



## TREASURY COMMITTEE INQUIRY INTO THE FUTURE OF FINANCIAL SERVICES

### FINANCE & LEASING ASSOCIATION SUBMISSION

#### About the FLA

1. The Finance & Leasing Association (FLA) is the leading trade body for the UK asset, consumer and motor finance sectors. In the twelve months to November 2020, FLA members provided £115 billion of new finance to UK businesses and households. Over £87 billion was in the form of consumer credit, accounting for over a third of all new consumer credit written in the UK. Nearly £28 billion of finance was provided to businesses (including £16 billion to SMEs) and the public sector to support investment in new equipment, representing over a third of UK investment in machinery, equipment and purchased software.
2. Our members provide both regulated and exempt lending and are subject to regulatory oversight by the Financial Conduct Authority (FCA), Prudential Regulation Authority (PRA) and the Competition and Markets Authority (CMA). The Financial Ombudsman's Service (FOS) also plays a quasi-regulatory role in interpreting FCA rules and guidance. The FLA's Lending Code and Business Finance Code have also formed part of the overarching regulatory framework for over 25 years, providing additional protection for customers.

#### Executive Summary

3. The removal of the EU layer from the policy framework offers an opportunity to simplify the financial services policy framework and make it more transparent.
4. Key to effectiveness will be ensuring that each of the key players – Parliament, Government, FCA and the other Financial Services and Markets Act (FSMA) bodies – have clearly defined roles and accountabilities and that their functions are exercised transparently.
  - Parliament should clearly retain for itself the function of determining the framework through primary legislation and calling all the players to account.
  - The FCA should, as now, have significant powers to set and enforce the detailed rules in a transparent, independent, evidence-based and agile way.
  - There is, however, an opportunity to redefine the role of Government in this framework, to address a perceived or real current democratic deficit – where society's expectations would be, for example, that significant decisions around strategic direction and scope of regulation should be the preserve of Government, as held to account by Parliament.

- But it is essential that any enhanced role for Government be exercised in a transparent and consultative way in accordance with procedures set out in statute (such as an amended FSMA), for example through orders and instruments subject to parliamentary scrutiny. It is essential for market and consumer confidence that significant government control should not be exercised behind closed doors.
5. Specifically, the Government should seize the chance to enhance the protections for consumers and small businesses when taking out finance regulated by the Consumer Credit Act. If done properly, the new framework will provide for streamlined customer forbearance procedures, information requirements suited to finance taken out online and a parity of customer rights regardless of product.

## RESPONSE TO QUESTIONS

*What changes should be made to the UK's financial services regulations and regulatory framework once the UK is independent of the European Union?*

6. Brexit offers the UK the timely opportunity to ensure that the legislative framework is fit for purpose. First and foremost, the Government must introduce primary legislation to bring the Consumer Credit Act (CCA) 1974 into the 21<sup>st</sup> century. The current regime includes 27 statutory instruments made under the CCA, the EU Consumer Credit Directive (CCD), and into rules set within the FSMA framework. Together these represent a complex framework for credit.

*How can Government policy and the UK regulators facilitate the emergence of FinTech and new competition; develop new areas of growth for the financial services sector; and promote the UK as the best place to incubate new financial technologies and firms?*

7. The UK has been at the forefront of technological innovation for a significant part of the last decade. It is home to one of the largest technology ecosystems in the world, and to thousands of start-up companies that are often led by talented and ambitious entrepreneurs. A core segment of this market includes the world of FinTech, with firms utilising a vast array of emerging technologies to improve financial services. The use of Open Banking as a solution to help streamline financial customer journeys is an example of this.

With Open Finance now being considered as a tool that will build on the successes of the former, it is vital that both the Government and the regulators continue to support these initiatives through a positive political lens and an effective regulatory framework. However, there is a need for a balanced approach here, particularly as too much intervention could potentially stifle innovation and impede competition for FinTech firms, which could be hugely detrimental to such an important sector.

Nonetheless, we have seen some positive strides from the FCA in terms of creating a safe environment (via their Regulatory Sandbox initiative), for both new and more established firms to test products and ideas. We would encourage more of this activity, particularly as it appears that the majority of firms using this platform feel

more confident in building their propositions and comfortable with the regulatory steer provided to them as part of the process. We feel that this approach, at a global level, will help to cement the UK's position as a safe harbour for firms that are seeking to innovate.

Furthermore, as a result of Brexit, both the Government and the regulators will now be free to simplify legislative and regulatory frameworks as required.

*Through what legislative mechanism should new financial regulations be made?*

8. The UK has now ceased to be bound by the CCD. If UK primary legislation can be secured, this affords an opportunity to enact a more transparent, future-proof and adaptable regime for consumer credit and with more straightforward compliance for the 40,000 firms (two-thirds of all FCA-regulated firms), many of them SMEs. The core CCA provisions that require legal enactment (such as rights and liabilities), could be incorporated into FSMA as for other financial services products. All other matters would be delegated to FCA rules – to bring them into line with the regulatory approach for all financial services products.

