UK FINANCE

HM TREASURY FINANCIAL SERVICES
FUTURE REGULATORY FRAMEWORK REVIEW

CALL FOR EVIDENCE: REGULATORY COORDINATION

UK FINANCE RESPONSE

18 October 2019

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CONTENTS

ACRONYMS USED IN THIS DOCUMENT

AI	Artificial intelligence
AML	Anti-money laundering
APP	Authorised push payment
ASA	Advertising Standards Authority
BEIS	Department for Business, Energy and Industrial Strategy
BoE	Bank of England
CBA	Cost/benefit analysis
CDEI	Centre for Data Ethics and Innovation
CFR	Council of Financial Regulators
CMA	Competition and Markets Authority
CoFR	Council of Financial Regulators
CoP	Confirmation of payee
CRD IV	Capital Requirements Directive IV
CRM	Contingent-reimbursement model
DRR	Digital regulatory reporting
EBA	European Banking Authority
ECB	European Central Bank
ESMA	European Securities and Markets Authority
FCA	Financial Conduct Authority
FOS	Financial Ombudsman Service
FRC	Financial Reporting Council
FSB	Financial Stability Board
FSBRA	Financial Services (Banking Reform) Act 2013
FSOC	Financial Stability Oversight Council
GDPR	General Data Protection Regulation
GFIN	Global Financial Innovation Network
HMRC	HM Revenue & Customs
HMT	HM Treasury
ICO	Information Commissioner's Office
IOSCO	International Organization of Securities Commissions
LSB	Lending Standards Board
MAS	Monetary Authority of Singapore
MiFID II	Markets in Financial Instruments Directive II
MiFIR	Markets in Financial Instruments Regulation
NCA	National competent authority
NPSO	New Payment Systems Operator
OBIE	Open Banking Implementation Entity
PR	Prescribed responsibilities
PRA	Prudential Regulation Authority
PSD2	Revised Payment Services Directive
PSF	Payments Strategy Forum
PSP	Payment-service provider
PSR	Payment Systems Regulator
RTS	Regulatory technical standards
SFO	Serious Fraud Office
SM&CR	Senior Managers and Certification Regime
SME	Small or medium-sized enterprise
TPR	Temporary permissions regime

1. EXECUTIVE SUMMARY

1. This document is UK Finance's response to HM Treasury's (HMT) July 2019 call for evidence on regulatory coordination,[1] the first publication in its Financial Services Future Regulatory Framework Review. We welcome HMT's timely focus on these issues. At this critical inflection point for banking and finance, improving regulatory coordination can help to lay the groundwork for the growth, infrastructure and jobs of the UK's future.

2. Looking beyond EU withdrawal, the UK's continued position as a leading global centre for finance and innovation should not be taken for granted. That is why we believe it essential that the UK support the development of global standards, promote regulatory convergence in national standards, remain an open and competitive market for global banking and finance and develop effective relationships with EU institutions and member states, third-country national competent authorities (NCAs) and international standard-setting bodies.

3. The development of the UK's regulatory framework for financial services has resulted in multiple public-sector bodies regulating banking and finance firms in ways that frequently overlap. Consequently, the scale of firms' interactions with those bodies collectively is extensive, and regulatory change now accounts for increasing operational risk in the financial-services system and a significant proportion of investment budgets, crowding out funds available for innovation and growth.

4. Effective coordination between the multiple bodies responsible for that change is vital to achieving the aims of ensuring financial stability and maximising benefits to consumers. Even the best-resourced firms have only so much financial, technical and strategic capacity to deliver and oversee change while managing the resilience of the system. The banking and finance sector has, however, become increasingly concerned that such coordination is not being achieved in practice, and so we welcome the recognition by both the Bank of England (BoE) and HMT of the need for greater "air-traffic control" to manage the cumulative impact of regulatory change emanating from different sources.

5. This response has been compiled with the assistance of 50 firms operating and supporting across the sector, some of which will also be submitting individual responses. Not all firms share the same concerns with the quality and quantity of engagement with UK regulators. Some firms that operate in multiple jurisdictions have made clear that global coordination is of greater importance. Nonetheless, almost all that do engage with UK regulators see scope for the existing levels of coordination between them to be improved—for some, significantly so.

6. Better coordination is not, of course, an end in its own right. A successful outcome to this exercise will see robust regulatory outcomes delivered more efficiently and with lower and/or better managed compliance costs and resource requirements for firms. This will ultimately enable them to better support their customers, including individuals and small and medium-sized enterprises (SMEs). This, in turn, will leave the UK better placed to determine the regulatory framework for banking and finance after it leaves the EU.

7. We consider it important that HMT take account of the full breadth and depth of the regulatory landscape for banking and finance when considering improvements to coordination between public bodies. A great many such bodies, both specific to the financial-services sector and operating economy-wide, interact with, and impose requirements on, banking and finance firms. Moreover, regulatory influence extends to "voluntary" industry initiatives undertaken at the behest of public bodies that need to be coordinated on the same basis as those in the statute or rule book.

1. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819025/Future_Regulatory_Framework_Review_Call_for_Evidence.pdf

8. There are many examples of good practice in how public bodies coordinate their regulation of banking and finance firms. This response nonetheless focuses on examples where a lack of coordination has been problematic for firms, with case studies showing how several coordination problems often occur at one and the same time. In light of this, we believe that UK regulators should better implement their existing duties and powers and apply practices from elsewhere in the regulatory landscape. In particular, we recommend that:
   - HMT establish a strategy and policy statement providing context and guidance about priorities and desired outcomes over the medium term specifically in the banking and finance sector and clarifying the respective roles of regulators and government;
   - UK regulators define, deliver and demonstrate intended consumer outcomes;
   - cost/benefit analyses (CBAs) take account of relevant activities by other public bodies and are subject more routinely to consideration by an external, independent body with appropriate expertise and stakeholder participation; and
   - UK regulators collaborate on a shared business plan setting out upcoming issues that cut across their individual responsibilities. The plan should be owned by an air-traffic control mechanism able to ensure that the pipeline of change initiatives is delivered safely for consumers, firms and the stability of the financial system as a whole. At a minimum, it should comprise HMT, the BoE, the Prudential Regulation Authority (PRA), the Financial Conduct Authority (FCA), the Payment Systems Regulator (PSR) and the Competition and Markets Authority (CMA), with the participation of other bodies as appropriate and the direct involvement of stakeholders. It should also consider longer-term and strategic issues that affect the banking and finance sector as a whole
9. Firms have different experiences of authorisation, supervision and enforcement and will respond accordingly. This response considers the general scope for greater use of new technology and data sharing, as well as how regulatory processes for dual-regulated firms could be better coordinated.
10. Finally, we identify issues for subsequent phases of the Financial Services Future Regulatory Framework Review. These are important to the future competitiveness and attractiveness of the UK as a destination of continued investment.
11. To discuss this response, please contact Matthew Conway, Director of Government and Regulatory Affairs at UK Finance, at **matthew.conway@ukfinance.org.uk**.

2. INTRODUCTION

12. UK Finance is the collective voice for the banking and finance industry. Representing more than 250 firms, we act to enhance competitiveness, support customers and facilitate innovation. This document is our response to HMT's July 2019 call for evidence on regulatory coordination,[2] the first publication in its Financial Services Future Regulatory Framework Review. We would particularly like to thank EY for supporting this submission. Its help convening firms for evidence gathering and its expertise, challenge and constructive thoughts on the way forward have proved invaluable. This response nonetheless reflects the evidence provided by firms.

13. At this critical inflection point for banking and finance, the groundwork can be laid to deliver the growth, the infrastructure and the jobs of the UK's future. The banking and finance sector can better support consumers to save, spend and invest their money and provide the supportive backbone essential for a thriving business community. It stands ready to rise to this challenge, working in partnership with the public sector.

The global context

14. The UK's continued position as a leading global centre for finance and innovation should not be taken for granted as it prepares for EU withdrawal, rapid digitalisation and growing competition from other countries. That is why we believe it essential that the UK:

    - maintain the strengths of the current regulatory environment by supporting the development of global standards through bodies such as the Financial Stability Board (FSB), the Basel Committee on Banking Supervision, the Financial Action Task Force and the International Organization of Securities Commissions (IOSCO);
    - promote regulatory convergence in national standards and in the regional implementation of global standards. Cross-border regulatory coordination and cooperation, supplemented by supervisory deference where appropriate, are of critical importance to UK firms with a global presence as fragmented approaches to regulation and supervision create inefficiencies, overlap and conflict between jurisdictional requirements;
    - remain an open and competitive market for global banking and finance, attracting cutting-edge innovation and world-class talent; and
    - build on the banking and finance sector's deep technical expertise to develop effective relationships with EU institutions and member states, NCAs and international standard-setting bodies.

The domestic context

15. The call for evidence describes how the regulatory framework for financial services has developed over the past 40 years or so and particularly since the financial crisis. This extensive and, at times, rapid reform has resulted in multiple UK public-sector bodies regulating banking and finance firms, sometimes for quite different purposes, sometimes in ways that can—and frequently do—overlap and conflict.

16. Consequently, the scale of banking and finance firms' interactions with those bodies collectively is extensive. One firm recorded the number of regulatory publications that it monitored and assessed in 2018 and in 2019 to the end of August. As show in table 1 below, this averaged 41 publications per week over those eight months of 2019, of which an average of 18 per week were applicable to a UK-based bank serving retail customers and SMEs.

Table 1. Regulatory publications

	2018 final	2019 to end-August
Total received and reviewed	1,883	1,436
Distributed for information only	549	440
Logged on upstream-risk portal	276	198

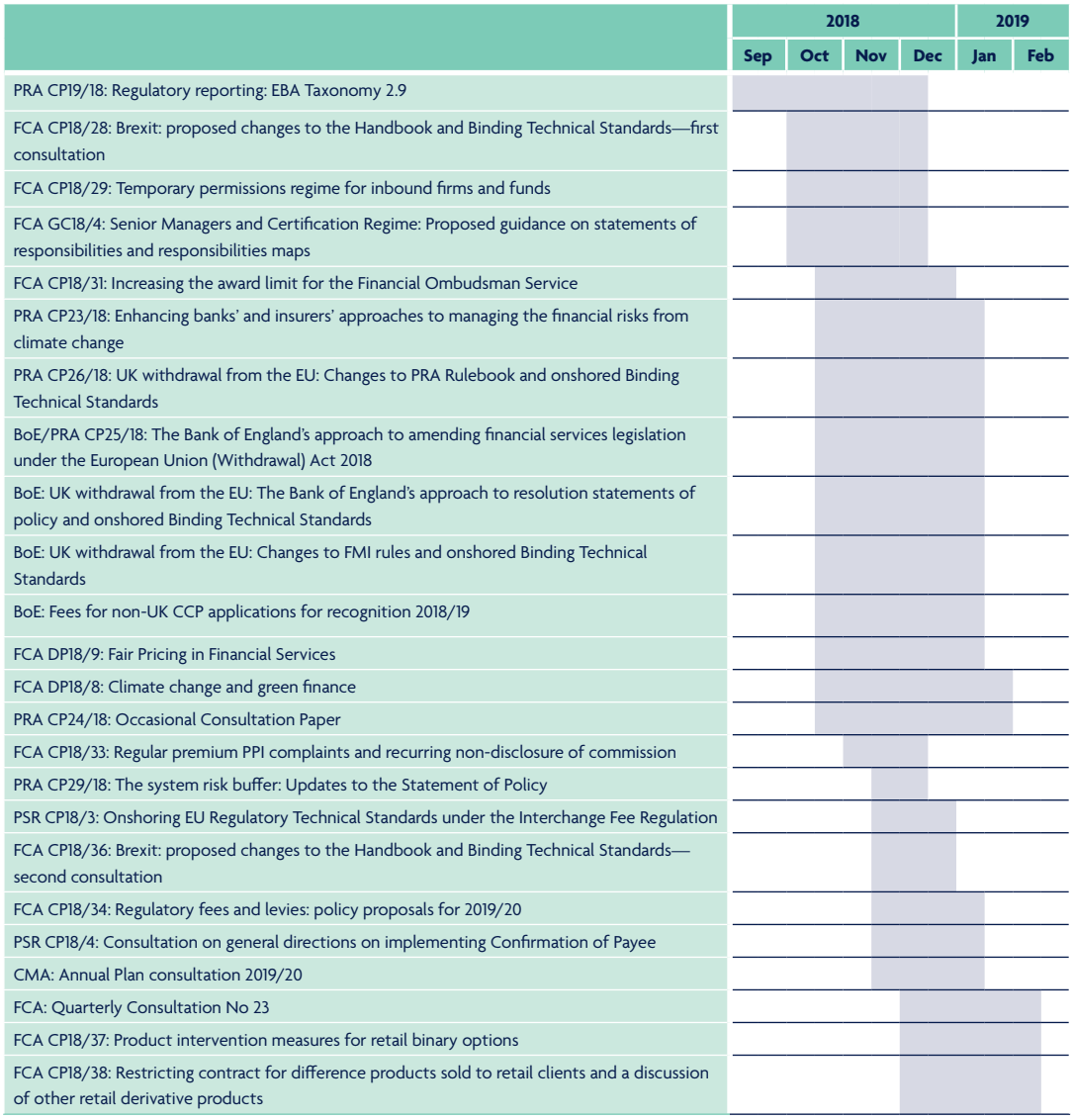
2. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819025/Future_Regulatory_Framework_Review_Call_for_Evidence.pdf

