**TREASURY SELECT COMMITTEE**
**FUTURE OF FINANCIAL SERVICES INQUIRY**
**FEBRUARY 2021**

Fair By Design welcomes the Treasury Select Committee's (TSC) invitation to submit written evidence to their inquiry on the Future of Financial Services.

Please note that we consent to public disclosure of this response.

For more information about this response please contact Martin Coppack, m.coppack@barrowcadbury.org.uk.

**ABOUT FAIR BY DESIGN**

Fair By Design is dedicated to reshaping essential services such as energy, credit and insurance, so they don't cost more if you're poor.

People in poverty pay more for a range of products such as energy, through standard variable tariffs; credit, through high interest loans and credit cards; insurance, through post codes considered higher risk; and for access to, or paying with cash, through fee-charging ATMs or fees for not using a direct debit. This is known as the poverty premium.

We collaborate with regulators, government, and industry to design out the poverty premium, so that consumer on low incomes pay a fair price for essential services.

Our Venture Fund provides capital to help grow new and scalable ventures that are innovating to make markets fairer. The Fair By Design Venture Fund[1] is an important part of the overall Fair By Design approach to achieving change. By understanding the capacity for the market to address the injustice of poor people paying more, we can see what changes are needed at a wider systems level. We support competition *where it can help people in poverty* but, at the same time, we understand the limits of competition alone in meeting consumer needs. This places us in a unique position within the current civil society landscape.

The Barrow Cadbury Trust manages our advocacy work, and Ascension Ventures manages the Venture Fund.

[1] https://fairbydesign.com/fair-by-design-fund/

## Summary and recommendations

Despite essential services (e.g. payments services, credit and insurance) being needed by everyone, the UK market has evolved in a way that excludes many people on low incomes and/or are in vulnerable circumstances. Today, these essential services often end up costing more when the customer is poor. We believe there is a better way. We believe in essential services markets that are designed to be inclusive and for a future that is *fair by design*. We have provided a range of policy proposals for consideration by regulators and government but the biggest problem to achieving large scale change is:

- Regulators do not adequately take into account the consumer interest when considering potential regulatory changes.
  - The civil society sector does not have the resource to adequately represent consumers, especially the most vulnerable.
  - This is exacerbated by a disconnect between policymakers/regulators and people's *lived experiences* of poverty and exclusion. Regulatory policy making is not inclusive.
- Poverty premium and access issues all too often fall into the gap which exists between social and regulatory policy.
  - This is exacerbated by a failure to take ownership of poverty and exclusion issues, by either regulators or ministers, so there remains no clear, transparent way to address these important issues.

**Recommendations**

1. The FCA should have either a duty or cross-cutting *must have regard to* financial inclusion.

2. The Government should give the FCA the power to take on the enforcement of individual cases relating to financial firms' compliance with the Equality Act, in addition to the EHRC.

3. Creation of a clear, open and transparent process which consumer organisations can easily engage with on issues that involve a mixture of both regulatory and social policy. An entity needs to own this process and have responsibility for this.

4. HMT and Parliament need to properly consider what their responsibilities are, as well as what they clearly give to the regulator, and clearly communicate these.

5. Ring fenced funding should be made available for consumer organisations to engage on financial services regulation, especially in areas that are currently the least represented (for example insurance). This money could be sourced via the annual levy on the industry carried out by the FCA.

6. The FCA should fund the creation of an additional Consumer Panel of people with lived experience of poverty, financial exclusion and wider consumer vulnerability. This would help to ensure regulatory policies are designed to meet the needs of all consumers and that the regulatory system is designed *with* people rather than *without* them. (See

below for more detail on how this can work.)  This panel could be created in a way that allows it to be used across essential services regulators and sponsoring government departments – with funding gained from across different markets.

7. Essential services should be designed so they are as inclusive as possible.

    a. The Competition and Markets Authority, and regulators of essential services, including the FCA, should adopt inclusive design to:
        i. help set their priorities;
        ii. develop and implement interventions;
        iii. assess their effectiveness; and
        iv. guide their expectations of business.

    b. Where inclusive design cannot solve issues, the government and regulators must work together to bridge the policy divide – so markets work for everyone See recommendations 3 and 4 above.

    c. There is a single body/open process responsible for addressing issues that fall between regulators and their sponsoring departments that is public and to which organisations can take such issues. See recommendations 3 and 4 above.

