

# Department for Business and Trade Call for Evidence on Smarter Regulation and the Regulatory Landscape

Date: 17 January 2024

## Introduction and executive summary

1. UK Finance is the collective voice of the banking and finance industry. Representing around 300 firms, we act to enhance competitiveness, support customers, and facilitate innovation.
2. We are pleased to have the opportunity to respond to this call for evidence. We recognise that financial services is explicitly excluded from the scope, however the regulatory environment is complex and some cross-economy regulators span many different sectors. We would also like to share examples from the financial services sector where we believe good practice can be mirrored in other industries.
3. We support the principles driving this programme of regulatory reform. Regulation, when designed and utilised correctly, can be a catalyst for growth and create an environment for businesses to thrive. In particular, we agree with the Department for Business and Trade's (DBT) assessment that regulatory burdens should be minimised, that regulation should be used as a last resort, not as a first choice, and share the belief that there is an ongoing need to ensure that regulations remain well functioning and fit for purpose.
4. We believe that the Government has a real chance to introduce an effective regulatory framework for business from the ground up. To do that effectively, DBT should draw on examples from across the economy, including the financial services sector - which is itself undergoing its own significant regulatory reform – to create a better and more agile regulatory system that puts consumers and businesses at its heart.
5. Ultimately, regulatory frameworks – whether in the real economy or financial services – should be proportionate and predictable and support the international competitiveness of the UK. With that in mind, there are lessons that real economy regulators can learn from financial services, including ensuring that regulators support the wider growth agenda of the Government (to this end, we were pleased to see DBT issue a new consultation on extending its Growth Duty to a new cohort of sector regulators).
6. We have set out below ways in which the Government can do this, as well as highlighting the issues arising from the UK's complex regulatory landscape.

## Overlapping remits

7. Most highly regulated sectors – such as financial services or energy – have dedicated sector regulators that oversee the strategic regulatory direction of the sector, through the powers afforded to them by Parliament. In most cases, the specific sector regulators are staffed by sector experts who have a good knowledge of the firms they regulate.
8. However, regulatory uncertainty can arise when two or more regulators are given jurisdiction and impose regulation for the same policy area in any one sector. For example, the Competition and Markets Authority (CMA) has powers to enforce competition law across all sectors of the economy. However, sector regulators also have competition powers. This overlap is managed by the Concurrency Arrangement Framework which sets out how regulators should work together on matters of competition policy. While we welcome this attempt to provide clarity, the current regime risks duplication and inconsistency, especially

as regards to matters of competition policy and markets issues (i.e., outside the Competition Act 1998). The remedies that the CMA imposes at the end of a market investigation can act as another form of regulation, with the associated cost on firms, but without the benefit of the sector regulator's expertise as to what other regulation and costs the industry is also subject to. To reduce duplication and increase efficiency and effectiveness, further consideration should be given to whether it would be more appropriate for any remedies imposed by the CMA following a market investigation to be overseen by the relevant sector regulator.

9. We welcome the recently signed Memorandum of Understanding (MOU) between the CMA and Bank of England (BoE), which sets out principles for cooperation and information sharing between the two bodies. We call on the FCA and the Payment Systems Regulator (PSR) to review whether their own MOUs with the CMA (specifically on 'competition powers') also remain fit for purpose and to remove the risk of duplication and inconsistency between the three regulators on competition policy matters.
10. In contrast, fragmented regulatory structures are also a prominent concern. Drawing on an example within payments regulation, the recent independent Future of Payments Review by Joe Garner found that, while the UK is unique in having a dedicated payment systems regulator (the PSR), we have multiple regulators with unique focuses relating to payments, including the FCA, PRA and BoE. This can make holistic policymaking more challenging and has led to a congested regulatory pipeline which, in extremis, creates operational risk for payment firms; and also inhibits their own budget and capacity to innovate. The Review has resulted in a National Payments Vision being developed which should help with overall regulatory outcomes. We recommend that the DBT similarly looks for ways in which to minimise the impact of overly fragmented regulation where it has the potential to cause unintended consequences to both businesses and consumers in the sectors it oversees.

### **Purposeful regulation**

11. Unlike macro regulators which have regulatory powers across multiple sectors (such as the CMA), sector regulators often do have clear mandates and remits set by Government to regulate specific sectors and cohorts of firms. In many cases, Parliament sets clear objectives by statute and Government provides strategic steers on their remits at least once a Parliament.
12. This approach is to be welcomed, as it provides critical regulatory certainty, and something we would like to see DBT continue to take forward as part of any new smarter regulation regime.