17. The same firm estimates that its investment in regulatory change in the first eight months of 2019 represents 33-40 per cent of its forecast annual business-as-usual investment budget. Another firm puts this figure at 40-50 per cent over the first half of 2019, while a third estimates that regulatory change now accounts for 30-50 per cent of its IT-change budget, and a fourth saw its total spend on regulatory change increase from less than 20 per cent of its overall costs to some 30 per cent between 2015 and 2018. A further firm makes roughly 25,000 IT changes each month, all of which carry a degree of operational risk. Approximately half are driven by the need to implement government/regulatory requirements, with recent examples including the implementation of ringfencing, open banking and cheque imaging.

18. One mid-sized building society centrally manages changes that are larger and more complex, involve coordination between departments and require project-management skills. Approximately 35 projects are typically in flight at any point in time, and the proportion of internal time incurred on regulatory projects has sat at 15, 14 and 18 per cent in October 2017, 2018 and 2019 respectively. Not only are these significant numbers but the regulatory projects in question have drop-dead dates that must be met, with a material impact on resource planning and discretionary value-add projects if they have to give way to ensure regulatory deadlines are met. The challenge is compounded if the scope and requirements of a regulatory project are changed mid-flight, leaving little time to adapt and imposing a further knock-on impact and opportunity cost on other projects.

19. By way of further example, in early December 2018, with only weeks left before the introduction of ringfencing and the Christmas holidays, there were 24 live consultations from the BoE, the PRA, the FCA, the PSR and the CMA. The periods during which they were open for responses were as shown in figure 1 below.

Figure 1. Live regulatory consultations in early December 2018



20. This burden of change is felt particularly acutely by smaller firms and risks hampering their growth. One mid-tier bank expects to invest three times as much in 2019 as it did in 2016 to comply with new regulation, equal to half its total profits in a recent year.

Why regulatory coordination matters

21. Effective coordination between the multiple bodies responsible for that change is vital to achieve the aims of ensuring financial stability and maximising benefits to consumers. The consequences of imposing unnecessary implementation and compliance costs on firms can be significant, including deprioritising investment in other—arguably more beneficial—service improvements for consumers. For example, whatever the perceived and realised benefits of cheque imaging, its introduction has cost firms hundreds of millions of pounds, leading at least one firm to defer other payments initiatives (including quicker/faster payments and tokenisation). It is therefore important that regulators look at policy developments holistically rather than individually and seek to prioritise and dovetail initiatives.

22. Just as critically, even the best-resourced firms have only so much financial, technical and strategic capacity to deliver and oversee change. This is now even more important given the requirements of the Senior Managers and Certification Regime (SM&CR) for good governance and individual accountability and the need to manage the evolving risks of increasingly sophisticated cyber and economic crime.

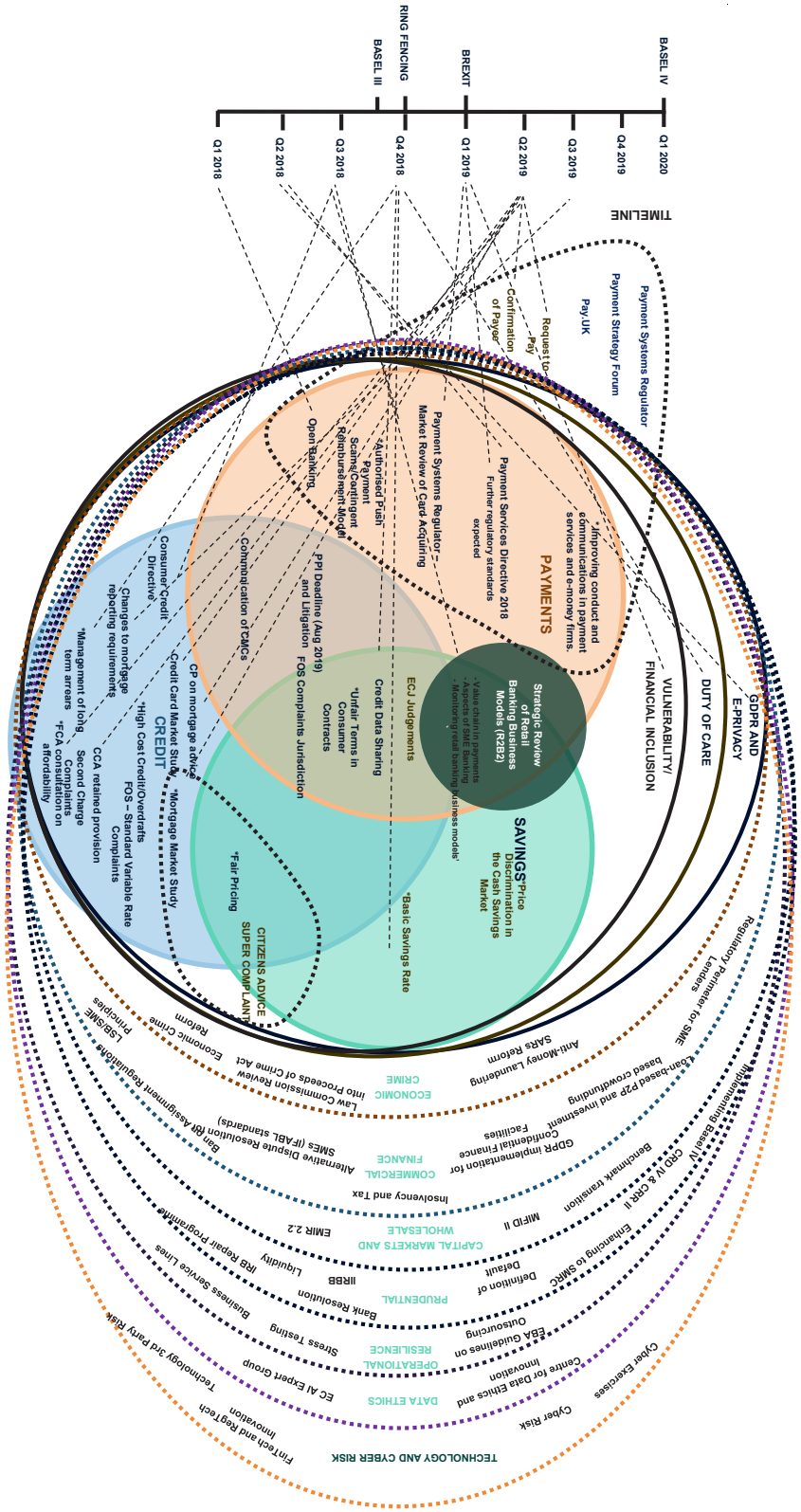
23. We have, however, become increasingly concerned over the past 12-18 months that such regulatory coordination is not always being achieved in practice. We first expressed this in our written evidence of 18 January 2019 to the Treasury Committee's inquiry into IT failures in the financial-services sector, where we noted that:

    12. According to our members, legislative and regulatory requirements now account for an even greater proportion, and the operational risks introduced by this volume of change exacerbated by an absence of coordination between public authorities over substance, timing and prioritisation. Annex 1 attempts to show these overlapping initiatives, juxtaposed with those of a non-technological nature given their combined impact on finite firm resources, not least senior management attention. We would particularly highlight mandatory changes in the payments sector given the criticality and complexity of these services and the potential of any disruption to create significant customer impact.[3]

24. The annexed representation of overlapping initiatives, updated to 1 July 2019, is set out in figure 2 overleaf.

3. http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/it-failures-in-the-financial-services-sector/written/95181.pdf

Figure 2. Snapshot of regulatory change as of 1 July 2019



3. THE REGULATORY LANDSCAPE

25. We consider it important that HMT take account of the full breadth and depth of the regulatory landscape for banking and finance when considering improvements to coordination between public bodies.

UK regulators: not just five

26. The call for evidence identifies five main UK regulators responsible for the regulation and supervision of financial-services firms:
    - the FCA;
    - the PRA;
    - the BoE;
    - the PSR; and
    - the CMA.
27. We welcome recognition of the role of the CMA—whose jurisdiction spans the entire economy—in applying competition law in the financial-services sector concurrently with the FCA and the PSR. Given the history of interventions that it and its predecessors, the Office of Fair Trading and the Competition Commission, have made in banking and finance, there is a real need for its activities to be coordinated with the four sectoral regulators.
28. The call for evidence goes on to identify other UK bodies that interact with, and affect requirements on, financial-services firms, specifically the Financial Reporting Council (FRC), the Financial Ombudsman Service (FOS) and the Information Commissioner's Office (ICO). Their interactions not just with firms but with the five main UK regulators are, indeed, significant, as are those of the following:
    - specific to the financial-services sector—the Financial Services Compensation Scheme and the Open Banking Implementation Entity (OBIE); and
    - specific to other sectors or economy-wide—the Department for Business, Energy and Industrial Strategy (BEIS), the Department for Culture, Media and Sport, the Department for Environment, Food and Rural Affairs, the Department for Exiting the European Union, the Department for International Trade, the Department for Work and Pensions, HM Revenue & Customs (HMRC), the Government Equalities Office, the Home Office, the Ministry of Housing, Communities and Local Government, UK Export Finance, Ofcom, the Advertising Standards Authority (ASA), the Civil Aviation Authority, the Pensions Regulator, the Regulator of Social Housing, the Law Commission, the Serious Fraud Office (SFO) and other law-enforcement agencies, and the devolved administrations.
29. While the means of ensuring coordination with these bodies may differ, we believe it is important that HMT also take them into account, particularly as some ask for similar information from banking and finance firms (e.g. financial-services regulators and tax authorities both requiring transaction data).
30. Other public bodies (e.g. the Gambling Commission, the Law Commission and Transport for London) interact sufficiently infrequently and on issues of such specificity that we would not argue they need to be addressed by this exercise.

Regulation in its widest sense

31. The call for evidence recognises that "regulation" should cover all the regulatory rules and activity that affect financial-services firms, markets and consumers. This includes:
    - legislation made by parliament;
    - rules made by regulators;
    - guidance;
    - "Dear CEO" letters;
    - supervisory and enforcement activity;
    - data-gathering activity; and
    - communication of expectations (e.g. via speeches).
32. We welcome this acceptance of the need to consider regulation in its widest sense. We also recommend HMT recognise that several "voluntary" industry initiatives are, in practice, undertaken at the behest of the UK government and/or regulators, typically with an expectation that implementation/adherence by participants will be monitored and the prospect of intervention should it subsequently be needed. Examples include:
    - the standards of lending practice monitored and enforced by the Lending Standards Board (LSB);[4]
    - the contingent-reimbursement model (CRM) code for authorised push-payment (APP) fraud, also governed and overseen by the LSB;[5]
    - the Access to Banking Standard, again overseen by the LSB;[6] and
    - the Business Banking Resolution Service.[7]
33. These initiatives need to be considered and coordinated on the same basis as those in the statute or rule book as their operational impact, as well as the systems and monitoring required to evidence adherence to them, is often significant.