8. Cost benefit analysis procedures must involve extensive engagement with consumer organisations and people with lived experience of the issues being analysed. The FCA should account for how they have engaged and sought this information as well as how they have incorporated it in to their Cost Benefit Analysis.

## Our response

We are responding to the following three questions from the call for evidence:
- What role does Parliament have to play in influencing new financial services regulations?
- Should the mandate and statutory objectives of the financial services regulators change to include wider public policy issues?
- How should consumer interests be taken into account when considering potential regulatory changes?

## Background and evidence of problems to be addressed

People need access to products and services that meet their needs at an affordable price. For this to happen the market needs to be able to accommodate the needs of people on low incomes and/or with certain characteristics that can be associated with low income such as disability and long term illness – regularly referred to as consumer vulnerabilities.

However, a catch-22 situation has emerged where those who most often have the least resource and are most vulnerable are often disadvantaged by:
- not being able to afford, or having to pay extra, for appropriate products and services because they are deemed to be a higher risk/not as desirable to serve;

- not being able to access products and services that meet their needs because they are 'nonstandard';
- being excluded altogether.

**Financial inclusion and wellbeing**

Financial inclusion remains a significant challenge for the UK, a nation which prides itself on being a global leader in financial services. It should be noted that:

- Just under 1 million people do not have a bank account.
- 13.2 million working age adults (40%) do not have home contents insurance.[2]
- In 2016, almost 19 million UK adults had outstanding debt on an High Cost Credit product and 6.7 million people took out 11.8 million High Cost Credit products.[3]
- High Cost Short Term Credit includes payday loans and short-term instalment loans. These products are often accessed by those who struggle to access mainstream products. There were 1.46 million HCSTC loans made in the second quarter of 2018, an increase of 11% on the first quarter of that year (FCA, 2019a).[4]
- 10.5 million UK adults would be unable to cover one month of living expenses if they lost their source of income.[5]
- From March 2018 to March 2020 there was a 15% reduction in the number of free cash access points across the UK. The largest contributor to this decline was from free to use ATMs which fell by approximately 19% over this period.[6]
- At the end of May 2020, 4.6 million people had accumulated £6.1 billion of arrears and debt, averaging £1,076 in arrears and £997 in debt per adult affected. As of late May, 2.7 million people had accessed payment holidays on mortgage and credit products[7].

**The poverty premium**

The term 'poverty premium' describes how poor people pay more for essential goods and services compared to those on higher incomes. Examples of poverty premiums include:

- Lack of access to affordable credit pushing people towards high cost loans.
- Higher than average insurance premiums where people live in poorer areas.
- Having to make costlier payments through not being able to benefit from direct debits as they are presently structured, or their need to use cash.
- Higher costs due not having the resources and ability to shop around, including digital exclusion.

The poverty premium affects almost every person on a low income and costs the average low income household £490 a year. But for more than one in ten of low income households

[2] https://www.birmingham.ac.uk/research/chasm/financial-inclusion/2020/index.aspx

[3] Financial Conduct Authority (2019a). 'Consumer credit — high-cost short-term credit lending data'. Available at: https://www.fca.org.uk/data/consumer-credit-high-cost-short-term-credit-lending-data-jan-2019

[4] Financial Conduct Authority (2019a). 'Consumer credit — high-cost short-term credit lending data'. Available at: https://www.fca.org.uk/data/consumer-credit-high-cost-short-term-credit-lending-data-jan-2019

[5] https://financialinclusioncommission.org.uk/

[6] http://www.bristol.ac.uk/media-library/sites/geography/pfrc/Where%20to%20withdraw%20-%20mapping%20access%20to%20cash%20across%20the%20UK.pdf

[7] https://www.theguardian.com/money/2020/jun/09/uk-households-face-6bn-debts-because-of-covid-19-says-charity

it costs at least £780. Bristol University's seminal work found that 99% of low income households paid at least one poverty premium.[8] Experience of the poverty premium is compounded by factors such as vulnerability, digital exclusion, and geography.
In our most recent research[9] of 1,000 low income households accessing the services of national poverty charity Turn2us, evidence shows that poorer households are spending the equivalent of 14 weeks' worth of food shopping just to access the same services as people who are better off.