### **Drawing on the examples of the financial services sector**

13. While it is not the focus of this call for evidence, there are lessons that government departments can draw on from the financial services sector as the Smarter Regulation programme is designed and rolled out.
14. Financial services regulation is undergoing its own significant overhaul following the passing of the Financial Services and Markets Act 2023 (FSMA 2023). FSMA 2023 repeals Retained EU Law (REUL) related to financial services and provided the powers to 'shift' them to the regulators' (in this case the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA)) handbooks, as required. This 'lifting and shifting' is now underway through the roll out of the Smarter Regulatory Framework for financial services and will lead to a regulator centric model, providing the FCA and PRA with the powers to develop, adapt and change regulation itself without the need of new legislation.

15. This so called 'FSMA model' means financial regulators can be more agile and able to respond to changing trends in the sector when needed. As part of DBT's work, we urge it to consider adopting a similar approach, subject to the right checks and balances, for other areas of the economy through its Smarter Regulation Programme.
16. If you have any questions relating to this response, please contact Matthew Young, Principal, Strategic Policy, at [matthew.young@ukfinance.org.uk](mailto:matthew.young@ukfinance.org.uk)

### Select call for evidence questions

#### Question 1: Based on your experience, do you think that UK regulators are supportive of the individual businesses they regulate in a way that appropriately balances considerations of consumers and other businesses within the sector more broadly?

17. Regulators are mandated by Parliament to provide supervision of the markets they oversee. Complex, sometimes overlapping, statutory powers govern how regulators must support individual businesses and the different criteria they must weigh up when discharging their duties. For example, the CMA's remit is set by the Government at the start of every Parliament in the form of a 'strategic steer', giving it clear responsibility to help both individuals and firms benefit from competitive market practices.
18. While the CMA has consumers at the heart of its interventions, it does not always appear to assess the ongoing obligations on businesses subject to its market investigation remedies, in order to satisfy itself that those requirements are proportionate on an ongoing basis, or to consider whether as the market changes those historic requirements could in fact themselves harm or shape competition in a way not originally envisaged. For example, Open Banking was introduced by the CMA as part of a package of remedies in 2017. Although the CMA has in 2023 determined the implementation period to be complete and continues to laud the success of the remedy, there continue to be significant direct costs for firms on top of the £2bn already spent by industry, whereas the CMA's original proportionality assessment in 2016 was undertaken on the basis of an industry cost of £20m i.e., 1 per cent of that figure.<sup>1</sup>

#### Question 2: Please name the UK regulator(s) you engage with most frequently

19. UK Finance is most regularly in contact with the specific financial services sector regulators (such as the FCA, PRA and PSR). However, given financial services is out of scope of this call for evidence, we have primarily focused our response on the work of the CMA, which has responsibility for competition law across the economy, including financial services. (We also briefly reference oversight for corporate reporting regulation below, which is co-ordinated by the Financial Reporting Council (FRC), the UK's cross sector regulator of financial reporting, auditing, actuarial and corporate governance, and the DBT and FCA).
20. The CMA already has significant influence on financial services regulation. Moreover, the Digital Markets, Consumers and Competition (DMCC) Bill is set to widen the CMA's role, providing it with enhanced powers to fine firms and individuals, as well as new powers to revisit and amend remedies. These new powers for a non-specialist financial services regulator will significantly increase regulatory uncertainty in the sector and possibly dent the overall attractiveness of the UK for investors. It remains unclear whether these powers are intended to apply to already existing remedies which would further increase uncertainty and would be a disproportionate step.

---

<sup>1</sup> There are other impacts such as increased fraud which should also be factored into the cost to both industry and consumers and which merit further consideration.

21. UK Finance has previously argued that the CMA's enhanced powers, as set out in the Bill, would be out of step with the Government's wider competitiveness and growth agenda. Further clarity is urgently needed on the intent of the legislation and the CMA's intended application of the rules, in order to minimise uncertainty.
22. Separately, in the UK, regulatory and policy oversight (including financial, non-financial and sustainability reporting) sits across DBT, the FRC, the FCA, as well as other bodies. Here we would welcome greater levels of co-ordination amongst these bodies. It is important that corporate reporting regulation is coherent and joined up in order to improve the attractiveness of the UK as a global financial centre, where businesses want to setup and grow, and senior executives want to work.
23. While we welcome the Government and the FRC's recent announcements relating to proposed new corporate reporting legislation and updates to the UK Corporate Governance Code in Q4 2023, concerns remain. Of particular concern is the FRC's intended proposals on internal controls, which are expected to be wider in scope than other international jurisdictions, including the US. We are concerned that they could significantly detract from the UK's international competitiveness and its attractiveness as a listing destination and place of business for companies and their boards.