4. https://www.lendingstandardsboard.org.uk/the-slp/
5. https://www.lendingstandardsboard.org.uk/contingent-reimbursement-model-code/
6. https://www.lendingstandardsboard.org.uk/resources/access-to-banking-standard/
7. https://thebbrs.org/

4. REGULATORY COORDINATION

34. There are many examples of good practice in how public bodies coordinate their regulation of banking and finance firms. This response nonetheless focuses on situations where a lack of coordination has been problematic for firms and ultimately their ability to innovate, adapt and provide better products for their customers.

Good practice

35. The call for evidence identifies some of the existing formal mechanisms to facilitate the coordination of activity by the UK government and regulators. These can certainly work well, and we both welcome where that is the case and hope that the lessons from such good practice can be extended more widely. While by no means exhaustive, firms have highlighted the following examples of good practice:
    - the FCA's overall approach to innovation;[8]
    - the Climate Financial Risk Forum, co-chaired by the PRA and the FCA;
    - joint consultations, such as the BoE/PRA/FCA discussion paper on building the UK financial sector's operational resilience.[9] We hope to see this collaborative approach continue, underpinned by a supervisory regime with common definitions and methodology, such as operational resilience in resolution;
    - the operation of the memorandum of understanding between ICO and the FCA,[10] which sees the latter ask about data-protection issues when it speaks to a firm rather than the former contacting the firm separately;
    - joint meetings between firms, the PRA and the FCA on common topics including IT strategy and information security—as well as joint visits on supervisory issues—reducing both duplication and administrative burdens;
    - ICO's convening of the Regulators and AI forum to let regulators share best practice in regulating artificial intelligence (AI); and
    - the UK government's establishment of the Joint Authorities Cash Strategy Group, bringing together HMT, the PSR, the FCA and the BoE, within the context of its policy to safeguard access to cash for those who need it while supporting digital payments.[11]

Coordination problems

36. It is nonetheless the case that firms see a lack of coordination among UK public bodies that manifests itself in two principal ways:
    - different regulators acting in the same policy area without coordinating their activities; and
    - different regulators imposing different burdens on firms at the same time.

8. https://www.fca.org.uk/firms/fca-innovate
9. https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/discussion-paper/2018/dp118.pdf
10. https://ico.org.uk/media/about-the-ico/documents/2614342/financial-conduct-authority-ico-mou.pdf
11. https://www.gov.uk/government/publications/joint-authorities-cash-strategy-group-terms-of-reference

37. Firms also experience regulatory decisions and actions that, although not a matter of coordination *per se*, exacerbate any shortcomings in the way regulators work with each other.

38. In answer to question 1 in the call for evidence, this section seeks to describe the different manifestations and consequences of these coordination issues. It does so by grouping examples cited by firms into nine ways in which coordination issues manifest themselves in practice:

    i. incoherent duties and objectives;

    ii. failures to consider a policy issue in the round;

    iii. misalignments of prudential and conduct requirements and initiatives;

    iv. revisiting or front-running existing reforms;

    v. cannibalising common implementation resource;

    vi. lack of coordination with other regulated sectors;

    vii. infeasible consultation periods;

    viii. infeasible implementation timescales; and

    ix. infeasible implementation dates.

39. This section concludes with case studies that seek to illustrate how firms often experience several problems with regulatory coordination at the same time.

i. Incoherent duties and objectives

40. Examples of regulators' approaches failing to join up because their duties do not align or their objectives pull them in different directions include the following.

    - **Retention of data.** Firms highlight a conflict between the expectations of the PRA, the FCA and the FOS that firms retain customer data for subsequent redress and information requests and the requirement under the General Data Protection Regulation (GDPR) to delete data when they are no longer required.[12] Redress reviews can date back 20 years, and firms can be considered liable if they do not have the records to support their decisions.

    - **Communicating with customers.** Similarly, there is a gap between ICO's regulation of direct marketing under the Privacy and Electronic Communications (EC Directive) Regulations 2003[13] and the FCA's desire that firms actively assist customers move from lower-value to advantageous products. Firms may derisk their practices and cease providing communications that are in customers' best interests without guidance from the regulators on activity that they agree does not breach data-protection requirements.

    - **Fraud.** By making payment-service providers (PSPs) liable for repayment in most instances of APP fraud, the CRM code promoted by the PSR[14] risks lessening consumer vigilance and desensitising the public to fraudulent behaviour. The code has significantly changed the liability framework without legislative or regulatory underpinning, at a time of concern about the rise in fraud in the UK.

    - **Resilience.** Regulators' intolerance of interruptions to customer service is putting significant pressure on firms to squeeze IT changes into small windows, increasing the risk to operational resilience. Building consumers' understanding that continual system enhancements cannot always be achieved safely without planned outages will be increasingly important as firms digitalise.

    - **Competition.** UK regulators all have differently expressed competition objectives:

        » the CMA must seek to promote competition, both within and outside the UK, for the benefit of consumers;[15]

        » the FCA has a primary objective to promote effective competition in the interests of consumers in the markets for regulated financial services or services provided by a recognised investment exchange in carrying on regulated activities;[16]

12. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&qid=1569669984820&from=EN
13. http://www.legislation.gov.uk/uksi/2003/2426/contents/made
14. https://www.psr.org.uk/outcome-consultation-development-contingent-reimbursement-model
15. http://www.legislation.gov.uk/ukpga/2013/24/section/25/enacted
16. http://www.legislation.gov.uk/ukpga/2000/8/section/1E

- the PSR has a primary objective to promote effective competition in the market for payment systems and the markets for services provided by payment systems in the interests of those who use, or are likely to use, services provided by payment systems;[17] and
- the PRA has a secondary objective to facilitate effective competition in the markets for services provided by persons whom it authorises in carrying on regulated activities.[18]

To the extent these differences are not objectively justified, they risk creating unintended consequences.

- **Payments.** The respective roles of the FCA and the PSR mean that it is unclear who is responsible for payments policy. Their duties are neither contradictory nor wholly consistent, and nothing has been published that helps external parties understand which to talk to about what. Moreover, they do not regulate the same firms; indeed, the PSR regulates different firms depending on whether it is acting under the Financial Services (Banking Reform) Act 2013 (FSBRA),[19] the Interchange Fee Regulation[20] or its concurrent competition powers.[21]
- **Dispute resolution.** The FOS makes decisions based on what it thinks is fair and reasonable in all circumstances of the case.[22] This is different from the basis on which many relevant FCA decisions are made and may encourage the very activity by claims-management companies that the transfer of their regulation to the FCA under the Financial Guidance and Claims Act 2018 was designed to tackle.[23] For example, it is important that the FOS and the FCA are aligned on the aims of the latter's guidance for firms on the fair treatment of vulnerable customers given expectations that firms will adopt different approaches to implementing the requirements and firms' approach will evolve over time.[24] Recent FOS judgements involving victims of scams have resulted in less rather than more consistency in the banking and finance sector's approach to treating vulnerable customers, stretching the boundaries of liability and cutting across the existing legal definition. For example, in a recent judgement, the FOS used the Banking Protocol and its view of industry best practice to overturn chip and PIN payments made by a customer. Regulatory alignment from the outset will help minimise the risk that the FOS makes judgements on cases down the track that do not align with FCA expectations or reflect the spirit of the guidance.
- **Crisis communications.** The BoE is responsible for supervising key financial-market infrastructure to ensure stability in the operation of these systems, yet the PSR issued a direction to Visa in the wake of the outage regarding its approach to communication in any future crises.[25]

ii. Failures to consider a policy issue in the round

41. Examples of public bodies acting with too narrow a focus, thereby missing key aspects of a broader policy issue, include the following.

- In 2014, the UK government consulted on the case for cheque imaging, which it considered "a further step to support ongoing innovation in UK payments and secure the future of cheques."[26] However, in addressing one means of payment in isolation from the many others, it arguably failed to consider whether the implementation costs would deliver commensurate benefits to consumers. It should be noted that cheques were used to make payments worth £356 billion in the UK in 2018,[27] compared to the £840 billion in 2012 cited by the UK government's consultation, while losses from cheque fraud increased by 789 per cent between the first half of 2018 and 2019 (from £3.3 million to £29.4 million) and the value of attempted cheque fraud prevented by banks rose by 172 per cent over the same period (from £74.3 million to £202.3 million).[28]

17. http://www.legislation.gov.uk/ukpga/2013/33/section/50
18. http://www.legislation.gov.uk/ukpga/2013/33/section/130
19. http://www.legislation.gov.uk/ukpga/2013/33/contents/enacted
20. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015R0751
21. https://www.psr.org.uk/competition-act-1998-ca98-guidance
22. https://www.financial-ombudsman.org.uk/who-we-are/make-decisions
23. https://hansard.parliament.uk/lords/2017-07-05/debates/57474CA7-3AFD-4C78-8A1F-9C64D82A9D79/FinancialGuidanceAndClaimsBill(HL)
24. https://www.fca.org.uk/publication/guidance-consultation/gc19-03.pdf
25. https://www.psr.org.uk/psr-publications/policy-statements/specific-direction-9-visa-crisis-communications
26. https://www.gov.uk/government/consultations/speeding-up-cheque-payments-legislating-for-cheque-imaging/speeding-up-cheque-payments-legislating-for-cheque-imaging
27. http://www.fasterpayments.org.uk/sites/default/files/Quarterly%20Statistical%20Report%20Q1%202018.pdf
28. https://www.ukfinance.org.uk/system/files/Half%20year%20fraud%20update%202019%20FINAL.pdf

- Ringfencing required some mid-tier banks to access the payments system directly rather than through larger banks. This neither reduced systemic risks nor better protected consumers but did negatively affect competition because of the high cost of delivery
- Increased regulatory focus on affordability requirements (in the context of personal-loan and credit-card affordability) could have the unintended effect of pushing customers to more expensive credit from payday lenders and unauthorised/unregulated firms as lending criteria tighten. A recent example can be found in relation to the FCA's work on significant credit-limit increases as part of its final rules and guidance on assessing creditworthiness in consumer credit.[29] The FCA proposed that firms make a reasonable assessment of creditworthiness before (i) making a regulated credit agreement or (ii) significantly increasing the amount of credit and/or the credit limit. It confirmed that a "significant credit limit increase" can be made up of a number of separate increases but neither defined what it meant by "significant" nor confirmed how many increases would be appropriate. (It said this might vary according to the circumstances.) In the absence of a definition or any clear guidance, firms are open to interpret this differently and thus may set the bar low. This, in turn, could mean customers are declined for additional borrowing, potentially pushing them toward payday lenders and/or unauthorised/unregulated firms.

iii. Misalignments of prudential and conduct requirements and initiatives

42. Examples of prudential and conduct regulations acting at cross-purposes with, and sometimes in contradiction to, each other include the following.

- FCA measures to enable customers on reversion rates in closed books to transfer to new lenders[30] may require those lenders to hold greater levels of capital because those borrowers are seen by the PRA as riskier, with negative implications for their ability to lend to first-time buyers seeking mortgages of their own.
- The FCA's affordability and responsible-lending rules require detailed assessments of mortgage borrowers' income and expenditure, the BoE's Financial Policy Committee recommends that firms should stress-test at three per cent over the reversion or standard variable rate, and the PRA has set a macroprudential limit that no more than 15 per cent of lending business should be at more than four and a half times income. The impact of this cumulative regulation is twofold: consumers find it harder to get a mortgage now, and some customers whose mortgages predate these rules cannot move as they would fail the new tests.
- There is inconsistency between the PRA's rulebook and the FCA's handbook (e.g. in respect of governance and systems and controls) following the partition of the Financial Services Authority handbook on their creation

iv. Revisiting or front-running existing reforms

43. Examples of a public body acting where another has already set a regulatory direction of travel for firms include the following.

