FAIR BY DESIGN
Ending the extra costs of being poor

June 2023

Briefing

A new duty for the FCA to 'have regard' to financial inclusion

We are urging Parliament to ensure the Financial Conduct Authority (FCA) has a cross-cutting duty to have regard to financial inclusion via an amendment to the Financial Services and Markets Bill.

Our ask

Now that the Financial Services and Markets Bill returns to the House of Commons on 26 June, we urge you to vote in favour of the FCA financial inclusion "must have regard" amendment and raise it in the House.

This amendment has won a vote at Report Stage in the House of Lords, with peers from across the political spectrum voting to support it.

Rationale

A new duty on financial inclusion would allow clarity on how far market regulation can address financial exclusion in the United Kingdom and where social policy is needed instead, or in tandem. A new cross-cutting 'must have regard' will not allow the FCA to initiate social policy. Instead, it would place a clear remit on the regulator to ensure it routinely explores financial inclusion across its work. It would give greater clarity on unintended consequences of policy making as well as the most appropriate interventions needed and who is best placed to act. This will sometimes be the FCA, the Government, or a mixture of institutions working together.

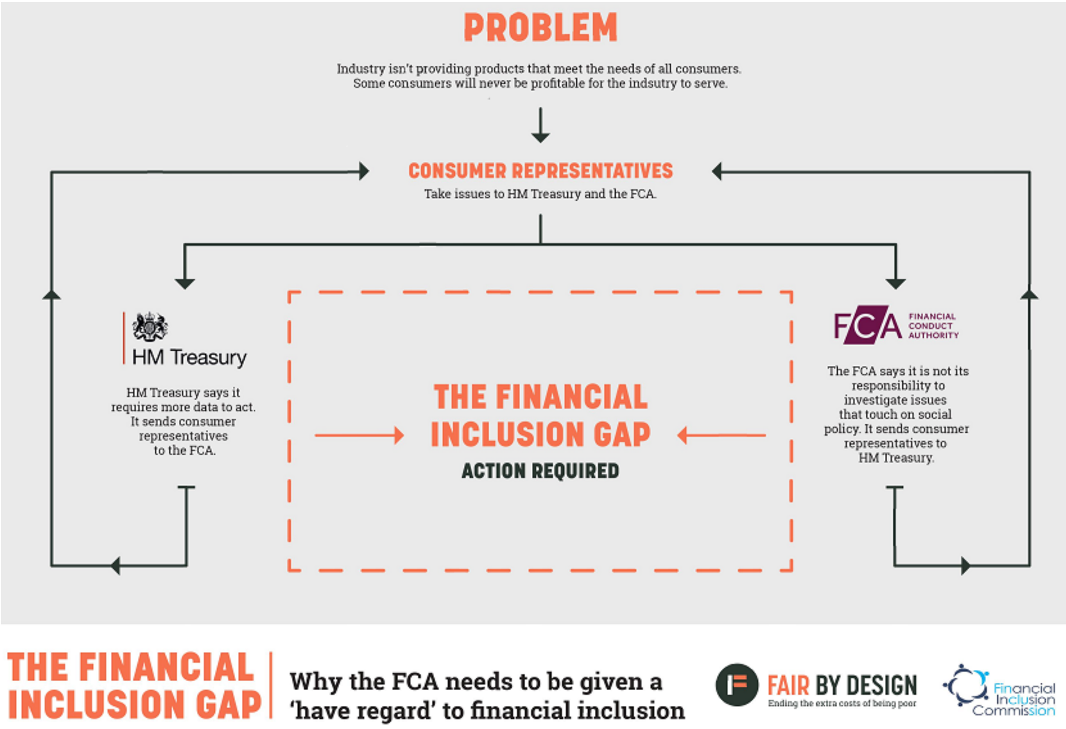
This proposed new Duty would future-proof policy decisions made after the Bill is passed. This would ensure that financial inclusion issues such as **free access to cash** are dealt with as they emerge, rather than dragging on for years, resulting in a race against time before cash delivery infrastructure disappears.

Such a duty would also remedy the fact that the FCA's Consumer Duty primarily deals with *existing* consumers. The Consumer Duty does not address the needs of those consumers that the market views as more expensive and less profitable to serve and who are, therefore, excluded from the market.

By giving the FCA a cross-cutting 'must have regard' duty on financial inclusion, the FCA will have the ability – and incentive – to ensure that the needs of those who are denied access due to affordability issues are considered.