It should be noted that:

- **Car insurance** was the biggest contributor to the poverty premium, with some people paying nearly £300 more a year simply because they live in a deprived area.
- **Credit** is expensive when on a low income, whatever form it takes. A sub-prime credit card costs around £200 more a year and personal loans cost more than £500 extra.
- Being on the best **energy** prepayment tariff could still be £131 more expensive than the best online-only one. But being on a fixed tariff could still be costly: **not paying by direct debit** costs up to £143 more a year.

The experience of the poverty premium varies among different age groups. For example, for the under 35s, it might be seen in struggling with the costs of owning a car. While for the over 65s it could be because of digital exclusion and an inability to access and engage with the market, such as not being able to switch online to the best energy or insurance deal. Switching rates among families with young children tend to be higher, however, they are more likely to use expensive forms of consumer credit for household goods like washing machines or fridge freezers.

**Poverty premium and protected characteristics**

Many people affected by the poverty premium have characteristics which are 'protected' under the Equality Act. Whilst living in poverty or on a low income is not in itself a protected characteristic, people with some protected characteristics are often more likely to be poor or living on a low income than people without that characteristic. For example, the Personal Finance Research Centre highlights that people from non- white groups, single parent and disabled households are more likely to be living in poverty and points to evidence that certain groups with protected characteristics are more likely to incur poverty premiums, compared with low income households as a whole.[10]

Furthermore, there are wider questions about what the Public Sector Equality Duty means in practice for regulators (and government departments). At present emphasis by public bodies, such as the FCA, is placed on avoiding negative consequences for people with protected characteristics rather than actively promoting inclusion, when carrying out equality and impact assessments. (See below.)

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[8] University of Bristol (2016) Paying to be poor: Uncovering the scale and nature of the poverty premium. http://www.bristol.ac.uk/media-library/sites/geography/pfrc/pfrc1615-poverty-premium-report.pdf
[9] University of Bristol (2020) 'The poverty premium: a customer perspective' https://fairbydesign.com/wp-content/uploads/2020/11/The-poverty-premium-A-Customer-Perspective-Report.pdf
[10] The Inequality of Poverty; Davies, S. Personal Finance Research Centre, University of Bristol. Forthcoming research exploring the link between the poverty premium and protected characteristics

## Overarching barriers to meeting the needs of consumers who are poor, excluded and/or in vulnerable circumstances

Despite essential services (e.g. payments services, credit and insurance) being needed by everyone, the UK market has evolved in a way that excludes many people on low incomes and/or are in vulnerable circumstances. Today, these essential services often end up costing more when the customer is poor. We believe there is a better way. We believe in essential services markets that are designed to be inclusive and for a future that is *fair by design*. We have provided a range of policy proposals for consideration by regulators and government but the biggest problem to achieving large scale change is:

1. Regulators do not adequately take into account the consumer interest when considering potential regulatory changes.
   - The civil society sector does not have the resource to adequately represent consumers, especially the most vulnerable.
   - This is exacerbated by a disconnect between policymakers/regulators and people's *lived experiences* of poverty and exclusion. Regulatory policy making is not inclusive.
2. Poverty premium and access issues all too often fall into the gap which exists between social and regulatory policy.
   - This is exacerbated by a failure to take ownership of poverty and exclusion issues, by either regulators or ministers, so there remains no clear, transparent way to address these important issues.

## How can the financial services market better meet the needs of all consumers in the future?

- What role does Parliament have to play in influencing new financial services regulations?
- Should the mandate and statutory objectives of the financial services regulators change to include wider public policy issues?
- How should consumer interests be taken into account when considering potential regulatory changes?

