

By email to: [FRF.Review@hmtreasury.gov.uk](mailto:FRF.Review@hmtreasury.gov.uk)

19 February 2021

Future Regulatory Framework Review  
Financial Services Strategy  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ

Dear Sirs

### [Consultation - Financial Services Future Regulatory Framework Review Phase II](#)

The British Insurance Brokers' Association is the UK's leading general insurance intermediary organisation representing the interests of insurance brokers, intermediaries and their customers.

BIBA membership includes more than 1,800 regulated firms, employing more than 100,000 staff. General insurance brokers contribute 1% of GDP to the UK economy; they arrange 67% of all general insurance with a premium totalling £65.1bn and 81% of all commercial insurance business.

Insurance brokers put their customers' interests first, providing advice, access to suitable insurance protection and risk management.

BIBA receives more than 600,000 enquiries per year to its Find Insurance Service and helps people and business to access insurance.

BIBA is the voice of the insurance broking sector and advises members, the regulators, consumer bodies and other stakeholders on key insurance issues.

### [General Observation](#)

BIBA and its members recognise the benefits of having a flexible and dynamic approach to the UK regulatory regime. However, regulators must not feel that they have been given 'a free hand' in what is a delegation of power to them. The regime needs appropriate checks and balances built into it so that regulators recognise that they are accountable and must

justify why a rule is needed and its impact on the competitive position of UK market participants when compared to other markets, such as the EU's.

Part of those checks and balances could be a requirement to show why other, less intrusive or burdensome options would not produce the desired outcome.

Research conducted for BIBA by London Economics in 2011, 2015 and 2019 on the cost of regulation in the UK compared to EU member states and other major insurance centres such as New York and Singapore, highlighted that the current degree of freedom to create rules for the regulatory environment has seen the UK become one of the most expensive places in the world in which to do business. Further freedom to write rules without challenge would only exacerbate matters.

Cost takes on a particular significance at the moment and whilst the FCA has quite rightly been calling on firms to recognise and respond to the financial strain that businesses and consumers are facing as a consequence of the pandemic, the FCA itself (along with the Financial Ombudsman Service (FOS) and Financial Services Compensation Scheme (FSCS)) appears to be disregarding the fact that regulated firms have not been immune to the pandemic's effects and it is introducing transaction costs, as well as increasing application fees and no doubt will want higher levies come its fees consultation in April. The FOS is also looking for a substantial increase in its levy and case fee despite expecting to receive fewer complaints. The FSCS levy projection is in excess of £1 billion.

For insurance brokers the FSCS levy is particularly egregious as the total amount the sector is being asked to pay towards the FSCS is £146 million, whilst the actual levy for claims related to the General Insurance Distribution funding class is £14 million ( the balance of £132 million goes towards failures in funding classes not connected to our sector).

It would be remiss of us if we did not take this opportunity to also raise as an example of valueless and bureaucratic regulation, the Competitions and Markets Authority's (CMA's) application of its Private Motor Insurance Market Investigation Order 2015 to insurance brokers. Data submitted to the CMA by insurers is duplicated many times over by insurance brokers who are being asked to also submit the data for each of the insurers they use to arrange this type of cover.

[1. How do you view the operation of the FSMA model over the last 20 years? Do you agree that the model works well and provides a reliable approach which can be adapted to the UK's position outside of the EU?](#)

BIBA and its members agree that the FSMA model offers 'the path of least resistance' in terms of how the UK regulatory framework could operate.

That said, this does not signify that the last 20 years (15 in the case of insurance brokers) has consistently led to firms feeling that the model works. For example, it is often felt that the Financial Conduct Authority (FCA) has just been going through the motions of consulting and taking feedback, as despite strong reservations expressed in response to areas of a consultation, the FCA has said: “we are going ahead with our proposals anyway”.

If the measures of the model’s success with the current powers that the regulators have included the impact on the number of firms that are authorised to trade, details on the insurance broking sector would not make comfortable reading. The underlying data from the FCA's Data Bulletin 1 shows that in 2006 there were 8,261 authorised general insurance intermediaries. The underlying data for its Retail Intermediary Market 2019 review shows that the number of general insurance intermediaries has fallen to 4,888. This reduction in competition creates a lack of a local presence and therefore ultimately reduces choice for consumers.

