The PRA's approach to policy [Discussion Paper DP4/22]
Response from Finance Innovation Lab and Which?
December 2022

Summary

1. We commend the PRA for consulting on its approach to policy via this Discussion Paper (DP) as the Future Regulatory Framework will bring about the biggest shake up of financial regulation since the 1980s. It will determine how financial services regulation is developed in the UK outside of the EU, and it opens up fundamental questions about what purpose the PRA works towards and how it is held accountable.

2. While we are opposed to the proposed new growth and 'international competitiveness' objective, there are opportunities for the PRA to act to ensure that it is implemented in a manner that minimises risks to financial stability, and supports the advancement of consumer protection and interests, and the ability of regulators to make decisions independently in the public interest. In particular, we urge the PRA to take extreme caution when implementing its described proactive approach to pursue the new objective. We recommend that a proactive approach must dramatically improve stakeholder engagement, especially with civil society, in order to help the PRA ensure that it understands the potential impacts of the new objective on consumers and broader society.

3. We welcome the PRA's commitment to engage with a wide range of stakeholders during the policy-making process, including in particular from civil society. These actors hold unique expertise in the impacts of financial services and its regulation on consumers, the real economy, society, and the environment that is essential to good regulatory decision making. Despite this, there is currently a gross imbalance in stakeholder input – with industry voices dominating. The PRA must pro-actively work to overcome this problem and the structural barriers to the participation of civil society in policy-making. We provide a number of ideas for this, which we would be happy to discuss further.

4. The Finance Innovation Lab and Which? are submitting this joint response because both organisations recognise the critical importance of the issues raised in the DP, and we want to ensure that the interests of consumers and broader society are not diluted, but are in fact enhanced, as the new regulatory framework is implemented. Our need to collaborate is also a demonstration of some of the issues highlighted in our answer to Q.8 regarding the challenges civil society organisations face in responding to formal written consultations.

5. Please contact Marloes Nicholls, Head of Policy and Advocacy at the Lab (marloes@financeinnovationlab.org), and Paddy Greene, Head of Money Policy at Which? (paddy.greene@which.co.uk), to discuss this response in more detail.

Finance Innovation Lab

6. Finance Innovation Lab ("the Lab") is a UK-based charity working to bring about a financial system that works for people and planet.[1] This submission builds on the Lab's previous relevant consultation responses and it reflects dialogue the Lab has pursued with senior policy-makers in relation to the Future Regulatory Framework Review and Financial Services and Markets Bill.[2]

7. The Lab is also part of the Finance For Our Future coalition - an umbrella group of 39 civil society organisations and other public interest bodies calling on the government to ensure that its financial services reform package is adequate for the biggest challenges the UK faces now and into the future.[3]

Which?

8. Which? is the UK's consumer champion, here to make life simpler, fairer and safer for everyone. Our research gets to the heart of consumer issues, our advice is impartial, and our rigorous product tests lead to expert recommendations. We're the independent consumer voice that works with policymakers, investigates, holds businesses to account and makes change happen. As an organisation we're not for profit and all for making consumers more powerful.

9. This submission follows on from our response to HM Treasury's consultation on *Financial Services Future Regulatory Framework Review: Proposals for Reform*.[4]

Response

Q.1 Do you have views on whether we are correct to adopt a proactive approach to our new secondary objective? If so, do you have views on ways in which we could pursue our new secondary objective, as part of a proactive approach?

10. It is important to note that we are in fact opposed to the proposed new secondary objective (as currently stated in the Financial Services and Markets Bill 2022), which will

[1] For more information see: https://financeinnovationlab.org/
[2] For example, the Lab submitted a response to HMT's Future Regulatory Framework Review in February 2022, as well as written evidence to the Financial Services and Markets Bill Committee in the House of Commons in September 2022.
[3] *Finance for our Future (2022), Joint Statement.*
[4] *Which? response to HM Treasury's consultation on Financial Services Future Regulatory Framework Review: Proposals for Reform* (February 2022)

mandate the PRA to pursue its expanded powers in such a way that promotes growth and 'international competitiveness' of the UK, and of the financial services industry "in particular".

11. We are very concerned that this objective risks undermining financial stability, the advancement of consumer protection and interests, and the ability of regulators to make decisions independently in the public interest.