**Greater clarity is needed on who owns the issues that too often fall in between regulators and government.**
The Financial Conduct Authority has a range of powers/statutory objectives/tools that it uses to regulate the market. These include its statutory objectives as well as the Treating Customers Fairly outcomes and its Public Sector Equality Duty. Despite all of this, there is still no clear duty or cross-cutting '*must have regard'* provision to tackle financial inclusion.

Without this:
- There is no clear, statutory requirement for the FCA to address financial inclusion issues.
- The FCA does not routinely have regard to issues of financial inclusion across all of its work, where it is appropriate.
- Consumer organisations are signposted from the FCA to HM Treasury (or, occasionally, the Equality and Human Rights Commission or Competition and Markets Authority

CMA)), and vice versa – usually unable to meet in the same room together. A catch 22 situation evolves where consumer representatives are unable to gain traction on issues that involve more than one organisation. This demonstrates a lack of clarity about who owns what among these organisations. (There is a strong argument for increased scrutiny by the TSC of all regulators whose work touches on financial services, including the FCA, the Payment Systems Regulator, the CMA and EHRC – ensuring a joined up approach to regulation.)

- It is difficult to gain any traction on the issues that matter most to those in the most precarious financial circumstances in the UK today, for example, access to affordable credit and insurance, and ability to access cash easily and free of charge.

Furthermore, the Equality and Human Rights Commission (EHRC) has oversight of compliance with the requirements under the Equality Act. So, regulators will typically not consider that they have a mandate to actively assess firms' compliance. However, whilst the EHRC is clearly the specialist, expert agency, it faces challenges in practical supervision and enforcement, especially in the highly technical and complex markets of financial services. The EHRC has previously stated to the TSC, for example, that it does not have the relevant resources to investigate whether individual insurance firms' treatment of customers with disabilities is compliant with the Equality Act or not. The FCA has told the Committee it does have the expertise and resources.[11]

Recent discussions have challenged whether the sector regulators should do more to support the EHRC and expressed concern at the degree to which fundamental and important legislation is falling through the cracks. The issue of whether regulators should take more responsibility for compliance with the Act has been considered recently by two House of Commons Select Committees – both of whom have recommended that regulators should be given powers to secure compliance with the Act in the sector for which they are responsible. The Treasury Select Committee has recommended that: 'The Government should give the FCA the power to take on the enforcement of individual cases relating to financial firms' compliance with the Equality Act, in addition to the EHRC'.[12]

Additionally, recent consultations from the FCA point to the equalities impact process appearing to focus on avoiding negative consequences to groups with protected characteristics, on avoiding exclusion rather than actively seeking inclusion. Shifting the focus towards inclusion would support more meaningful compliance with the PSED. [13]

[11] House of Commons Treasury Committee. (2019) Consumers' Access to Financial Services. https://publications.parliament.uk/pa/cm201719/cmselect/cmtreasy/1642/1642.pdf

[12] House of Commons Treasury Committee. (2019) Consumers' Access to Financial Services. https://publications.parliament.uk/pa/cm201719/cmselect/cmtreasy/1642/1642.pdf

[13] Fair By Design & Money Advice Trust. Inclusive design in essential services. Publication forthcoming.

**Recommendation 1**: The FCA should have either a duty or cross-cutting *must have regard to* financial inclusion.

**Recommendation 2**: The Government should give the FCA the power to take on the enforcement of individual cases relating to financial firms' compliance with the Equality Act, in addition to the EHRC.

**An appropriate system for dealing with issues that involve a mixture of social and regulatory policy**

As noted above, it is very difficult for consumer representatives to make progress on issues that involve a mixture of both social and regulatory policy because of:

- The lack of clarity on who owns which issues when the solutions sit across regulatory and social policy.
- Lack of clear, constructive communication to consumer organisations from HM Treasury and the FCA on how to progress such issues, each often pointing the other as being responsible. The Equality and Human Rights Commission also struggles with resource to engage on financial services equality matters.[14]
- The lack of an open and transparent process for dealing with these issues, in which consumer organisations can engage.

