability to participate. The technical complexity of much financial regulation can make it necessary for regulators to invest in identifying and explaining the salience for social and environmental issues of regulatory changes.[32]

The Lab's work on data in financial services[33] demonstrates that it is vital to ensure that a broad range of stakeholder views are considered in the development of future financial services. Envisaging Open Finance in terms of a straightforward relationship between firms and consumers misses the secondary impacts on third parties, and on society more broadly. For example, digitisation in finance puts pressure on non-digital infrastructure - such as

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[28] All-Party Parliamentary Group on Financial Markets and Services (2021) 'APPG calls for greater Parliamentary oversight of financial services regulation', 17 February. https://apgfms.org.uk/2021/02/17/appg-calls-for-greater-parliamentary-oversight-of-financial-services-regulation/

[29] Beyers and Arras (2020) 'Who Feeds Information to Regulators?' https://ideas.repec.org/a/cup/jnlpup/v40y2020i4p573-598_3.html

[30] Pagliari and Young (2014) Leveraged Interests: Financial Industry Power and the Role of Private Sector Coalitions. https://www.stefanopagliari.net/pdf/Pagliari%20and%20Young%20-%20Leveraged%20Interests%20-%20RIPE%20-%20Pre-Publication%20Draft.pdf

[31] Runnymede (2020) 'The Colour of Money Report. How Racial Inequalities Obstruct a Fair and Resilient Economy' https://www.runnymedetrust.org/uploads/publications/pdfs/2020%20reports/The%20Colour%20of%20Money%20Report.pdf

[32] Pagliari and Young (2016) 'The Interest Ecology of Financial Regulation: Interest Group Plurality in the Design of Financial Regulatory Policies'. https://academic.oup.com/ser/article-abstract/14/2/309/2451755?redirectedFrom=fulltext

[33] Finance Innovation Lab (2021) 'Open Finance and Vulnerability: A Policy discussion paper'. https://financeinnovationlab.org/wp-content/uploads/2021/07/Open-Finance-doc_FINAL_2021.pdf

in-person branches or postal applications – which are most needed by poorer people, who face greater harm if that infrastructure disappears.[34]

Statutory panels present one key method for stakeholders to input into regulation. The government should build on its proposals to increase transparency regarding the panels, including membership recruitment, by ensuring that the voice of consumers and citizens is given at least equal weight to that of industry. Currently, the Financial Conduct Authority's statutory panels are largely mechanisms for gaining input from industry, with the Financial Services Consumer Panel being the exception. The Prudential Regulation Authority, on the other hand, does not have a public interest panel at all.

The new framework will need to include a stronger, clearer definition of 'public': currently, what is meant by the public can be interpreted very narrowly, or can bias towards consulting industry representatives rather than representatives of the general public. For example, the AI Public-Private Forum[35] includes only one civil society organisation, the Alan Turing Institute, and none that focus specifically on broader social and environmental issues or consumer representatives. The recently launched International Data Transfer Expert Council intended to select experts from civil society, academia and industry but failed to include any civil society representation when launched.[36]

We recommend that the government require the Financial Conduct Authority and Prudential Regulation Authority's statutory panels to consist of a maximum of 50% industry representatives and at least 50% public interest representatives This approach is already being used elsewhere. For example, only 13 out of 30 representatives in the EU's Securities and Markets Stakeholder Group are financial market participants.[37] As part of this, a duty should be placed on the Prudential Regulation Authority to consult the public, not just firms (amending FSMA s136), including via a new statutory panel. Resources should also be provided to enable public interest groups to participate.

Reform however, should not stop there. To truly provide important and diverse stakeholder input into the development of policy and regulation, the government should consider the following measures:

- Amend legislation to ensure regulators have an appropriate and representative balance of interests on their boards and high level decision making bodies.
- Establish formal arrangements for consumer input and to take account of the advice they receive, including publishing whether and how they have acted upon that advice. This would address the imbalance between formal practitioner and consumer input into the system.
- The Financial Conduct Authority and Prudential Regulation Authority should be required to hold part of their board meetings in public along the lines of the Food Standards Agency. This would ensure that board members are given proper exposure to external views from civil society and consumer advocates. On key

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[34] Finance Innovation Lab (202), 'Lifting the Lid on Fintech. What Does New Technology Mean for a Financial System That Serves People and Planet'.
https://financeinnovationlab.org/wp-content/uploads/2020/11/Lifting-the-Lid-on-Fintech-Finance-Innovation-Lab.pdf
[35] Bank of England (2020) Fintech AI Public-Private Forum, 12 October.
https://www.bankofengland.co.uk/events/2020/october/fintech-ai-public-private-forum
[36] Department for Digital, Culture, Media & Sport (2022) Global data experts fire up government's plans to promote free flow of data, 25 January.
https://www.gov.uk/government/news/global-data-experts-fire-up-governments-plans-to-promote-free-flow-of-data
[37] European Securities and Markets Authority (2022) 'Securities and Market Stakeholder Group'.
https://www.esma.europa.eu/about-esma/governance/securities-and-markets-stakeholders-group

matters, the Financial Conduct Authority and Prudential Regulation Authority should be required to hold formal public hearings (in addition to annual public meetings).
- Introduce a role for 'Citizen Ambassadors', representatives from communities that are facing the highest risk of discrimination, vulnerability and exclusion with a responsibility for making sure the financial system develops in a way that supports equality and human rights.
- Review and address protections over industry whistleblowers. This is particularly important given recent events at the Competition Markets Authority that demonstrated a disregard for whistleblower safety.[38]

Question 7: Do you agree that the proposed requirement for regulators to publish and maintain frameworks for CBA provides improved transparency for stakeholders?