12. We know these risks well from recent history. In 2010, HMT identified that one of the reasons for regulatory failure leading up to the global financial crisis of 2007/08 was "excessive concern for competitiveness".[5] Parliament acknowledged this too, and they removed competitiveness from the mandate of the financial regulator. It is important to note that, at the time, the regulator (then the FSA) was merely to 'have regard to' competitiveness, which is a far weaker requirement than pursuing a statutory objective.

13. In the words of the Bank of England's Governor Andrew Bailey in 2019, when he was CEO of the FCA, the regulator "was required to consider the UK's competitiveness, and it didn't end well, for anyone".[6] The global financial crisis saw millions lose their savings, homes, businesses and jobs, and cost the UK an estimated £1.8 trillion in lost UK GDP.[7] The Institute for Fiscal Studies estimates that the cataclysmic event cost each worker £800 per annum in lost income in the years that followed.[8] It is no wonder then that today, during a cost of living crisis, over 70% of the population are worried about the impact of another crash on their personal finances.[9]

14. We are also concerned that the proposed new objective could negatively impact on the regulators' ability to protect and advance consumer interests. In particular, we fear that important consumer protections may be unfairly portrayed as representing a burden for companies, inhibiting investment and innovative behaviour, and therefore constraining the regulators' ability to take action to protect consumers. In fact, as a recent Which? report has set out, consumer protections support, not hinder, economic growth by encouraging competition and innovation in markets. They also provide public confidence in businesses which engenders a consumer base ready and willing to try new firms, products and services.[10]

15. The new objective risks undermining the PRA's ability to make decisions independently in the public interest too. It effectively asks regulators to promote the ability of UK firms

[5] *HM Treasury (2010), A new approach to financial regulation: judgement, focus and stability.*
[6] *Bailey, A. (2019), The future of financial conduct regulation.*
[7] *Baker, Epstein, and Montecino (2018), The UK's Finance Curse? Costs and Processes.*
[8] *BBC (2018), Workers are £800 a year poorer post-crisis. 12 September 2018.*
[9] *The Finance Innovation Lab (2022), Financial Services and Markets Bill: Polling reveals UK public oppose deregulation.*
[10] *Which? (2022), Consumer protections and economic growth*.

to compete for business overseas.[11] As a result, it gives the PRA a problematic double mandate - as both watchdog *over* and cheerleader *for* the industry. This problem was noted by former FCA Chair, Charles Randell, to the Treasury Select Committee in December 2021: "The risk [is] that whenever we propose to do something, we receive a large amount of lobbying input saying this rule doesn't exist in this country or that country or the other country, and therefore you shouldn't do it." [12]

16. The Lab and Which? are joined by a wide range of stakeholders in expressing alarm about the new objective.[13] In May 2022, over 50 economists wrote to HMT warning of the dangers of any competitiveness objective for financial regulators.[14] The Treasury Select Committee has also expressed concern over competitiveness as a regulatory goal. In June 2022 it noted "sensitivity towards the idea of "competitiveness" as an explicit part of an objective, and fears that it might be interpreted as an invitation to overly loosen regulatory constraints".[15] The Financial Services Consumer Panel has said that they "do not believe the secondary nature of the objective is sufficient to mitigate the risk that consumer protection is traded off against competitiveness and therefore diluted.[16]

17. Unfortunately, despite the significant public concern surrounding the new objective, we are concerned that the risks we have highlighted above have not been adequately addressed by the government. However, we would like to ensure that if the new objective is introduced, following the Financial Services and Markets Bill receiving Royal Assent, that it is done so in a manner that causes the least harm to financial stability, the advancement of consumer protections and interests, and regulatory independence.

18. For this reason, we urge the PRA to take extreme caution when implementing its described proactive approach when looking for opportunities to advance growth and international competitiveness.

19. We are somewhat encouraged by the PRA's assertion that the best way to ensure the long-term competitiveness of the UK is through a robust and effective prudential regime, built around global standards, in a way that instils trust and confidence in the UK as a place to do business. However, we are not completely clear what this means in practice