Finally, the Treasury Select Committee has endorsed our call in its 2022 inquiry report into the Future of Financial Services Regulation, recommending the Treasury to require the FCA to have regard for financial inclusion.

Background to the issue



In a competition-driven market, firms will naturally design and market to those populations that are most profitable, likely conscious of the duty they have to their shareholders.

Certain consumers are not seen as desirable. These consumers tend to be those who are most vulnerable and equipped with the least resources. There are three consequences to this. Those on the lowest incomes:

- struggle to afford, or have to pay extra for, appropriate products and services because they are deemed to be a higher risk/not as desirable to serve;
- are not able to access products and services that meet their needs because they are deemed to be ‘nonstandard’;
- are excluded altogether.

Examples of current problems include:

- paying more for insurance because of where you can afford to live, or being excluded;
- being excluded or paying more for credit due to your credit rating, or being excluded;
- paying more to pay bills because you can’t benefit from direct debits, or need to use cash.

To gain traction from Government departments, consumer groups are asked to provide data and evidence which they often cannot gain access to. Often the only organisation that can gain the data is the FCA. However, the FCA is reluctant to gather such data due to the elements of social policy involved, especially when it comes to pricing risk, as in credit and insurance. This creates a catch-22 situation where Government departments (mostly Treasury) point to the regulator, and the regulator points to Government departments (mostly Treasury), with no real accountability to tackle these issues.

By giving the FCA a cross-cutting 'must have regard' duty on financial inclusion, the FCA will have the ability – and incentive – to ensure that the needs of those who are denied access due to affordability issues are considered.

Examples of where a 'must have regard' duty could help/could have helped in the past

- The **poverty premium in insurance -** people in deprived neighbourhoods are being priced out of insurance

  The Treasury requires greater amounts of information than consumer organisations are able to gain access to before it intervenes, with the FCA being the only organisation who has the capability to access the required information. However, the FCA does not feel the need to act, as this involves looking into pricing of risk which is out of scope. Result: stalemate.

- **Free access to cash and bank branches**

  This issue has been known, and discussed, for years. We are now in the 'last chance saloon' in terms of the remaining infrastructure needed to ensure people can gain access to cash. This issue has been a political hot potato thrown between the FSA/FCA, Payment Systems Regulator, the Department for Business, Energy and Industrial Strategy (BEIS) and Treasury. This could have been addressed much earlier, with much consumer detriment prevented.

- **Payment methods such as direct debits are not designed for people on low or erratic incomes** - this means they pay on receipt of bills, which costs more.

  There are other systems, such as 'request to pay' for income smoothing, but there is hardly any take up by firms to offer this to consumers. It is unclear who is responsible for the issue and how to bring more attention to it. Result: stalemate.

- The **poverty premium across essential services generally**

  The Competition and Markets Authority (CMA) started to carry out investigatory work on this and determined it was too difficult. It now signposts organisations to sector regulators, such as the FCA. However, the sector regulators say this is not their responsibility as it involves elements of social policy and pricing of risk. The FCA signposts to Treasury, which in turn requires data and signposts to the FCA. Result: stalemate.

- The **loyalty premium in insurance** - where people who automatically renewed their insurance were charged more.

  This problem had been well known for many years, but did not gain traction until Citizens Advice made a super complaint. Since then, this intervention has been heralded as a huge success by all. With the 'have regard' duty, this issue would have been addressed years earlier.

- **Access to basic bank accounts**

  This issue existed for many years before Treasury was persuaded to intervene and require the FCA to become involved. With the 'have regard' duty, this issue would have been addressed years earlier.

Arguments against a new 'have regard' on the FCA

The main argument is that the FCA's guidance on consumer vulnerability and proposed new Consumer Duty gives the FCA what it needs in this area. However, these primarily deal with current consumers. They do not address the needs of those consumers that the market views more expensive and less profitable to serve. In this case there is almost always a need for an intervention that involves some form of cross-subsidisation, or subsidisation. For action on this to happen, Treasury needs to be involved, but they require data first. However, FCA does not feel able to either intervene or even collect and publish data on this problem. Result: stalemate.

The other argument is that the FCA should not be responsible for social policy or require firms to do things that are deemed as social policy. This 'must have regard' duty would not allow this. It would simply break the stalemate.

For further information, please contact:

- Camila Azevedo, Head of External Affairs, Fair By Design, at c.azevedo@barrowcadbury.org.uk or 07379 408587