- As part of its retail-banking market investigation,[31] the CMA introduced open banking—now being taken forward by OBIE—despite similar requirements being included in the revised Payment Services Directive (PSD2). As a result, firms had to implement PSD2 and open banking in parallel. At the same time, neither initiative gave due consideration to the potential impact on prudential risk, particularly by destabilising retail-deposit bases in periods of stress in a way that might adversely interact with the deployment of bank-resolution tools as highlighted by the independent review of the prudential supervision of the Co-operative Bank Plc.[32] Moreover, the FCA subsequently undertook a strategic review of retail-banking business models, revisiting much of the CMA's market investigation.[33]
- The FCA brought in telephone-taping and product-intervention rules notwithstanding both being included in EU reforms under the Markets in Financial Instruments Directive II (MiFID II).[34]

29. https://www.fca.org.uk/publication/policy/ps18-19.pdf
30. https://www.fca.org.uk/news/press-releases/fca-acts-help-mortgage-prisoners
31. https://www.gov.uk/cma-cases/review-of-banking-for-small-and-medium-sized-businesses-smes-in-the-uk
32. https://www.gov.uk/government/publications/independent-review-of-the-prudential-supervision-of-the-co-operative-bank-plc
33. https://www.fca.org.uk/publications/multi-firm-reviews/strategic-review-retail-banking-business-models
34. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0065&from=EN

- The CMA introduced major reforms to the current-account and overdraft market in 2017, including the requirement to publish service metrics and provide customers with overdraft alerts. In 2018, the FCA requested that firms publish performance metrics and announced further changes to overdrafts for 2019/20. More coordination in respect of the timing of such requirements would have prevented the need to implement changes in isolation. It would have been more effective if one set of requirements was delivered so systems changes could be made at the same time, reducing the cost of implementation and resource allocation and increased risk from multiple changes.

v. Cannibalising common implementation resource

44. Examples of regulators requiring firms to implement separate regulatory reforms that nonetheless need the same scarce implementation resource include the following.

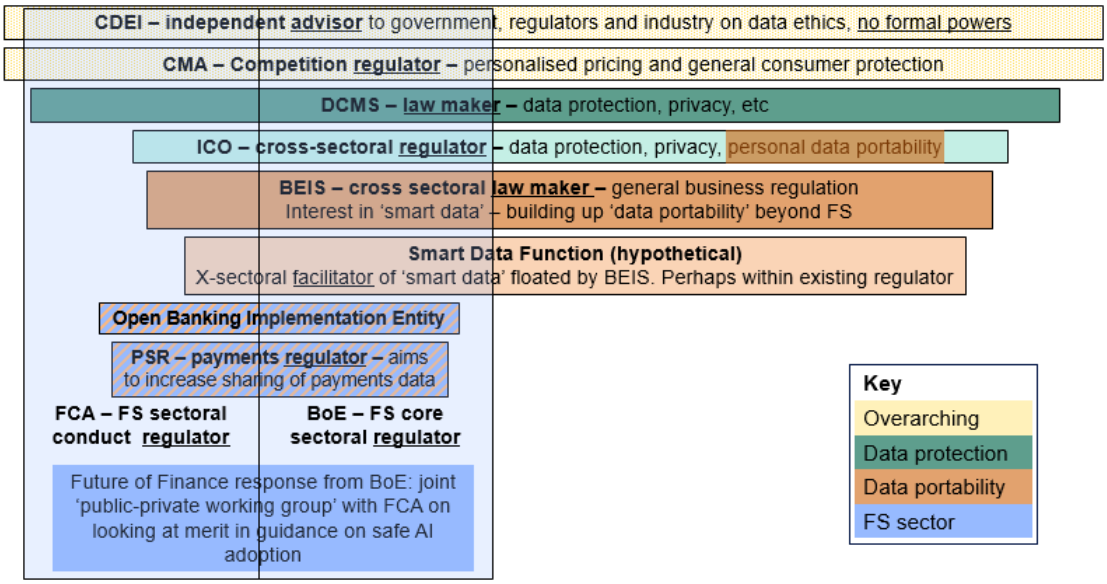
- Major banks needed to implement both ringfencing and changes associated with the New Payments Architecture simultaneously, both UK requirements that coincided with multiyear EU implementation projects including GDPR, MiFID II, the Markets in Financial Instruments Regulation (MiFIR)[35] and PSD2.
- The impact of ringfencing also coincided with firms' efforts to comply with PSD2, particularly the associated regulatory technical standards (RTS). One firm regularly received separate follow-up questions and requests for calls on similar issues from both the PRA and the FCA when issues arose, duplicating effort and pulling resource away from its implementation project. The concentration effect of significant, customer-impacting programmes requiring simultaneous implementation also required careful management and further constrained the firm's ability to execute non-mandatory change.

vi. Lack of coordination with other regulated sectors

45. Examples of inconsistent regulation between the banking and finance and other sectors include the following.

- Many public bodies now have roles, or are showing a new interest, in aspects of "data" regulation, as illustrated in figure 3 below.

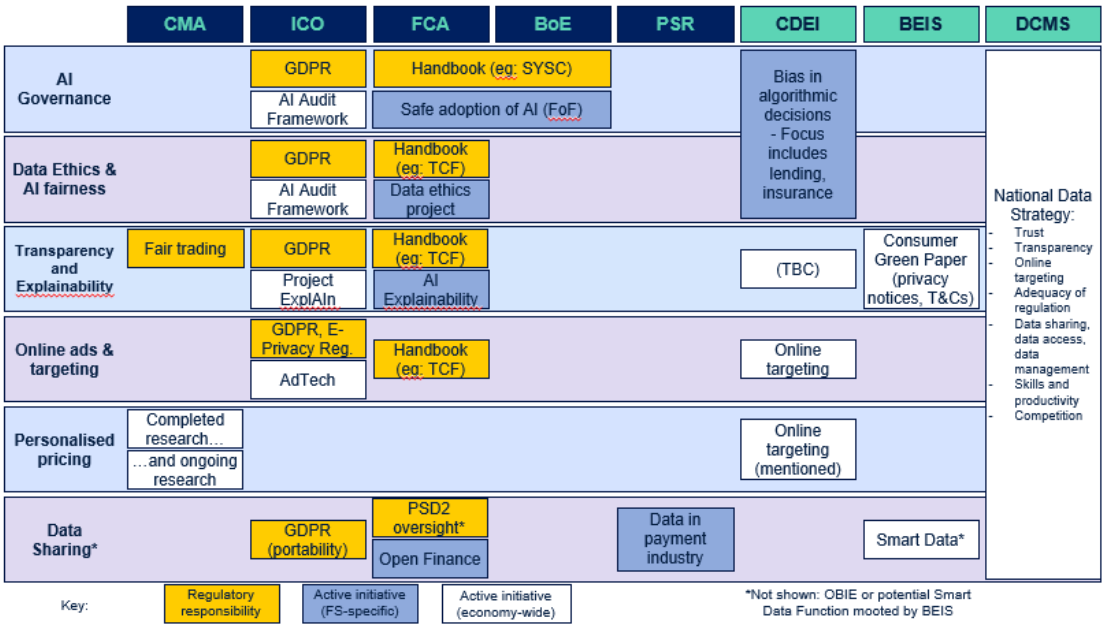
Figure 3. Public bodies with an interest in data regulation



35. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0600&from=EN

On the whole, these roles are sensible. Some bodies have a broad remit, while others are sectoral or more specialised. Effective coordination between them is therefore necessary, but it is not clear that this is happening. As shown in figure 4 below, the financial-services implications of several live initiatives—many of them new—either are closely connected or overlap with the responsibilities of other bodies.

Figure 4. Financial-services implications of live data initiatives



Where related work is not joined up, potential synergies could be missed, leading to duplicative or even contradictory requirements being placed on firms and potentially confusing interactions with consumers. For example, it is not clear that ICO's Project ExplAIn[36] and the FCA's work on AI explainability[37] (each in conjunction with the Alan Turing Institute) are connected. Equally, the PSR's discussion paper on data in the payments industry[38] did not feature in the subsequent BEIS consultation on smart data.[39] A lack of coordination between sectoral and cross-cutting regulators also risks the development of an unlevel playing field, with stricter data-ethics and AI-governance requirements for banking and finance firms than others.

Where the work of one body overlaps with the responsibilities of another without proper coordination, the same risks arise. For example, the PSR's discussion paper on data in the payments industry contained numerous misunderstandings of data-protection law; closer collaboration with ICO before publication would have enabled the PSR to refine its proposals. Similarly, the work of the Centre for Data Ethics and Innovation (CDEI) on bias in algorithmic decision making[40] (including specifically in lending and insurance) seems not to have benefited from full engagement with the FCA, risking misunderstanding of the latter's existing rules and controls. Firms also report that the FCA is asking them about their AI-governance arrangements, touching on matters normally within the responsibilities of—and without any clear link to—ICO.

- While initial regulatory and industry efforts to tackle APP fraud and scams have focused on the banking and finance sector, the actual deception of consumers is often effectively enabled by actions in other sectors (e.g. data breaches in the aviation sector, which are the purview of ICO). These have resulted in significant costs for banking and finance firms, yet they have received no recompense from those who caused the problem in the first place.
- While the banking and finance sector called for and welcomes the FCA's guidance on the fair treatment of vulnerable customers, firms are currently required to comply with different definitions of vulnerability by different public bodies (e.g. the CMA, the FCA, BEIS and the CRM code for APP scams).

36. https://ico.org.uk/about-the-ico/research-and-reports/project-explain-interim-report/
37. https://www.fca.org.uk/news/speeches/future-regulation-ai-consumer-good
38. https://www.psr.org.uk/psr-publications/policy-statements/rp19-1-response-to-discussion-paper-data-in-payments-industry
39. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/808272/Smart-Data-Consultation.pdf
40. https://www.gov.uk/government/publications/the-centre-for-data-ethics-and-innovation-calls-for-evidence-on-online-targeting-and-bias-in-algorithmic-decision-making/centre-for-data-ethics-and-innovation-review-on-bias-in-algorithmic-decision-making

vii. Infeasible consultation periods

46. Examples of regulators consulting on changes for infeasibly short and/or impractical periods of time include the following.

- HMT consulted trade associations on draft regulations giving effect to its breathing-space debt-respite scheme on 13 August 2019, with a request for comments by 2 September 2019—a span of less than three weeks over the summer holidays.
- The FRC published a consultation on proposed revisions to the Client Assets Assurance Standard on 1 August 2019 with a closing date of 27 September 2019, a period of eight weeks over the summer holidays.[41]
- While coordination between the PRA and the FCA on joint aspects of the SM&CR was helpful, the consultation process extended over an 18-month period and became fragmented as several standalone consultations were published. This created challenges for firms in defining implementation approaches until very close to go-live as they awaited final policy statements from both regulators.
- During the FCA's consultation on high-cost credit review,[42] it sought detailed costs at a product level for implementing rules that had not yet been finalised. In one situation, it was impossible for a firm to provide the required analysis as its general approach is to scope requirements before calculating associated costs. The FCA did not appear to appreciate the time and resource associated with meeting a cost request of this scale, particularly within the timeframes imposed, and ultimately the firm could only provide very draft high-level costs to which it could not commit.
- As PSPs have different customer bases and business models, it is not always possible to align like-for-like transactions (e.g. BACS and SEPA credit transfers). Because of this, FCA guidance on the scope and impact of the revised Cross-Border Payments Regulation would have been welcome.[43] However, clarification of items that were otherwise relatively opaque was not received until very late, contributing to significant implementation and compliance difficulties for some firms.

viii. Infeasible implementation timescales

47. Examples of regulators requiring changes to be implemented in infeasibly short periods of time include the following.

- The Fourth Money-Laundering Directive came into force on 25 June 2015,[44] and member states had two years to transpose it. However, HMT did not consult on draft implementing regulations until 15 March 2017[45] and did not lay the final regulations—providing legal certainty of their requirements—until 22 June 2017,[46] just four days before they came into force.
- Firms have experienced significant issues from the perspectives of both delivery and financial planning because of the continually shifting requirements for implementing PSD2. While significant recent changes have been welcomed as good news for many firms and some consumers, these changes have come at point when firms are far down the compliance timeline. This can be misleading for customers as firms have an obligation to keep them informed of any changes. Furthermore, some legislative and regulatory requirements (e.g. the Payment Services Regulations 2017[47] and the FCA's Banking: Conduct of Business sourcebook[48]) require up to two months' notification (e.g. when changes are being made to a customer's terms and conditions and savings account respectively). This means firms have sometimes communicated things that have then changed, thereby necessitating a further communication to customers.