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[11] While there has been much confusion about this, we note that the PRA already has an objective to promote competition (which is distinct from 'international competitiveness') between firms in order to drive better outcomes.
[12] *House of Commons Treasury Committee (2021), Oral evidence: The work of the FCA, HC 146.*
[13] *Kay, J. (2022). Capturing the regulators: What happens when a body charged with ensuring fair play is beholden to the industry it oversees? 3 November 2022.*
[14] *Balanced Economy Project (2022) Competitiveness in financial regulation: some good news.*
[15] *House of Commons Treasury Committee (2022) Future of financial services regulation. First Report of Session 2022–23. pp.25-26.*
[16] *Financial Services Consumer Panel (2022) Financial Services Consumer Panel response to the Public Bill Committee's call for evidence on the Financial Services and Markets Bill*

and how this will protect and benefit consumers and broader society. For example, the DP notes that the new objective will be implemented “subject to aligning with relevant international standards" yet it also notes that with the UK no longer a member of the EU, the PRA can “adjust” its implementation of international standards and “have more scope to determine which firms to apply international standards to”. We do not think that such an approach has adequate concern for consumers.

20. To address this, we suggest that any proactive approach must dramatically improve stakeholder engagement, especially with civil society, in order to help the PRA ensure that it understands the potential impacts of the new objective on consumers and broader society. This should be complemented by an increased focus within the PRA in general on consumer issues.

21. In our response to Q.8 (see below) we outline suggestions for a new more inclusive and balanced approach to stakeholder engagement that can improve the PRA’s policy-making process.

Q.8 Do you have views on how the PRA could enhance its approach to external engagement, and our proposed guiding principles?

a. Which groups of stakeholders should the PRA seek to engage during the policy-making process?

22. We welcome the PRA’s commitment to engage with a wide range of stakeholders during the policy-making process, including in particular from civil society. We define civil society broadly as including consumer groups, civil society organisations (such as grassroots community groups, charities, and NGOs), Small and Medium Enterprises (SMEs), and members of the public. These actors hold unique expertise in the impacts of financial services and its regulation on consumers (including vulnerable customers), as well as the real economy, society, and the environment.[17]

23. Engagement with civil society can improve decision making and result in better regulation. As the government noted in the Financial Services Future Regulatory Framework Review: “it is vital that there are opportunities for consumers, relevant stakeholders and firms to engage with and scrutinise the development of regulatory proposals. 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.”[18]

24. As the Consumer Working Group of the UK Regulators Network has stated, effective civil society engagement is also fundamental to embedding a risk-based approach to regulation. It provides reliable and robust evidence of consumer needs and detriment

[17] *Pagliari and Young (2014) [Leveraged Interests: Financial Industry Power and the Role of Private Sector Coalitions](). *
[18] *HM Treasury (2021) Financial Services Future Regulatory Framework Review: Proposals for Reform.*

that enables regulators to clearly define objectives based on the outcomes that consumers need, and it allows regulators to systematically monitor the market thereafter for signs that risks to those objectives have materialised or are likely to materialise.[19]

25. A recent report by the Consultative Group to Assist the Poor, a global partnership of more than 30 leading development organisations, found that consumer groups, such as consumer associations, can elevate the collective consumer voice and bring together diffuse, and often weak, interests to strengthen engagement in policy-making.[20] They recommend public consultation, including in-person events, and creating formal consultative structures, such as consultative bodies to advise regulators. The report highlights the FCA's Financial Services Consumer Panel as "an exemplary model for engaging the consumer perspective in regulatory policymaking."

26. It is therefore striking that even though the PRA has an objective to protect policyholders, it has no legal requirement or mechanism to consult them or their representatives.

27. This forms part of a much larger problem of industry representatives dominating other stakeholders in the policy-making process. For instance, there are at least 18 finance trade associations and industry groups in the UK with turnovers above £1 million, with a combined annual turnover of more than £145 million in 2020-2021, and finance-related consultations are frequently dominated by business interests advocating for weaker financial regulation.[21] According to Charles Randell, in 2021 Ministers held 10 times more meetings with UK Finance and the Association of British Insurers than Citizens Advice.[22] As a result, if regulators do not actively work to make it easier for the public interest to be heard, they risk being captured by the industry.

b. Do you have any views on how stakeholders should be engaged at each stage of the policy-making process?