It is our view that cost benefit analysis (CBA) can be a useful process by providing additional information for stakeholders that can form the basis for challenging regulatory policy decisions. This is only possible if CBA is carried out in a detailed and transparent manner that goes beyond the financial costs that firms will face due to new regulations. CBA should take into account the wider impact of policy decisions, such as the overall impact on consumers, financial exclusion, risk to financial instability and impact on climate commitments. Echoing points made by FairByDesign, we believe that CBA procedures must involve extensive engagement with consumer organisations and people with lived experience of the issues being analysed. The Financial Conduct Authority should account for how they have engaged and sought this information as well as how they have incorporated it into their CBA. We urge the government to specify in the new statutory requirement that the regulator CBAs take into account these considerations.

Question 8: Should the role of the new CBA Panel be to provide pre-publication comment on CBA, or to provide review of CBA post-publication?

We are in favour of a new CBA Panel as this can increase scrutiny of new regulation. However, as noted above, this will only be effective if it takes into account the wider impact of policy decisions. To ensure that the CBA Panel provides a balanced and transparent assessment that can add value to the regulatory process, their role should be to provide review of CBA post-publication.

Reviewing post-publication will limit the opportunity for industry lobbyists to influence the outcome of CBA, presenting a better chance that new regulation, e.g. climate or increased consumer protection, that may incur a cost to industry, is not rejected at an early stage. This will not only lead to a worse outcome for consumers but pre-publication will also slow down the regulators and reduce their effectiveness. Raising the same concerns as in our response to Q.6, in order for the panel to be effective at reviewing CBA on behalf of society, it must be appointed in a transparent manner that seeks to appoint representatives from a multitude of stakeholders, including the most vulnerable in society.

Question 9: Do you agree that the proposed requirement for regulators to publish and maintain frameworks for how the regulators review their rules provides improved transparency to stakeholders?

[38] City A.M. (2021) Competition watchdog investigates complaint over treatment of whistleblower, 19 December. https://www.cityam.com/competition-watchdog-investigates-complaint-over-treatment-of-whistleblower/

We believe that the proposed framework for regulators to publish and maintain frameworks for how the regulators review their rules does improve transparency for stakeholders. However, the government could do more to ensure that the UK is a world leader in transparency.

Transparency is central to creating a democratically accountable financial sector policy. It is a prerequisite for stakeholder engagement, combating corruption, and ensuring public trust. When a lack of transparency over lobbying leads to policy outcomes that only benefit well-funded or well-connected interest groups, millions and even billions of pounds worth of taxpayer money can be put at risk. It is therefore critical that the UK government develops a policy that provides for transparency regarding lobbying activities in the finance sector and beyond. Such policies will bolster the UK's international reputation for financial integrity and should not be seen as a hindrance; countries like the US and Ireland already have more stringent lobbying regulations in place than the UK.[39]

We recommend that the government require statutory registration of all lobbyists, disclosure of lobbyists who have previously been public officials involved in developing finance policy, and require all lobbyists to report monthly on their communications with government and regulators, including written communications.

Q10. Do you agree with the government's proposal to establish a new Designated Activities Regime to regulate certain activities outside the RAO?

We understand the government's argument for establishing a new Designated Activities Regime to regulate certain activities outside the RAO and agree with the principle. However, in order to ensure financial stability and the correct supervision of financial services, we suggest that the regulators closely monitor and review the new regime, particularly at the early stages, intervening when necessary. The new regime should not be an avenue for risky behaviour to benefit from light-touch supervision.

Q11. Do you agree with the government's proposal for HM Treasury to have the ability to apply "have regards" and to place obligations on the regulators to make rules in relation to specific areas of regulation?

We are in favour of this proposal to provide HM Treasury with the ability to apply 'have regards' and to place obligations on the regulators to make rules in relation to specific areas of regulation. This will mean that the Financial Conduct Authority will have an obligation to consider, and report back to parliament on, areas that are not strictly part of its objectives but are nonetheless very relevant to their work. For example, the Financial Conduct Authority does not currently have a clear statutory requirement to address financial inclusion issues and does not routinely have regard to issues of financial inclusion across all its work, wherever it is appropriate. However, there is a risk that this proposal provides the Treasury with unchecked power and the ability to unduly impact the work of the regulators. We therefore urge the government, as we have done throughout this response, to ensure that any supplementary powers are granted under the condition of public and parliamentary scrutiny.

[39] Transparency International UK (2021) Understanding access and potential influence in Westminster. https://www.transparency.org.uk/uk-lobbying-issues-access-influence-westminster