41. https://www.frc.org.uk/news/new-august-2019/consultation-on-the-proposed-revisions-to-the-cass
42. https://www.fca.org.uk/firms/high-cost-credit-consumer-credit/high-cost-credit-review
43. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32019R0518
44. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ%3AJOL_2015_141_R_0003
45. https://www.gov.uk/government/consultations/money-laundering-regulations-2017
46. https://www.legislation.gov.uk/uksi/2017/692/made
47. http://www.legislation.gov.uk/uksi/2017/752/contents/made
48. https://www.handbook.fca.org.uk/handbook/BCOBS.pdf

- The depositor-protection information that must be provided to customers at point of sale must be accurate immediately after the UK leaves the EU, with the PRA providing firms with no transition period. Previously, the PRA has provided five-month transition periods to implement such changes, which is necessary given there are significant logistical challenges in changing communications and collateral (in this case requiring six to eight weeks).

ix. Infeasible implementation dates

48. Examples of regulators requiring firms to implement changes by unachievable dates include the following.

- The PSR initially proposed that PSPs should implement the first stage of confirmation of payee (CoP) the day after the UK was scheduled to leave the EU on 31 March 2019 (see case study below).
- On 7 June 2019, the FCA published finalised guidance notes in relation to the calculation of costs relating to returned-item fees. The guidance came into effect immediately, which meant that firms were immediately in breach. A transition period for compliance or implementation would have been welcomed in this instance.
- Seemingly convenient go-live dates (e.g. 1 January) that occur midweek make system changes more problematic and increase operational risk.

Case studies

Prudential- versus conduct-policy development: algorithmic trading

49. This case study concerns MiFID II and the related PRA supervisory statement and FCA report on algorithmic trading. It demonstrates the difficulties that unexplained differences in the two regulators' policies and expectations can cause firms.

What was observed?

50. MiFID II and MiFIR, which applied from 3 January 2018, were together among the most complex recent reforms to financial services, with far-reaching operational and technological impacts. Article 17 of MiFID II, implemented in the UK through the FCA's Market Conduct sourcebook, set out new requirements for algorithmic trading, with more granular detail in RTS 6: Algorithmic Trading and Direct Electronic Access, which was developed by the European Securities and Markets Authority (ESMA).

51. On 12 February 2018, just over five weeks after RTS 6 came into effect, the PRA published a supervisory statement on algorithmic trading and the FCA a report on algorithmic-trading compliance in wholesale markets. Both publications were based on reviews of firms and were largely unexpected.

52. The FCA noted on its website that the PRA's formal consultation was "an area of continuing collaboration and we will continue to work with the PRA to ensure we are coordinated in our approaches going forward." While there was clearly coordination between the PRA and the FCA and the documents covered broadly the same content without contradiction, there were nonetheless differences in overall approach, focus and level of detail. For example:

- the PRA focused on safety and soundness and consulted on "expectations for the prudential aspects of risk management and governance of algorithmic trading at PRA regulated firms" across five areas to manage "the risks stemming from algorithmic trading." The FCA, however, focused on market integrity and summarised its five key areas as defining algorithmic trading, development and testing, risk controls, governance and oversight and market conduct. It also included examples of good and poor practice for FCA solo-regulated investment firms and dual-regulated firms;
- while the FCA's report largely stayed within the remit of MiFID II RTS 6, the PRA's supervisory statement broadened and gold-plated the EU algorithmic-trading requirements. For example, the PRA included significant uplift and enhancements in several areas that included governance, inventories and documentation, and testing and deployment. It also extended the scope to include unregulated financial instruments (e.g. spot foreign exchange);

49. https://www.fca.org.uk/publication/policy/ps19-16.pdf
50. https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2018/ss518.pdf?la=en&hash=714A0DBD03C2AA95A1322CF1BC35BA846AD597EB
51. https://www.fca.org.uk/publication/multi-firm-reviews/algorithmic-trading-compliance-wholesale-markets.pdf

- the PRA required an assessment and a report by some firms, while the FCA did not require any specific action by any of them; and
- while the content of both publications (and MiFID II RTS 6) can be grouped into four broad themes, a detailed review of the contents of the PRA and FCA publications found that 11 per cent of the PRA's proposed requirements related to definition and inventory, while 24 per cent of the FCA's best-practice examples related to this category. For accountability, governance and organisation, the figures were 29 per cent versus 24 per cent, and for development and testing 27 per cent versus 20 per cent. While the PRA's requirements were generally quite high level and broad, the FCA report was more practical and included direction.

53. The FCA's report was applicable on its publication on 12 February 2018. The PRA's draft statement was published for consultation on the same date, with a closing date for comment of 7 May 2018 and a proposed start date of 30 June 2018. The PRA explained that this was to align with the implementation date of the European Banking Authority's (EBA) revised guidelines on internal governance under Capital Requirements Directive IV (CRD IV) and joint ESMA/EBA guidelines on the assessment of the suitability of members of the management body and key function holders under CRD IV and MiFID II. However, the link between the algorithmic-trading guidelines and the EBA and joint ESMA/EBA guidelines was not clear to the industry and appeared to be a PRA decision rather than a legal necessity. Firms were concerned that this compressed timetable would not give them time to implement should there be any material changes to the MiFID II RTS 6 requirements.

54. The PRA subsequently published its final policy statement on algorithmic trading on 15 June 2018, 10 business days before the confirmed implementation date of 30 June 2018.[52] Two respondents to the consultation had flagged that it might not be possible for firms to meet all expectations in the time available. There was some expectation that the PRA would take account of this when publishing the policy statement, by either reducing the requirements or extending the implementation date. However, the PRA instead agreed to "take forward any remediation work with firms after this date as part of normal supervisory activities" rather than change the implementation date. While this provided some comfort, firms were unable to comply with the policy statement on the date it came into force.

55. Although the Financial Services and Markets Act 2000 does not require CBAs for thematic reports, even for those good-practice benchmarks, the CBA to the PRA's February 2018 consultation paper on algorithmic trading stated that:

    3.4 The PRA has assessed that the proposals in this CP require minimal incremental investment by firms above that already made in order to comply with existing regulation and guidance for this activity. The PRA considers those costs are outweighed by the benefit of reducing uncertainty over its expectations in this area, and therefore reducing the risk of firms investing in approaches that would not meet its expectations.[53]

56. The CBA was not, however, cumulative for dual-regulated firms and did not comment on the extent to which clarifications, such as the increased scope, resulted in changes to systems and controls so soon after a major regulatory change (i.e. MiFID II).

What was the impact?

57. Although the differences in focus reflected the PRA and the FCA's different statutory duties, the differences in content and approach led, in practice, among other things to:

    - different algorithmic-trading requirements for dual-regulated investment firms subject to the PRA supervisory statement from FCA solo-regulated investment firms, which only had to take account of its more market-integrity-focused report;
    - an overlap in coverage for dual-regulated firms, without an explanation of how the PRA's supervisory statement and the FCA's report—both of which covered governance, testing and controls (albeit from slightly different perspectives)—aligned other than that they were to be read together. This risked key questions and actions being lost in the detail;
    - less focus on, and analysis of, the FCA's report since, unlike the PRA's supervisory statement, it did not contain a specific action and some firms assumed that the FCA's expectations would be satisfied by meeting the PRA's requirements;

52. https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2018/ps1218.pdf
53. https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2018/cp518

- an increase in the scope of the MiFID II RTS 6 requirements in the UK, which created differences in approach for firms that operate in other EU member states (e.g. the FCA expects firms to document algorithms that fall outside the RTS 6 definition). Firms with global operations had to navigate disjointed obligations, either considering the implementation of higher standards across their operations regardless of local jurisdictions or having a patchwork of local regimes across branches. This could have been mitigated had the PRA worked with ESMA (and the FCA) rather than in isolation; and
- firms having to rely on the PRA being willing to take a pragmatic approach to implementation of the new requirements, which carries a high degree of regulatory risk. It would have been preferable if the PRA had set a realistic implementation timeframe from the outset.

Prudential- versus conduct-policy development: temporary permissions regime

What was observed?

58. On 26 October 2018, as part of the onshoring of EU legislation and following HMT's publication in July 2018 of the draft EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018,[54] the PRA published a consultation paper on changes to the PRA rulebook and onshored binding technical standards.[55] Chapter 7 set out the PRA's proposals relating to the temporary permissions regime (TPR), which is designed to provide continuity for incoming EEA firms should the UK leave the EU without a deal. Under the TPR, an incoming EEA firm would be able to carry on financial services in the UK for a limited period while its application for authorisation was determined. The PRA consulted on its prudential rules for dual-regulated incoming EEA firms in the TPR, in particular how its handbook would apply to them.

59. The FCA had, earlier in the month (8 October 2018), published its proposals for the TPR and was consulting on the application of the FCA handbook to solo- and dual-regulated firms in the TPR.[56] Given incoming EEA firms' need for information for planning purposes, some had expected the PRA to confirm the same approach as the FCA. However, it became apparent that the PRA and the FCA were taking opposite approaches to the underlying policy issue, with the PRA proposing treating incoming EEA firms as third-country branches on entry into the TPR and the FCA proposing to maintain the status quo of incoming EEA firms becoming third-country branches when authorised and leaving the TPR. Underlying this difference of approach is the difference between prudential (home-state) and conduct (host-state) approaches to regulation, although this was not articulated at the time.

60. As a result of these differing policy positions, the PRA and the FCA also differed in their approach to the application of additional rules, particularly the SM&CR, although this was not highlighted in either consultation. Both the PRA and the FCA recognised that a firm in the TPR, with a deemed Part IV permission, would come within the full scope of their supervisory, rulemaking and enforcement powers. However, while the FCA proposed "a proportionate approach that will enable firms to comply with our requirements from Day 1 while maintaining an adequate level of consumer protection" by applying certain additional rules to those already applying to inbound EEA firms, the PRA started from the position that all third-country branch rules would apply but said that it was "considering" transitional relief for certain rules. The FCA had explained that it "considered alternative options" for applying its rules to the TPR, including, "Applying all rules to TP firms which apply to current third-country firms." The FCA, however, had specifically discounted the option on the basis that "this would be difficult for TP firms to comply with in time and therefore causes its own risks. Although we are not relying on home state regulators to supervise TP firms, some provisions of home state law/regulation would continue to apply to TP firms in relation to their UK business. We also believe that this approach would not be appropriate given the temporary nature of the TPR."

What was the impact?

61. Some inbound firms had, given the uncertainties and time pressures, predicated their planning on the FCA's approach to the SM&CR (i.e. worked on the basis that they would maintain, until authorisation, their existing arrangements under the SM&CR requirements that apply to EEA branch firms). Hence, they were not expecting to have to comply with the additional controlled functions and requirements that apply to UK branches of third-country firms until authorised as a third-country branch.

54. https://www.gov.uk/government/publications/temporary-permissions-regime-for-firms/eea-passport-rights-amendment-etc-and-transitional-provisions-eu-exit-regulations-2018-explanatory-information

55. https://www.bankofengland.co.uk/prudential-regulation/publication/2018/uk-withdrawal-from-the-eu-changes-to-pra-rulebook-and-onshored-bts

56. https://www.fca.org.uk/publication/consultation/cp18-29.pdf

62. However, under the PRA's (subsequently confirmed) proposals, the SM&CR rules for third-country branches will apply to all firms in the TPR, including EEA firms providing cross-border services into the UK. Hence, all firms in the TPR will be required to have one or more individuals approved to perform the Head of Overseas Branch function (SMF19). Additionally, if the PRA rulebook requires third-country branches to have persons approved to perform other PRA SMFs (e.g. the Chief Risk function (SMF4) or the With-Profits Actuary function (SMF20a)) in certain circumstances, firms in the TPR will also be required to have persons approved to perform the relevant additional SMFs.

63. Under the PRA proposals, an incoming EEA firm would have also had to allocate the PRA prescribed responsibilities (PR) for third-country firms and put in place a management-responsibilities map in considerably less time than was available to third-country branches when the rules were first introduced. As a result, there was concern about what incoming EEA firms were expected to do and by when, why there were differences between their regulations and what the impact of the proposals would be.