28. At an event organised by the Lab and Chartered Banker Institute in July 2022, Victoria Saporta, Executive Director of the PRA, said that she wanted to "hear more from civil society groups" and that the PRA is "committed to improving this engagement". She noted that "working with civil society groups makes us more effective policy-makers" and that they hear less from civil society groups than they would like to.[23]

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[19] *UK Regulators Network Consumer Working Group (2014) [Involving consumers in the development of regulatory policy.]()*

[20] *Consultative Group to Assist the Poor (2021) [Elevating the Collective Consumer Voice in Financial Regulation.]()*

[21] *Positive Money (2022), [The Power of Big Finance: How to reclaim our democracy from the banking lobby.]()*

[22] *Randell, C. (2022) [Finance Bill must not be charter for vested interests.]() 16 November.*

[23] *Finance Innovation Lab (2022) [Transforming Engagement in Financial Services](). 5 July.*

29. We really welcome the PRA seeking a greater balance of diverse views from different stakeholders, including from civil society, in the policy-making process. The PRA also notes that now the UK is outside the EU there is more flexibility to tailor regulation to the UK. We suggest that this presents an opportunity to demonstrate global leadership in addressing the gross imbalance in stakeholder engagement with financial regulation by civil society versus industry representatives. (To achieve this, the Finance for our Future coalition recommends that at least 50% of representatives engaged in providing advice and making decisions about financial services policy and regulation (e.g. at events, on panels, or via bilateral meetings) should be from civil society.)

30. In this DP, the PRA notes that they "engage with industry and civil society stakeholders through the policy-making process" and have developed principles to guide their future approach to engagement. This includes "wider engagement" defined as seeking to "engage with a broader range of relevant stakeholders from across civil society (for example with consumer protection groups)".

31. The DP also notes the ways in which the PRA will improve how it gathers feedback from stakeholders. For example, the PRA "will identify opportunities to advance our secondary objectives through our practical supervisory experience, industry feedback, analysis, or research". This method of engagement is effective if the stakeholders have the financial resources and capacity required to proactively generate research and respond to relevant consultations, not only from the PRA, but other financial regulators.

32. In our experience, civil society does not have the resources enjoyed by the financial services industry, which places them at a disadvantage to engage with the PRA as described. This problem is going to be particularly acute for the next two to five years, given the scale of post-Brexit reform. According to the Regulatory Initiatives Grid, as of May 2022, of the 133 live initiatives 54 (41%) are likely to be of interest to consumers and consumer organisations.[24]

33. In order to improve engagement with civil society, the PRA must consider how to adapt its consultation and research processes. For example, it could help to:
    a. Work with partners to translate forthcoming reviews (which can be very technical) in a way that is meaningful to civil society.
    b. Pro-actively engage civil society to understand what their concerns and priorities for reform are.
    c. Map and promote consultations to relevant civil society organisations.
    d. Extend the time periods civil society representatives have to respond to consultations.

34. Overall, however, effective engagement with civil society in the policy-making process should be multifaceted and go beyond issuing written discussion papers and

[24] *FCA (2022) Regulatory Initiatives Grid dashboard. May 2022.*

consultations. In our response to Q.8c we offer suggestions for how this can be achieved.

c. Do you have any suggestions for new forms of engagement that the PRA could consider adopting?

35. To redress the imbalance between industry and civil society engagement in the policy-making process, we recommend that the PRA should establish new formal arrangements that support civil society to input to the policy-making process, and report annually on how they have acted on this advice and considered the impact of their policies on consumers. Examples of such mechanisms should include:
    a. Creating a new civil society advisory panel that is based on the successful FCA Financial Services Consumer Panel.
    b. Holding public hearings on critical regulatory developments (such as reform to Solvency II).
    c. Hosting regular engagement fora with civil society in order to provide: 1) information on current and upcoming policy initiatives; 2) an opportunity for civil society organisations to ask questions, share feedback, and raise concerns with PRA executives; and 3) hear civil society's priorities for reform.
    d. Holding at least part of the Prudential Regulation Committee meetings in public, along the lines of the Board of the Food Standards Agency so that the committee members are given exposure to external views from civil society representatives and consumer advocates.

36. Organising secondment positions in policy-making teams to civil society representatives (and vice versa) could also aid relationship building and mutual understanding.

37. Alongside this, it will be essential that the PRA is transparent about the stakeholders it is meeting with, and makes this information publicly available on a regular basis.

38. We are aware that the challenge of engaging civil society in the policy-making process is complex. For this reason, we urge the PRA to commit to a separate review to understand how to address the issue of under-engagement with civil society in the policy-making process over the long-term**.** We suggest that this takes place before the PRA publishes the consultation that follows this DP, and in collaboration with civil society representatives. The Lab and Which? would be happy to discuss with the PRA how this could work in more detail in a specific meeting, and to share our expertise, capacity, and networks in order to support it.