**Question 3: What do you consider to be the most positive and/or negative aspect of how the UK regulators that you engage with operate?**

24. One positive aspect of the UK regulatory system is the level of appropriate scrutiny it has developed over many years. Nevertheless, there is more that could be done to improve scrutiny. For example, many regulators report to Parliament through Annual Plans and Annual Reports. Parliamentarians therefore have a role in holding the regulators to account and scrutinising their work, including through the select committee framework, where regulators are called to appear for questioning by MPs or peers.
25. A negative aspect of the current system is the overlap between the work of certain regulators that cover the whole economy and the work of specific industry regulators. The CMA's Open Banking remedy is illustrative of such problems. For example, the recent Future of Payments Review<sup>2</sup> highlights that Open Banking's progress is hindered by uncertainty around the transition to new governance arrangements and a permanent regulatory framework following completion of the CMA Order.

**Question 7: As set out above, UK regulators have a remit that is set through legislation and guidance. Which of the below do you consider best applies?**

- a. Regulators always act within the scope of their remit;
  - b. Regulators go beyond their remit in a way that may negatively impact the outcomes that they are required to deliver; or
  - c. Regulators go beyond their remit in a way that supports the outcomes they are required to deliver
26. B. In most cases regulators do act within the scope of their remits. They have clear objectives set by statute and are – in many cases – given clear strategic steers by Government on how to interpret their objectives, often at the start of each Parliament. They are also subject to scrutiny by Parliament, which helps deter them encroaching beyond their remits.

---

<sup>2</sup> Future of Payments Review Report (November 2023), [https://assets.publishing.service.gov.uk/media/6557a1eb046ed400148b9b50/Future\\_of\\_Payments\\_Review\\_report.pdf](https://assets.publishing.service.gov.uk/media/6557a1eb046ed400148b9b50/Future_of_Payments_Review_report.pdf)

27. However, there are instances where we believe regulators have gone beyond what would have been expected as part of their duties. The implementation of Open Banking by the CMA was far-reaching and more costly than other equivalent market investigation remedies, and arguably not foreseen by the legislation. If responsibility for oversight of market investigation remedies was given to sector regulators, this duplication and uncertainty might have been avoided.

**Question 8: Do you often have to engage multiple UK regulators on the same issue or area?**

- a. Yes
- b. No

28. A. Yes. While the CMA, FCA and PSR have a MOU setting out how their concurrent competition powers will be exercised, there remain some issues where all three regulators are involved, with different incentives and approaches. This duplication and lack of clarity has, for example, been recognised by the recent Future of Payments Review as hampering progress on the development of Open Banking.
29. While we welcome the recently signed MOU between the CMA and the BoE, setting out the principles for cooperation and information sharing between the two bodies, the FCA and PSR should review whether their own existing MOU with the CMA remains fit for purpose given the policy challenges set out above.
30. Separately, economic crime (and in particular fraud), is an area that requires engagement and coordination between a number of authorities. When this co-ordination is done effectively it allows for the more effective collective action to tackle economic crime within the UK. For instance, the industry is very supportive of the Government's Economic Crime Plan because it seeks to prioritise and align across the official sector and with the private sector in these efforts.
31. The Payment Systems Regulator is introducing rules that will increase refunds to those who have fallen victim to fraud, but these proposals cannot be looked at in isolation of wider efforts from different regulatory and government organisations, including those from outside the financial services sector. The Government's Anti-Fraud Champion has a key role to play, as does the Government's Economic Crime Plan and Fraud Strategy. Government should ensure that different departments (and relevant regulatory bodies) with oversight for fighting economic crime are joined up and aligned to these strategies so they are used as the basis on which to collectively fight economic crime in the coming years.