## 2. What is your view of the proposed post-EU framework blueprint for adapting the FSMA model? In particular:

- What are your views on the proposed division of responsibilities between Parliament, HM Treasury and the financial services regulators?

The division of responsibilities is logical. BIBA would not be in favour of fully operationally independent financial services regulators, however. As we expand on below, there needs to be an appropriate degree of oversight within government and HM Treasury in particular, to ensure that the regulators’ enthusiasm for rule writing does not create a UK marketplace that is at a competitive disadvantage to its near neighbours and so acts to dissuade capital from investing in the UK.

There also remains a role for the Treasury Select Committee in reviewing the work of the regulatory family, but the focus of oversight should be on the day-to-day rule-making and supervisory activities.

- What is your view of the proposal for high-level policy framework legislation for government and Parliament to set the overall policy approach in key areas of regulation?

We are persuaded by the argument for government and Parliament to set the policy approach for specific areas of financial services regulation, which should allow for more strategic policy input by the UK’s democratic institutions. It also provides the opportunity for ‘the bigger picture’ to be considered.

The consultation paper uses an example of the government and Parliament setting out in legislation the overall purpose and regulatory approach needed for the prudential regulation of insurance business and BIBA would highlight the potential opposing desired outcomes between the FCA and Prudential Regulation Authority (PRA) that touch on this area. The FCA, in fulfilment of its purpose to provide consumer protection, would like insurers to provide what is known as ‘risk transfer’ (whereby money received by an insurance broker is deemed received by the insurer) which would involve insurers taking the credit risk to their balance sheets. The PRA on the other hand, in pursuing its objective of financial stability, would rather these insurers minimised their credit risk, or hold extra capital. We thus see two regulators working to their objectives but whose approaches are contradictory. In setting the overall regulatory approach, these potential contradictions could be considered and managed.

- [Do you have views on how the regulators should be obliged to explain how they have had regard to activity-specific regulatory principles when making policy or rule proposals?](#)

BIBA and its members strongly support the existence of a challenge mechanism as part of the model, so that there are checks and balances in place. This should help create an environment in which regulators consider their proposals long and hard before making them.

### [3. Do you have views on whether and how the existing general regulatory principles in FSMA should be updated?](#)

It is considered that the principles of good regulation remain valid.

Of the existing principles, ‘Proportionality’ comes up as the least observed, in the opinions of BIBA members. This is most noticeable when the regulators are creating rules for a market that has a diverse range of firms operating within it. So whilst BIBA members have not come forward with any suggestions (beyond the wider suggestion in response to Q4) on how these could be updated, how the regulators adhere to them may need review.

An example of this perceived lack of proportionality can be seen in a review that BIBA undertook in 2017 of the number of regulatory publications that the FCA had produced that had an impact on insurance brokers. Evenly distributing them over the four years since the FCA’s formation in 2013, it worked out as one publication per fortnight.

Further, research conducted by London Economics on behalf of BIBA in late 2019 found that in small firms, more than one in every four (26%) full time equivalent staff are employed to attend to regulatory requirements.

Tying up over a quarter of a small insurance broker's staff to deal with regulation matters, when they could be using some of that time to help service clients' needs can only reduce a firm's productivity and does not seem to be proportionate regulation for a sector that creates no systemic risk.

4. Do you have views on whether the existing statutory objectives for the regulators should be changed or added to? What do you see as the benefits and risks of changing the existing objectives? How would changing the objectives compare with the proposal for new activity-specific regulatory principles?

BIBA has, for a number of years, strongly supported the calls to give the regulators a statutory objective to support the international competitiveness of the UK financial sector when carrying out their responsibilities. During its time as a member of the European Union (EU), the UK has earned itself a reputation for 'gold plating' regulations, creating an unlevel playing field between UK regulated firms and their EU counterparts. As the UK looks to develop its place in a post-EU exit world, the last thing it needs is its financial services regulators having the ability to operate in a way that could be counter-productive to government policy and the UK's international competitive position.