Issues that span regulatory and social policy include, for example, access to affordable insurance and credit, and suitable payment systems.

**Recommendation 3**: Creation of a clear, open and transparent process which consumer organisations can easily engage with on issues that involve a mixture of both regulatory and social policy. An entity needs to own this process and have responsibility for this.

**Recommendation 4**: HMT and Parliament need to properly consider what their responsibilities are, as well as what they clearly give to the regulator, and clearly communicate these.

**Taking into account the consumer interest**

(The Director of Fair By Design has spent 20 years engaging and representing consumers within financial services. Whilst at the Financial Conduct Authority he created its model for engaging with consumer and special interest groups as well as its consumer vulnerability programme and approach to financial inclusion. He has also written for the United Kingdom Regulators Network on the subject of engaging consumers in regulatory policy.)

[14] House of Commons Treasury Committee. (2019) Consumers' Access to Financial Services. https://publications.parliament.uk/pa/cm201719/cmselect/cmtreasy/1642/1642.pdf

‘Accountability’ is one of the Government’s six Principles for Economic Regulation. It stresses the importance of regulatory decisions being taken by bodies that have “the legitimacy, expertise and capability to arbitrate between the required trade-offs”.[15] However, for this to occur regulators need to be able to engage all stakeholders, and to ensure those with little resource are appropriately engaged and their concerns are of *equal* measure to those with greater resource.

Due to the amount of resource regulated businesses are able to (and do) invest in working with and influencing their regulators it is essential that this imbalance in representation is addressed. This is especially the case when industry and regulatory professionals working within a similar space (financial services) are able to frame issues in a similarly understood way.

If regulators do not fully understand the needs, wants and behaviour of the consumers on whose behalf they regulate, their work risks becoming disconnected from the real world. In an environment where many people share a similar professional background and mindset it is necessary to proactively engage with the full spectrum of consumers to avoid regulation becoming an academic and myopic activity.[16]

This situation exacerbates the disconnect that exists between policymakers/regulators and people’s *lived experiences* of poverty and exclusion. Regulatory policy making is not inclusive and does not use inclusive design processes to supplement current measures – which are currently built around limited engagement with poorly resourced consumer organisations and commissioned consumer research. (Commissioned consumer research is usually created to fit around the remit of an organisation (FCA) rather than the needs of the consumer.)

The ability of consumer representative organisations to engage on complex financial services issues is severely restricted due to resource constraints. And there are certain subjects, such as insurance, where consumer representatives struggle to engage at all. (Many such consumer organisations dedicate what finite resource they have to matters involving credit and debt, as their main focus is dealing with crisis intervention.)

It can also be difficult for regulators to receive many consumer organisation responses, despite there being clear implications for consumers. The FCA has created a range of engagement methods, including the creation of a consumer network for meetings and a limited number of strategic secondments. However, this falls well short of the measures needed to *balance* representation between firms and consumers.

The statutory Financial Services Consumer Panel is a welcomed resource and should continue. However, this cannot be relied upon to be the main consumer voice. There are other panels representing industry too, so this is an appropriate minimum. There exists a real issue around plurality of consumer voices, as well as representation of people with lived experience of issues such as poverty, exclusion and wider consumer vulnerabilities.

[15] UKRN Consumer Working Group.(2014) Involving consumers in the development of regulatory policy https://www.ukrn.org.uk/wp-content/uploads/2018/06/20140728-InvolvingConsumersInRegPolicy.pdf

[16] https://www.ukrn.org.uk/wp-content/uploads/2018/06/20140728-InvolvingConsumersInRegPolicy.pdf

**Recommendation 5**: Ring fenced funding is made available for consumer organisations to engage on financial services regulation, especially in areas that are currently the least represented (for example insurance.) This money could be sourced via the annual levy on the industry carried out by the FCA.

**Recommendation 6**: The FCA should fund the creation of an additional Consumer Panel of people with lived experience of poverty, financial exclusion and wider consumer vulnerability. This would help to ensure regulatory policies are designed to meet the needs of all consumers and that the regulatory system is designed *with* people rather than without them. (See below for more detail on how this can work.) This panel could be created in a way that allows it to be used across essential services regulators and sponsoring government departments – with funding gained from across different markets.