**Question 13: Do you find UK regulators to be agile and responsive to new and emerging issues?**

32. Speaking generally, the objectives of UK regulators are set by statute. In many cases Government can add to these objectives through primary legislation to reflect emerging issues. Government can also widen the remit of regulators – or create new bodies altogether – to address these issues. However, these processes are not swift as time must be found in the parliamentary calendar to legislate. This hampers the agility of regulators to address pressing concerns of the sectors they regulate.
33. We support regulation that is flexible and delivered without the need for new, often time consuming, legislation. As DBT repeals further areas of REUL, we recommend that it adopts a similar model to HM Treasury and empowers regulators to develop their own rules and



processes without the need for law making in Parliament, subject to the right checks and balances.

34. To ensure regulation is agile enough to respond to these emerging issues, it's also important that regulators, government departments and firms from different sectors work together to respond to new and emerging issues. Without close co-operation, issues can arise. For example, in the travel sector there are complicated consumer protection mechanisms that rely heavily on the cards sector. In the most extreme cases, such as airline failures, this results in the financial services sector supporting and subsidising failures in other markets.

**Question 20: Do you consider UK regulators to be proportionate in the measures they take, e.g. in applying regulations or responding to emerging issues?**

35. In our experience the proportionality of measures taken or imposed by regulators such as the CMA has been mixed. Many in the financial services sector would agree that the CMA's Open Banking remedy has created significant cost for the industry and taken up a lot of time and resource. There have been well reported concerns with the way in which the entity was set up and overseen by the CMA, but it is not clear that the CMA has implemented all the lessons learned, including those highlighted in the Alison White report and Kirstin Baker Lessons Learned review.
36. We also recommend that DBT adopt some of the aspects of financial services regulation, such as the introduction of Cost Benefit Analysis Panels by the FCA and PRA, through FSMA 2023. The CBA panels will support a proportionate approach to policy making, by providing analysis on the effectiveness of proposed policies. The panels will also reflect the views of industry as they will include sector representation.

**Question 39: If you could suggest a single reform to improve how UK regulators operate, what would it be?**

37. We would urge DBT to consider creating a new secondary objective to promote international competitiveness and growth for the regulators it sponsors. Regulators have an important role in driving the competitiveness of the sectors they regulate, both through maximising regulatory efficiency (such as through any authorisation regime), and through creating a stable regulatory environment that instils market confidence and attracts inward investment. Such an approach would mirror the approach taken by Government to provide the FCA and PRA with secondary objectives on the same theme.
38. We would also urge regulators to focus more on outcomes and away from prescriptive regulation that can hold back innovation. This principles-based approach is being adopted in the financial services sector through the roll out of the Smarter Regulatory Framework for financial services. This approach allows regulation to be flexible and adapt to changing industry trends and is something other sectors would benefit from.

**Question 42: Are there any further points you would raise about regulation, including the functioning of the regulatory system or any recommendations you have on the stock of regulations from the Government which should be removed or reformed and modernised?**

39. We are supportive of the Government's efforts to reintroduce the 'FSMA' model of regulation for financial services, which provides the FCA and PRA with the ability to deliver regulatory change without the need for legislation derived from Parliament. Agile, more effective regulation can be a catalyst for growth and can improve the UK's competitiveness against our international peers. A more streamlined regulatory framework will also support inward

investment to the UK to attract businesses seeking a stable and supportive regulatory environment.

40. As we have set out above, we urge DBT to adopt the approach taken within financial services and not only repeal redundant REUL but 'lift and shift' the regulatory rulebook from the statute books and into the hands of the regulators. This will create a more agile, responsive and less politicised regulatory system across the economy.

**Question 43: In what capacity do you interact with UK regulators or regulated businesses? (Please select the most appropriate option that represents you, and respond according to your primary responsibilities)**

41. Other: Membership organisation representing regulated entities in the banking and finance sector.

**Question 44: If you are a business, how many employees do you have?**

42. 100 – 499 employees.

**Question 45: Please name the Sector(s) that you operate in - you may wish to reference Standard Industrial Classifications**

43. We represent members operating in the banking and finance sector.

**Question 46: If you are a regulated business, how much as a percentage of turnover does demonstrating compliance with regulation cost your business?**

44. N/A

**Question 47: What is your name, or the name of your organisation?**

45. UK Finance

**Question 48: What is your e-mail address (optional response)?**

46. [Matthew.young@ukfinance.org.uk](mailto:Matthew.young@ukfinance.org.uk)

**Question 49: We usually publish a summary of all responses, but sometimes we are asked to publish the individual responses too. Would you be happy for your response to be published in full?**

47. Yes