Drawing on the examples used in response to Q3 above, the status of 'proportionality' as a regulatory principle seemingly does not give it enough conscious focus within the regulators. Amending the statutory objectives to add a consideration of the international competitiveness of the UK financial sector when creating rules, may provide the only mechanism by which the requirement would be 'front and centre' of the regulators' minds when considering placing additional obligations on firms.

It is our understanding that the regulators in a number of other countries such as Switzerland, Bermuda and Singapore, all of which have major financial services sectors, do have an international competitiveness objective and so reintroducing one in the UK would go some way towards enabling the UK to compete effectively.

Whilst the existence of the objective for the Financial Services Authority (FSA) was criticised as having contributed to the FSA's so-called 'light touch' regulation in the run up to the 2007-09 financial crisis, we would argue that this was an excuse rather than a reason. The UK was bound at the time by the same regulatory standards as all EEA markets and does not fit with the UK's reputation for 'gold-plating' regulations.

5. Do you think there are alternative models that the government should consider? Are there international examples of alternative models that should be examined?

As this review comes in the middle of the current pandemic, the most prudent course of action may be to apply the model that creates the least amount of upheaval and least cost

for regulated businesses. As the FSMA model is understood by most of the stakeholders in this market, it may be prudent to keep with that in the short term, with government and Parliament reserving the right to look at this again in a few years' time.

6. Do you think the focus for review and adaptation of key accountability, scrutiny and public engagement mechanisms for the regulators, as set out in the consultation, is the right one? Are there other issues that should be reviewed?

We believe that these are the right areas on which to focus at this stage.

7. How do you think the role of Parliament in scrutinising financial services policy and regulation might be adapted?

One possible option may be to look into the manner in which statutory instruments (SIs) are brought into force in this sector, particularly those within the scope of authority of the regulators. For example, if most (as suspected) follow the negative procedures route, would a move to the affirmative procedure provide the mechanism by which Parliamentary scrutiny may be increased?

It may be prudent to adopt a framework within which the regulators and HM Treasury could determine which SIs should follow the affirmative procedure and which the negative.

8. What are your views on how the policy work of HM Treasury and the regulators should be coordinated, particularly in the early stages of policy making?

As mention in response to Q1, BIBA members see a role for HM Treasury in scrutinising the work/proposals of the financial services regulators rather than simply increasing the level of engagement between the parties.

There is a natural hierarchy of accountability in this, with the regulators being accountable to HM Treasury (as well as Parliament) and HM Treasury being accountable to Parliament.

9. Do you think there are ways of further improving the regulators' policy-making processes, and in particular, ensuring that stakeholders are sufficiently involved in those processes?

As mentioned in response to Q1, it is often felt that the Financial Conduct Authority (FCA) has just been going through the motions of consulting and taking feedback, with the result that it simply states: "despite your feedback, we are going ahead with our proposals anyway". So that stakeholders understand why their feedback has not persuaded the regulator to change its mind, greater explanations may help.

Whilst the practitioner panels provide a useful means of the regulators engaging with industry as part of policy proposals, they are by necessity drawn from different financial sectors and so the level of detailed feedback/challenge that they can provide is limited. Subgroups of these panels, drawn from the sector or sectors most affected by a proposed regulatory change may be an option.

The cost/benefit analyses undertaken by the regulator are often regarded as fundamentally flawed and whilst we are aware that the FCA has carried out studies on how to improve the accuracy of these and even hired consultants to support this process, it is unclear what if anything has changed to improve them.

The paper also makes mention of the regulators carrying out reviews in some areas to determine whether measures that they have introduced are achieving their intended aims. A possible challenge to this is whether by conducting the reviews themselves, the regulators are totally objective in their assessment. One wonders whether it may be more appropriate for another body (e.g. HM Treasury itself, or an independent reviewer appointed by HM Treasury) to conduct these reviews.

We would be happy to discuss any of our points further if this would assist.

Yours sincerely

A handwritten signature in blue ink that reads "David Sparkes". The signature is fluid and cursive, with a long horizontal stroke at the end.

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