*What role does Parliament have to play in influencing new financial services regulations?*

9. Parliament should focus on scrutinising activity-based supervision (as outlined in HMT's Future Regulatory Framework consultation) rather than detailed oversight of technical rules. How the FCA accounts to Parliament for its statutory activities is a matter primarily for Parliament.
10. We would welcome an enhanced oversight role for Parliament to ensure coordination between regulators so that firms and their customers benefit from a consistent approach. For instance, Financial Ombudsman Service (FOS) decisions sometimes set a precedent where the FCA has not previously considered an issue or where its principles-based regulation has not been prescriptive. As the FOS makes its decisions based on the individual merits of each case, this creates the risk that further 'regulation' is created without taking into account wider considerations. In his 2008 [report](#), Lord Hunt concluded that the FOS should work to identify where its practice diverges from regulatory rules and work with regulators to achieve alignment. These recommendations have yet to be taken forward.

*How should new UK financial regulations be scrutinised?*

11. The UK Parliament is ill-equipped to scrutinise financial regulations in the same way as the European Parliament does. If that is the intention then a new structure would need to be developed comprising a joint committee with the House of Lords who might be better placed to perform more detailed examination of legislation given that they do not have the constituency and other responsibilities that MPs have. Peers generally have more widespread experience and will be in position for longer as they do not face re-election every few years. Such a committee would need to be supported by clerks with the appropriate expertise.

12. Our view is however that Parliament should oversee the activity of regulators at a high level and leave regulators to set, amend and enforce evidence-based detailed rules and guidance in consultation with stakeholders.

*How should financial services regulators be funded?*

13. Broadly speaking, the framework for funding the regulatory bodies set by FSMA remains fit for purpose. That said, to the extent that the FCA may take over some functions that were previously carried by EU-level authorities and publicly funded, there is an argument that these should continue to be funded publicly, not by industry. Nevertheless, given that the new circumstances allow the regulatory framework in the UK to be simplified and streamlined, our expectation would be that the regulatory resources required, and thus the overall industry funding envelope, would reduce over time.

14. We do, however, see two areas where the current funding arrangements should change. The first is that claims management companies should be liable to pay FOS case fees for the claims they bring. These fees are currently paid by financial firms, whether they win or lose. This change will require an amendment to FSMA. The second change would be to make the arrangements for funding debt advice fairer, to ensure that all creditors involved, including public authorities, utility companies and the housing sector, pay a proportionate and fair contribution to the debt advice from which they all ultimately benefit.

*Should the mandate and statutory objectives of the financial services regulators change to include wider public policy issues?*

15. Yes, the UK Government should take the opportunity of having left the EU to include wider policy objectives including environmental and other societal considerations.

*How important is the independence of regulators and how might this best be protected?*

16. It is crucial. The current system of scrutiny whereby Parliament holds regulators to account on a regular basis via select committees works well. This should be supplemented by requirements to undertake regular stakeholder surveys to deliver wider accountability.

17. The Financial Ombudsman Service is an important part of the FSMA framework in delivering consumer redress. However, FLA members are concerned about decisions that are inconsistent and do not seem to align with FCA rules. This makes it difficult for firms to judge what may be deemed inappropriate activity and underlines the need for greater transparency to promote understanding of how decisions are reached. The time taken to reach some decisions is also a factor in facilitating prevention and some complaints take several years to determine.

*How can the balance between lighter touch regulation and prudential safeguards be best secured?*

18. We support proportionate regulation, which was the approach taken, for example, by the FCA when implementing its approach to affordability and creditworthiness in 2018.
19. The pandemic highlighted the imbalance between Government support for banks and the many independent lenders who serve markets which otherwise may not benefit from finance. To address this, we have proposed an independent liquidity funding scheme that is administered by the Bank of England. To ensure an appropriate regulatory framework for independent lenders we have recommended that existing regulatory checks for independent entities are used as a benchmark. These would include whether an entity is regulated by the FCA or authorised under one of the British Business Bank's schemes.

*How should consumer interests be taken into account when considering potential regulatory changes?*

20. When policy and regulation is being designed consumer representatives should be consulted along with industry.
21. By way of specific example, it has become apparent that the Consumer Credit Act does not currently sufficiently take into account the needs of consumers. The 1.5 million initial COVID-19 payment deferrals offered by FLA members (in line with FCA guidance) were made significantly more burdensome for customers (which includes SMEs) due to CCA requirements for a modifying agreement to be issued. This involved writing a new separate agreement to be signed by the customer. This does not represent the best outcome for consumers.
22. Consequently, some lenders offered customers more informal arrangements, which because they were outside the formal modifying agreement requirements, carried legal risks and triggered the need to provide Arrears Notices and Default Notices which are drafted in inappropriate, confusing and unsympathetic language (the Government has recently updated elements of the latter via secondary legislation).
23. We regard simplification of the CCA as a priority to enhance consumer protections, for example, to equalise the protections for consumers regardless of products. Currently, credit hire offers less redress. Similarly, Sharia-compliant finance is not well-served by the currently regulatory framework. It would also present an opportunity to reflect the way the modern customer takes out finance, for example to finance a low emission vehicle or loans taken out online.