64. On 7 January 2019, the PRA clarified the interaction between its and the FCA's proposals for applying the SM&CR to firms in the TPR.[57] This note included a set of frequently-asked questions that reflected firms' uncertainties. In particular, the response to the question, "Why do the PRA and FCA have different proposals for applying the SM&CR to firms in the TPR?" helpfully explained that, "The differences stem from the fact that the FCA already has tailored SM&CR requirements for EEA branches but the PRA currently does not. Consequently, in order to ensure an appropriate level of accountability to both regulators and facilitate the transition to third-country branch approval, the PRA proposes to apply its SM&CR requirements and expectations to firms in the TPR."

65. The PRA also subsequently confirmed that the PR for third-country branches will not apply to firms in the TPR, which will have the existing PR for "compliance with the UK regulatory system applicable to the firm" and a new PR for managing the process of obtaining permission.

66. While incoming EEA firms appreciated the certainty provided by the TPR and the guidance provided in relation to the UK onshoring process, significant internal resources were needed to review draft regulations (particularly in the absence of consolidated marked-up drafts) and consultations, distil and apply the changes and seek to ensure they had clarity about the regulatory framework to apply at different points in time. Recognising the huge scale of the onshoring process for the UK government and regulators, as well as resource and time constraints, there is nonetheless a feeling that an opportunity might have been missed to better coordinate and communicate the PRA and the FCA's policy decisions, including explaining up front why and how they differed, clarifying the position of dual-regulated incoming EEA firms (particularly those with a services passport and no UK branch) and seeking to ensure that staffers interacting with incoming EEA firms could articulate the reasons for the differences and their practical impacts.

Payments and confirmation of payee

What was observed?

67. In December 2017, the Payments Strategy Forum (PSF), established by the PSR to work with the payments industry and users to develop a new payments strategy for the 21st century, published its blueprint for a new payments architecture, including details on the designs for CoP.[58] The blueprint was then handed over to the New Payment Systems Operator (NPSO)—subsequently renamed Pay.UK—for development and implementation. CoP is the industry-agreed way of ensuring that the names of payees are checked before payments are sent.

68. On 7 November 2017, the PSR had published a report on APP scams[59] that explained the work the PSR, the FCA and the payments industry had taken to reduce harm in the year following a Which? super-complaint about consumer safeguards in the market for push payments.[60] In the report, CoP was listed as an industry initiative led by the PSF and the NPSO, with a full implementation date of 2021.

69. During 2018, Pay.UK worked with "over 200 stakeholders representing payment service providers, customer groups and regulators" to validate the CoP proposition and develop the detailed design, rules and technical standards. Applications from PSPs to join the service and receive the full technical specifications could be made from December 2018.

57. https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/report/application-of-smcr-to-firms-in-tpr-clarification-of-pra-and-fca-proposals.pdf?la=en&hash=6EBCB90B90924BD867948DCB64A998EB0652834C

58. https://implementation.paymentsforum.uk/key-documents

59. https://www.psr.org.uk/authorised-push-payment-scams-%E2%80%93-psr-led-work

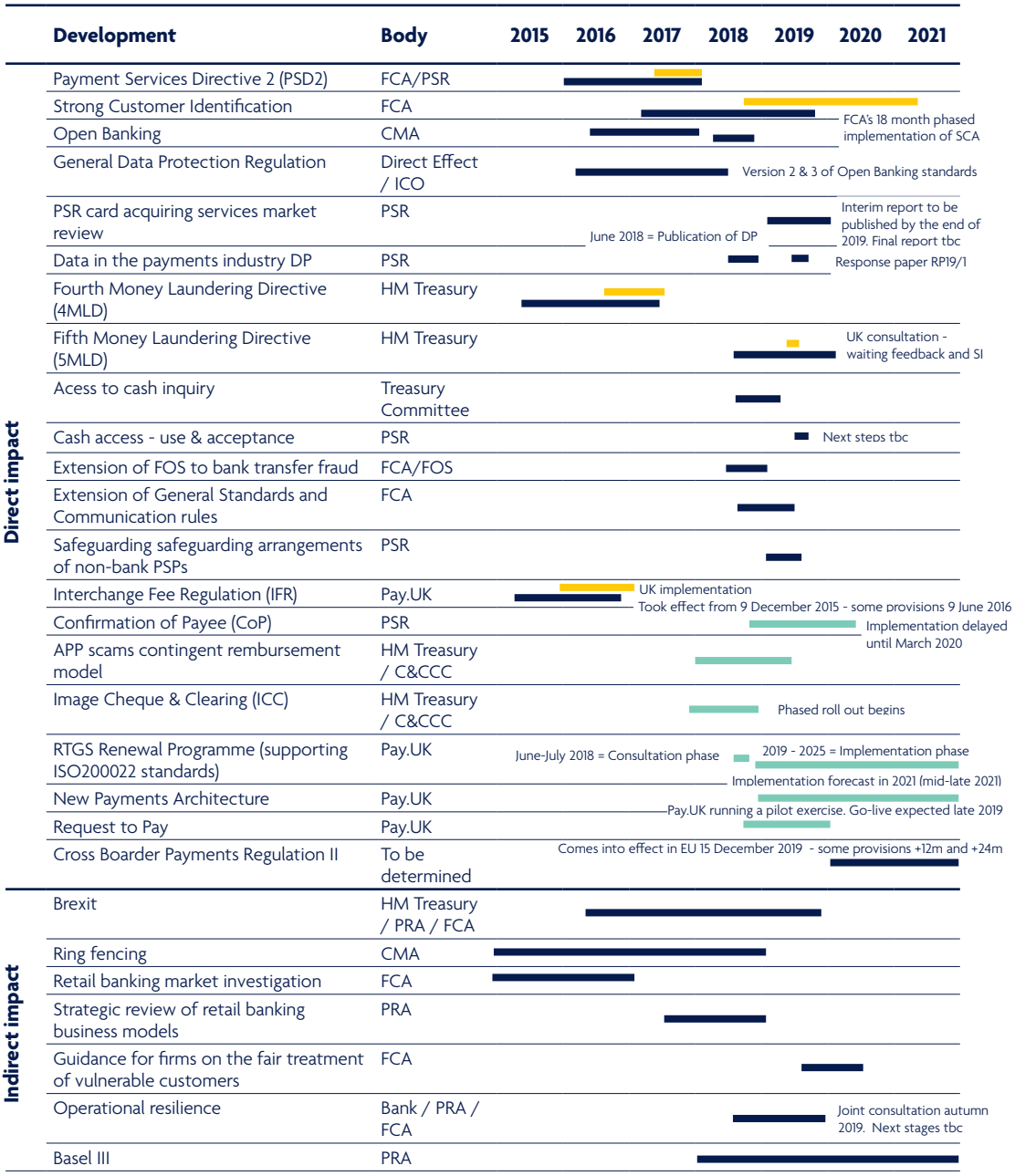
60. https://about-which.s3.amazonaws.com/policy/media/documents/59b0050d20b1b-which-super-complaint---consumer-safeguards-in-the-market-for-push-payments-453230.pdf

70. In November 2018, the PSR published a consultation on general directions on implementing CoP.[61] It proposed giving a direction to all PSPs using Faster Payments and CHAPS that would require them to be capable of receiving and responding to CoP requests by 1 April 2019 and sending CoP requests by 1 July 2019. The PSR's rationale for these timescales was, in summary, that "the rules, standards and guidance are available and the anticipated effectiveness of CoP, including in preventing significant losses to customers through stopping APP scams, strongly supports early introduction."

What was the impact?

71. Requiring the affected PSPs to make significant and complex systems changes across every delivery channel in less than a year proved infeasible, and the deadline subsequently had to be changed. Moreover, as figure 5 below illustrates, PSPs were required to implement several other regulatory initiatives that required systems changes at the same time, including PSD2's requirement for secure customer authentication, which was due to be implemented in September 2019. The lack of coordinated sequencing and infeasible implementation dates put pressure on PSPs' finite IT staff, who were also responsible for business-as-usual maintenance of systems, while PSPs reported that it was hard to recruit additional staff of the appropriate quality given the risks posed by multiple changes to core systems.

Figure 5. Payments regulatory timeline



61. https://www.psr.org.uk/psr-publications/consultations/cp-18-4-consultation-general-directions-implementing-cop

72. The PSR subsequently reported in May 2019 that:

    Most respondents said the dates were too challenging or impossible to meet. Many said they were already engaged in a heavy programme of regulatory change related to Open Banking, the Second Payments Services Directive and the UK's exit from the European Union. These changes would make it difficult to implement CoP by the proposed deadlines.[62]

73. It stated that, following a data-gathering exercise, it had recognised the previous implementation deadlines would be unachievable, and it consulted again on directing the six largest banking groups in the UK, rather than all PSPs using CHAPs and Faster Payments, to respond to CoP requests by 31 December 2019 and to send CoP requests and present responses to their customers by 31 March 2020. This is now the confirmed policy and final implementation deadline.

Solvent wind-down

What was observed?

74. Solvent wind-down provides an example of where coordination between UK public bodies could be improved, not only decreasing regulatory burdens but also mitigating any financial-stability risks that could arise.

75. In the UK, solvent wind-down capabilities are expected to be available to banks across the entire spectrum of recovery, resolution and post-resolution restructuring. However, the PRA's approach as the prudential regulator diverges from the BoE's approach as the resolution authority. The PRA's approach is data- and template-driven, which implies that a significant degree of complex modelling is required. However, the BoE has taken a different approach and focuses on developing a flexible solution that can easily be adjusted by the firm and third-party agencies hired by the BoE to assess the firm during a crisis. While the two regulators have developed differing approaches, we note that the BoE has subsequently allowed some recognition of the PRA templates rather than requiring a bespoke BoE approach, which addresses some of the concerns about differing approaches and potential duplication.

76. A key concern is that the PRA's current approach does not follow the expected glide path from stress through recovery and into resolution. It is also unrealistic in certain areas, particularly the systemic stress period of an initial six months, during which portfolios cannot be sold. In reality, firms would start to liquidate portfolios in stress as quickly as they can. On the other hand, the BoE is clear in its view of how banks can use the capability in the run-up to and after a resolution event.

What was the impact?

77. Due to the divergent sets of expectations from the PRA and the BoE, additional costs have arisen for banks subject to these expectations, and the lack of coordination could create confusion for banks that enter recovery. Furthermore, the implementation of solvent wind-down capability expectations requires firms to make significant investments in capabilities that may not be required by regulators in the multiple jurisdictions in which global banks operate. Moreover, the PRA's current inflexible approach may contradict expectations under the SM&CR, under which the Senior Manager Function is tasked with overseeing the firm's development of flexible and adaptable recovery and resolution planning capabilities that could be deployed rather than the disproportionately granular and template-based information requests from the PRA.

62. https://www.psr.org.uk/sites/default/files/media/PDF/PSR-CP-19-4-CoP-specific-direction-consultation-May-2019.pdf

5. IMPROVING COORDINATION

78. We have considered ways in which UK regulators could improve coordination to minimise the risk and consequences of acting in the same area and/or imposing burdens at the same time. We see these falling under three broad headings:
    - better implementation of existing duties and powers;
    - application of practices from elsewhere in the regulatory landscape; and
    - institutional reform.
79. We suggest HMT similarly consider these approaches in its deliberations. They should, of course, be read as complementing and building on the UK government's existing better-regulation framework. To the extent any decisions require legislation, we recommend they be included in the Financial Services Bill announced in the 2019 Queen's speech.

Better implementation of existing duties and powers

80. We have identified several ways in which coordination could be improved if public bodies regulating banking and finance firms improved how they deliver and use their existing duties and powers. Any such improvements are therefore within their current mandate.

Definition, delivery and demonstration of intended consumer outcomes

81. In its March 2019 report "Regulating to protect consumers in utilities, communications and financial services markets," the National Audit Office recommended among other things that the regulators in question—Ofwat, Ofgem, Ofcom and the FCA—should:

    Work together, for example through UK Regulators Network, to develop a consistent approach to modelling and measuring regulatory influence and impact, and providing links between regulatory activities, outputs and consumer outcomes.

82. If it is right for regulators operating in different sectors to define, deliver and demonstrate intended consumer outcomes, we believe it must certainly be so for regulators operating in the same sector.