**Inclusive design**

Over recent years regulators, including the FCA, have made significant progress in the treatment of consumers in vulnerable circumstances. Plus, regulators have recognised the advantages of products and services being designed inclusively.[17] However, the financial services market is competition-driven so naturally leads to products and services that are the most commercially attractive for firms. This leads to some consumers not being served well, or even at all. 'Markets as a whole need to be designed inclusively since, fundamentally, products and services will only be created within the constraints of the existing type of market.'[18]

Progress has been made in inclusive design within some policy making in the UK.[19] However. there is not a well-developed, shared understanding of what inclusive design means in the specific context of financial services, and other essential services. Nor is there a current understanding of how it relates to current regulation and UK law, or how it should be incorporated into the strategies of regulators. Our work with the Money Advice Trust aims to fill this gap, providing a practical toolkit, as well as mapping inclusive design to regulators' objectives and their obligations under the Public Sector Equality Duty.

At the heart of inclusive design is the premise that policies start with consumers. It is about giving staff the permission and guidance to build skills in inclusive design and to co-design and test solutions with the people who will need to access and use essential services. It is about placing lived experience of people at the centre of decisions and exposing decision makers to people 'not like them'.

[17] https://fairbydesign.com/wp-content/uploads/2019/08/CMA-Consumer-vulnerability-challenges-and-potential-solutions.pdf
https://www.fca.org.uk/publications/guidance-consultations/gc20-3-guidance-firms-fair-treatment-vulnerable-customers
https://www.ofgem.gov.uk/publications-and-updates/consumer-vulnerability-strategy-2025
[18] Fair By Design & Money Advice Trust. Inclusive design in essential services. Publication forthcoming.
[19] See https://openpolicy.blog.gov.uk/category/policy-lab/ and
https://www.designcouncil.org.uk/sites/default/files/asset/document/the-principles-of-inclusive-design.pdf

Fair By Design, with our partners, Toynbee Hall, currently facilitate this process for both firms operating in the essential services market[20], as well as regulators. For example, we have held one lived experience session with the Payment Systems Regulator on access to cash. However, it is rare for regulators (especially senior decision-makers) to engage directly with people living in poverty in this way. We would be delighted to talk to you more about this model and inclusive design more generally.

**Recommendation 7:** Essential services should be designed so they are as inclusive as possible.

a. The Competition and Markets Authority, and regulators of essential services, including the FCA, should adopt inclusive design to:
    - help set their priorities;
    - develop and implement interventions;
    - assess their effectiveness; and
    - guide their expectations of business.

b. Where inclusive design cannot solve issues, the government and regulators must work together to bridge the policy divide – so markets work for everyone See recommendations 3 and 4 above.

c. There is a single body/open process responsible for addressing issues that fall between regulators and their sponsoring departments that is public and to which organisations can take such issues. See recommendation 3 and 4 above.

**Cost/benefit analysis**

Cost/benefit analysis is a key tool used by regulators, including the FCA. One of the major impediments to ensuring the value of 'benefits' are truly assessed is the lack of consumer representation in such matters. Without adequate engagement with consumer organisations and people with lived experience of the issues being considered, there is a danger of continued focus on quantifiable costs, as opposed to benefits. There is a real danger that, due to the ability of firms to engage with the regulator on such matters, the cost/benefit analysis process becomes a vehicle for prioritising the consideration of costs over benefits.

If Parliament and HM Treasury want to achieve certain outcomes for consumers the process must recognise fully that costs are an essential element of meeting such outcomes.

[20] See page 33 Young Foundation (2020) Nothing about us without us. https://youngfoundation.org/wp-content/uploads/2020/02/Nothing-About-Us-Without-Us-Report-2020.pdf

**Recommendation 8**: Cost benefit analysis procedures must involve extensive engagement with consumer organisations and people with lived experience of the issues being analysed. The FCA should account for how they have engaged and sought this information as well as how they have incorporated it in to their Cost Benefit Analysis.

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