Supervision and enforcement of existing rules

83. By their nature, supervising and enforcing existing rules are less likely to raise problems of coordination than making new ones. Indeed, FCA chair Charles Randell observed in a speech at the Association for Financial Markets in Europe annual conference on 2 October 2018 that:

    Just as governments can tend to prioritise legislation over delivery, regulators can tend to prioritise rulemaking. So we need to make sure that we don't reach for the rulemaking tool when it isn't the best response.

84. This could be further refined to limit rulemaking to circumstances where supervision and enforcement are demonstrated to be insufficient to addressing the relevant issue. Of course, these, too, need to deliver proportionate and consistent outcomes. Firms are concerned about increasing instances of different supervisors interpreting their actions differently, particularly in relation to vulnerability and treating customers fairly.

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63. https://www.gov.uk/government/publications/better-regulation-framework
64. https://www.gov.uk/government/topical-events/queens-speech-2019
65. https://www.nao.org.uk/wp-content/uploads/2019/03/Regulating-to-protect-consumers-in-utilities-communications-and-financial-service-markets.pdf
66. https://www.fca.org.uk/news/speeches/rolling-rock-cycle-deregulation-crisis-and-regulation

Shared business plan

85. As noted in the call for evidence, section 98 of FSBRA gives the PSR, the BoE, the FCA and the PRA a duty to ensure the coordinated exercise of their functions.[67] One way they could demonstrate real compliance would be to collaborate on a shared business plan setting out upcoming issues (including "voluntary" industry initiatives undertaken at the behest of public bodies) that cut across their individual responsibilities. This could help firms gain a sector-wide view of the totality of change that is on the horizon and the corresponding time periods for implementation as well as assist the regulators identify policies that require coordinated development.

86. We note that the European Commission's initiative to ensure "better regulation" included improving and increasing opportunities for stakeholders to contribute throughout the policy and law-making cycle.[68] As part of this, the Commission provides stakeholders with the opportunity to comment on "roadmaps and inception impact assessments." Adopting this approach in the UK, ideally alongside a shared business plan, could provide the opportunity for stakeholders to provide regulators with insight into potentially large-scale implications that have not been identified and should therefore be appropriately considered before formal proposals are finalised. Embedding project-management and delivery expertise at an early stage of the policy-development process would additionally mitigate implementation risks.

Focus on proportionality

87. The then-Better Regulation Task Force recognised in its "Principles of good regulation" that:

    Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.[69]

88. Yet fast-growing mid-tier banks seem to be caught in the worst of all worlds: big enough to be included in new taxation, prudential and conduct initiatives but not big enough to be able to absorb them without an impact on their ability to innovate. Many such initiatives neither reduce systemic risk nor bring benefits to mid-tier customers. More proportionate and coordinated regulation, where the impact on competition, innovation and customer service is considered in the round, would help drive growth and innovation among these firms.

Appropriate consultation periods

89. Particularly where firms need to assess and advise on the interactions between a proposed regulatory change and others already in train, consulting too quickly "will not give enough time for consideration and will reduce the quality of responses."[70]

Cost/benefit analyses

90. To ensure CBAs take account of relevant activities by other public bodies, they could be subject more routinely to consideration by an external, independent body with appropriate expertise in banking and finance regulation and stakeholder participation. Even if it could not intervene directly where it found cause for concern, its findings could prompt public bodies to reconsider their proposals themselves as well as inform scrutiny by the UK parliament and firms' decisions about possible legal action.

Post-implementation reviews

91. As with CBAs, the wider use of post-implementation reviews could better identify where a lack of coordination reduced the benefits and/or increased the cost of intervention by a public body and inform approaches to similar issues in the future.

67. http://www.legislation.gov.uk/ukpga/2013/33/section/98
68. https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how_en
69. https://webarchive.nationalarchives.gov.uk/20100407173247/http://archive.cabinetoffice.gov.uk/brc/upload/assets/www.brc.gov.uk/principlesleaflet.pdf
70. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

Competition scrutiny

92. Under section 7 of the Enterprise Act 2002, the CMA can advise the UK government on how its own policies can facilitate the development of competition or where its policies risk constraining such development.[71] It has published guidelines to this effect.[72]

93. The UK government's July 2018 updated non-binding strategic steer to the CMA explicitly called on it to "make recommendations on regulatory, policy or legislative matters, and their implications for competition and consumers at either national or local level."[73] This could apply in full to regulators of banking and finance firms.

Standardised policy documentation

94. It can be difficult and time consuming to extract policy changes and implications from the different formats used by regulators. It would be beneficial for firms to be able to digest documents that are consistent in form, with dedicated sections for proposed or actual policy positions. In particular, the development and use by UK regulators of machine-readable documents would enable firms to integrate policy into their own technology systems, ultimately improving the way in which they comply with their varying regulatory obligations.

Application of practices from elsewhere in the regulatory landscape

95. We have also identified practices by other UK public bodies that we believe could improve coordination if they were incorporated into the regulation of banking and finance. We envisage some could be adopted voluntarily, although others may benefit from—or simply require—statutory underpinning.

Strategy and policy statement

96. Section 1JA of the Financial Services and Markets Act 2000 allows HMT to make recommendations to the FCA about aspects of the UK government's economic policy to which the FCA should have regard.[74] This was first (and last) done by way of a letter from the chancellor of the exchequer to the chief executive of the FCA in March 2017, but its recommendations were, by necessity, broad, requiring the FCA to have regard to UK government policy on competition, growth, competitiveness, innovation, trade and better consumer outcomes.[75]

97. Additionally, HMT could establish a strategy and policy statement providing context and guidance about priorities and desired outcomes over the medium term specifically in the banking and finance sector, and clarifying the respective roles of regulators and government, in line with the "Principles for economic regulation" published by the then-Department for Business, Innovation and Skills in 2011 (see box 1 overleaf).[76] These have subsequently been implemented for water[77] and communications[78] and proposed for energy.[79]

71. http://www.legislation.gov.uk/ukpga/2002/40/section/7
72. https://www.gov.uk/government/publications/competition-impact-assessment-guidelines-for-policymakers
73. https://www.gov.uk/government/publications/governments-strategic-steer-to-the-competition-and-markets-authority-cma
74. http://www.legislation.gov.uk/ukpga/2000/8/section/1JA
75. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/597668/Recommendations_Financial_Conduct_Authority_Spring_Budget_2017.pdf.pdf
76. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/31623/11-795-principles-for-economic-regulation.pdf
77. https://www.gov.uk/government/publications/strategic-policy-statement-to-ofwat-incorporating-social-and-environmental-guidance
78. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817921/SSP_-_post_consultation_version_FINAL.pdf
79. https://www.gov.uk/government/consultations/strategy-and-policy-statement

Box 1. Principles for economic regulation

The purpose of the principles for economic regulation was to:

- reaffirm the importance of, and the UK government's commitment to, stable and predictable regulatory frameworks to facilitate efficient investment and sustainable growth;
- set the framework for delivering greater clarity about the respective roles of government, regulators and producers and greater coherence in an increasingly complex and interlinked policy context; and
- set out the characteristics of a successful framework for economic regulation to guide policy makers in assessing future developments.

The principles are as follows.

Accountability

- Independent regulation needs to take place within a framework of duties and policies set by a democratically accountable UK parliament and government.
- Roles and responsibilities between government and economic regulators should be allocated in such a way as to ensure that regulatory decisions are taken by the body that has the legitimacy, expertise and capability to arbitrate between the required trade-offs.
- Decision-making powers of regulators should be, within the constraints imposed by the need to preserve commercial confidentiality, exercised transparently and subject to appropriate scrutiny and challenge.

Focus

- The role of economic regulators should be concentrated on protecting the interests of end users of infrastructure services by ensuring the operation of well-functioning and contestable markets where appropriate or by designing a system of incentives and penalties that replicate as far as possible the outcomes of competitive markets.
- Economic regulators should have clearly defined, articulated and prioritised statutory responsibilities focused on outcomes rather than specified inputs or tools.
- Economic regulators should have adequate discretion to choose the tools that best achieve these outcomes.

Predictability

- The framework for economic regulation should provide a stable and objective environment enabling all those affected to anticipate the context for future decisions and to make long-term investment decisions with confidence.
- The framework of economic regulation should not unreasonably unravel past decisions and should allow efficient and necessary investments to receive a reasonable return, subject to the normal risks inherent in markets.

Coherence

- Regulatory frameworks should form a logical part of the UK government's broader policy context, consistent with established priorities.
- Regulatory frameworks should enable cross-sector delivery of policy goals where appropriate.

Adaptability

- The framework of economic regulation needs capacity to evolve to respond to changing circumstances and continue to be relevant and effective over time.

Efficiency

- Policy interventions must be proportionate and cost-effective, while decision making should be timely and robust.

Reasonable grounds

98. Philip Hampton's 2005 report "Reducing administrative burdens: effective inspection and enforcement" for the chancellor recommended that "there should be no inspections without a reason."[80] Extrapolating such an approach could prevent public bodies proposing new or revised rules in banking and finance without reasonable grounds to believe there is an existing problem, reducing the likelihood of coordination problems.

99. This approach could be further refined to apply to intervention in particular markets (e.g. so that perceived problems in retail banking are not automatically read across to firms operating in wholesale markets). To strengthen the link between strategy and supervision, supervisors could also better justify to firms why they are concerned about certain markets, products and processes.

Cumulative impact assessments

100. Recognising the multiagency regulatory landscape in banking and finance—and particularly the macroprudential implications of competition and conduct regulation—public bodies could go beyond static CBAs of specific proposals to take account of other bodies' activities. By way of precedent, we note that section 5A of the Licensing Act 2003 provides that:

    A licensing authority may publish a document—"a cumulative impact assessment"—stating that the licensing authority considers that the number of relevant authorisations in respect of premises in one or more parts of its area described in the assessment is such that it is likely that it would be inconsistent with the authority's duty under section 4(1) to grant any further relevant authorisations in respect of premises in that part or those parts.[81]

101. Such CBAs could also better analyse the full spectrum of options, from "do nothing" (which may sometimes be advisable given the risk of regulatory failure when intervening) through to formal rulemaking. We note that Ofcom has a duty under section 3(4)(c) of the Communications Act 2003 to have regard to "the desirability of promoting and facilitating the development and use of effective forms of self-regulation"[82] and has published a statement on principles for analysing self- and co-regulation.[83] It may also be appropriate for CBAs to assess whether rules with the same policy objectives exist in other major banking and finance centres (e.g. the EU and the US) to promote consistency.

102. We recognise that as CBAs become more complicated, the accuracy of assessments is likely to diminish. In these circumstances, it is likely to become more important that public bodies conduct sensitivity analyses of the options they are considering implementing in order to demonstrate that the likely range of benefits clearly exceeds that of costs. This could be further enhanced by market assessments demonstrating that there is enough interest in supplying new products and services before regulatory intervention to promote them.

Criteria for voluntary initiatives

103. We recognise that it is sometimes preferable for the banking and finance sector to implement changes on a voluntary basis than to be subject to legislative or regulatory requirements. These, too, require coordination to avoid the problems outlined in section 4—even more so given that their voluntary nature bypasses many of the checks and balances built into the formal policymaking process.

104. There may be merit in establishing transparent criteria to inform when a voluntary initiative is appropriate (and more so than formal regulation). In particular, these could address concerns that only a subset of firms is involved in the initiative and/or that firms are sometimes expected to resolve market failures that, by their very nature, can only be tackled by state intervention (e.g. long-term funding for the CRM code for APP scams).

80. https://www.regulation.org.uk/library/2005_hampton_report.pdf
81. http://www.legislation.gov.uk/ukpga/2003/17/section/5A
82. http://www.legislation.gov.uk/ukpga/2003/21/section/3
83. https://www.ofcom.org.uk/__data/assets/pdf_file/0019/46144/statement.pdf

Institutional reform

105. The benefits of institutional reform to improve regulatory coordination clearly need to be weighed against the time needed to introduce them—especially if enabling legislation is required—and the crucial importance of preserving independence of day-to-day regulatory decisions in the interests of the stability and predictability of regulation. As noted in the "Principles for economic regulation":

    . . . investors will price any risk of political intervention and demand higher returns for their investment or, in the most extreme cases, might even decline to invest. This is likely to be detrimental to consumers and to the economy in the long-term. . . .

106. We have considered two mutually compatible institutional reforms that could improve regulatory coordination: "air-traffic control" and "town planning." Whether these are necessary or otherwise desirable may depend on the extent to which other solutions—including those suggested above—are expected to make a positive difference.

Air-traffic control

107. As the analogy suggests, the purpose of air-traffic control in banking and finance regulation would be to ensure the pipeline of change initiatives is delivered safely for consumers, firms and the stability of the financial system as a whole. Its introduction would be a logical solution to coordination failures that arise when individually rational decisions by multiple public bodies, each acting in accordance with its duties and powers, are nonetheless irrational when taken together (e.g. because they result in major reforms landing simultaneously, as considered in section 4).

108. "Future of finance—review on the outlook for the UK financial system: what it means for the Bank of England," published in June 2019, argued for a new forum with all major regulatory bodies, including the PSR, the FCA, OBIE and the CMA as well as the BoE and the PRA.[84] As noted in section 2, many other bodies play a role in regulating banking and finance firms; the crossover with data regulation is particular noteworthy, as addressed in section 4. We would recommend careful consideration of which, if any, of these bodies should also participate in the work of any air-traffic control mechanism. We would also see merit in involving stakeholders—particularly from the sector and consumer organisations—in an advisory capacity to ensure their perspectives fed directly into its deliberations.

109. "Future of finance" also saw the role of the forum as reducing risk to operational resilience and innovation through sharing information on the timing and impact of major projects while respecting each institution's statutory duties. Again, we would recommend careful consideration of the merits of enabling the air-traffic control mechanism to impose binding decisions in circumstances where public bodies cannot (perhaps because of restrictions imposed by statute) individually act in the collective good. Certainly, that mechanism should own the shared business plan identified above.

110. Any air-traffic control mechanism would need "the legitimacy, expertise and capability to arbitrate between the required trade-offs," as extolled in the "Principles for economic regulation." This would also argue for maximum transparency in its work, including through formal reporting to the UK parliament.

111. We observe the following examples of mechanisms established to improve coordination in financial-services regulation.

    - The Australian Council of Financial Regulators (CFR) is the non-statutory coordinating body for Australia's main financial regulatory agencies. Chaired by the national central bank, its members share information, discuss regulatory issues and, if the need arises, coordinate responses to potential threats to financial stability. The CFR also advises the Australian government on the adequacy of the country's financial regulatory arrangements.[85]
    - The main objectives of the New Zealand Council of Financial Regulators (CoFR) are to develop a collective view on longer-term strategic priorities for the financial system, identify and monitor important issues, risks and gaps in the financial system that may impinge upon achievement of member agencies' regulatory objectives and agree collaborative responses to issues that require cross-agency involvement and put in place appropriate mechanisms to deliver them. CoFR is chaired alternately by the national central bank and the financial-markets regulator.[86]

84. https://www.bankofengland.co.uk/-/media/boe/files/report/2019/future-of-finance-report.pdf
85. https://www.rba.gov.au/fin-stability/reg-framework/cfr.html
86. https://www.rbnz.govt.nz/regulation-and-supervision/banks/relationships/council-of-financial-regulators-terms-of-reference

- The US Financial Stability Oversight Council (FSOC) is a collaborative body chaired by the Secretary of the Treasury that brings together the expertise of federal financial regulators, state regulators and an independent insurance expert appointed by the President. It was created by—and is accountable to—Congress to respond to concerns that the US financial regulatory framework focused narrowly on individual institutions and markets, allowing supervisory gaps to grow and regulatory inconsistencies to emerge. Among other things, the FSOC is authorised to facilitate regulatory coordination, information sharing and collection.[87]
- The Joint Committee of the European Supervisory Authorities is a forum through which the EBA, ESMA and the European Insurance and Occupational Pensions Authority cooperate regularly and closely and ensure consistency in their practices, in particular in the areas of supervision of financial conglomerates, accounting and auditing, microprudential analyses of cross-sectoral developments, risks and vulnerabilities for financial stability, retail investment products and measures combating money laundering.[88]
- The FSB promotes international financial stability by coordinating national financial authorities and international standard-setting bodies as they work toward developing strong regulatory, supervisory and other financial-sector policies. Its role includes promoting coordination and information exchange among authorities responsible for financial stability and coordinating the policy development work of the international standard-setting bodies to ensure this work is timely, coordinated, focused on priorities and addresses gaps.[89]

Town planning

112. Distinct from air-traffic control, a town-planning mechanism would focus on longer-term and strategic issues that affect the banking and finance sector as a whole. These could take many forms, including, for example, the identification and coordinated resolution of major regulatory problems that result in poor outcomes for consumers and disproportionate burdens for firms alike.

113. Again, while we do not propose that any be replicated in its entirety, we observe the following examples of town-planning mechanisms.

- The Economic Crime Strategic Board sets priorities, directs resources and scrutinises performance against the economic-crime threat set out in the UK government's Serious and Organised Crime Strategy. It is jointly chaired by the chancellor and the home secretary and includes representation from banks, trade associations, law enforcement and regulators.[90]
- The National Economic Crime Centre was created to deliver a step change in the UK's response to, and impact on, economic crime. It brings together law-enforcement and justice agencies, UK government departments, regulators and the private sector with a shared objective of driving down serious organised economic crime, protecting the public and safeguarding the prosperity and reputation of the UK as a financial centre.[91]
- The NHS Long Term Plan was drawn up by frontline staff, patients groups and national experts as an ambitious but realistic recognition that the National Health Service has to continually move forward so that, in 10 years' time, it is fit for a future in which medicine advances, health needs change and society develops.[92]
- The Australian Productivity Commission is an advisory body that conducts public inquiries at the request of the government on key policy or regulatory issues bearing on Australia's economic performance and community wellbeing. Its legislative "instructions" include improving productivity and economic performance, reducing unnecessary regulation and encouraging the development of efficient and internationally competitive Australian industries.[93]

87. https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/fsoc
88. https://eba.europa.eu/de/about-us/organisation/joint-committee
89. https://www.fsb.org/
90. https://www.gov.uk/government/news/new-taskforce-to-tackle-economic-crime
91. https://www.nationalcrimeagency.gov.uk/what-we-do/national-economic-crime-centre
92. https://www.longtermplan.nhs.uk/
93. https://www.pc.gov.au/

Recommendations

114. We believe that UK regulators should better implement their existing duties and powers and apply practices from elsewhere in the regulatory landscape. In particular, we recommend that:
    - HMT establish a strategy and policy statement providing context and guidance about priorities and desired outcomes over the medium term specifically in the banking and finance sector and clarifying the respective roles of regulators and government;
    - UK regulators define, deliver and demonstrate intended consumer outcomes;
    - CBAs take account of relevant activities by other public bodies and are subject more routinely to consideration by an external, independent body with appropriate expertise and stakeholder participation; and
    - UK regulators collaborate on a shared business plan setting out upcoming issues that cut across their individual responsibilities.
115. The shared business plan should be owned by an air-traffic control mechanism able to ensure that the pipeline of change initiatives is delivered safely for consumers, firms and the stability of the financial system as a whole. At a minimum, it should comprise HMT, the BoE, the PRA, the FCA, the PSR and the CMA, with the participation of other bodies as appropriate and the direct involvement of stakeholders. It should also consider longer-term and strategic issues that affect the banking and finance sector as a whole.

6. AUTHORISATION, SUPERVISION AND ENFORCEMENT

116. In answer to question 2 in the call for evidence, this section addresses how firms and regulators can work together to make authorisation, supervision and enforcement more efficient.

117. Before considering how greater use of new technology could help make supervisory reporting "more efficient, flexible and less burdensome" and how data sharing could be facilitated, we have several non-technology-specific observations on how regulatory processes could be better coordinated and, as a result, more efficient for both regulators and firms. In particular, we believe the following merit further consideration:

- a one-stop shop for firms considering launching a business or product. Getting a single view on applicable regulations and licences is straightforward in jurisdictions such as Singapore or Switzerland, but with the BoE, the PRA, the FCA and the PSR all potentially relevant in the UK, firms often need to stitch things together themselves. This might place the UK at a competitive disadvantage in the future if innovative companies view it as too complicated to navigate;
- better use of existing gateways to highlight notifications, prior to introducing a shared PRA/FCA gateway for firms' submissions of notifications, reports and responses to information requests. Gateway staff could then share the information with the relevant teams in the relevant regulators to avoid their having to make potentially duplicative requests and firms' having to make multiple submissions;
- a shared back-office function for regulatory services to decrease regulators' costs and enhance efficiency for both firms and regulators. This shared function could build on the success of the PRA/FCA New Bank Start-Up Unit, a joint initiative through which the two regulators work closely together to ensure that, among other things, information requests are unified and regulatory messages consistent. Banks that have been through the authorisation process are very positive about the coordinated approach. While we recognise that the PRA and the FCA have different statutory objectives and approaches to supervision, we believe there is merit in exploring how a coordinated approach to logistics, particularly for smaller and medium-sized dual-regulated firms, could continue after authorisation, up to and including cancellation of permission. In addition to the shared PRA/FCA gateway discussed above, the back-office function could, among other things, be responsible for coordinating—
  - requests for information, with consistent data fields, from dual-regulated firms. For example, firms have received a number of requests about their preparedness for EU withdrawal from both the PRA (focused on liquidity, stress and the transfer of personal data to the EU in a no-deal scenario) and the FCA (which has been interested in customer communications and changes in customer behaviour). These have largely been sporadic, at short notice and lacking in a joined-up approach, consistent with some firms' experience during the Scottish-independence referendum in 2014; and
  - supervisory visits to dual-regulated firms, with possible combined visits to give PRA and FCA supervisors a single, consistent and coherent view of a firm (including its business model) but with a focus on both prudential and conduct-related issues;
- a lead supervisor for each dual-regulated firm, to coordinate supervisory activity across the PRA and the FCA, including having sight of all communications, scheduling known information requests and, as a far as possible, giving firms advanced notice to help plan resourcing based on the topics and likely expertise needed. If this extended to the PSR, it could address issues such as that regulator's broad data request as part of its market review into the supply of card-acquiring services[94] at the same time that PSPs were required to submit their first PSD2 fraud reports, which drew on the same resource; and

94. https://www.psr.org.uk/psr-focus/market-reviews/card-acquiring-services-market-review

- formulation of complex requests for information in a way that better facilitates the production and quality of data. Firms and regulators could work together, in advance of a new or complex request, to discuss the information that is needed and how it could best be obtained from firms' (or third parties') systems. Our response to question 2a below discusses potential technological tools.

118. We also strongly support:

- the FCA's proposed cross-sector sandbox for trialling innovation. This would help to share knowledge and expertise among regulators (including the PRA, the BoE, the FCA, the PSR, ICO, Ofcom and the ASA), better inform supervisors and policymakers and help develop greater coordination and joint approaches, at the same time as removing the costs and inefficiencies of multiple sandboxes; and
- the FCA's work in developing the Global Financial Innovation Network (GFIN) and prioritising cross-border testing through the recent launch of a pilot phase.[95] The GFIN provides an important opportunity for firms to develop and implement products and services on a cross-border basis, which can both increase consumer choice and support economic growth by making best use of the global potential of fintech initiatives. We encourage the FCA to continue to work to bring about open markets, underpinned by common regulatory standards, while upholding the highest levels of consumer protection.

119. Appendices I and II set out examples of supervisory and reporting issues that firms raised with us in developing this response. While we recognise that the intention of question 2 is to be forward-looking, a full understanding of the problems to be solved by technology is key to developing the right solutions, and we hope that this response contributes to those wider discussions.

2a. How might firms and the regulators take advantage of new technology to make supervisory reporting more efficient, flexible and less burdensome?

120. We believe that the greater use of regtech—new technology to resolve challenges in financial-services regulation, in particular to enable more automatic reporting of data and information—would have significant benefits to supervisors, regulators, law enforcement and firms.

"Future of finance"

121. "Future of finance" cited McKinsey & Company estimates that regulatory reporting is currently costing UK banks £2-4½ billion in run and risk-change costs alone. It saw opportunities to streamline firms' regulatory processes with advances in data recording and analysis and argued that, "To be effective, the Bank will need to develop a wide-reaching and ambitious regtech strategy to transform how it collects data from firms."

122. The report concluded that the BoE has an important role to play and should completely rethink the way it collects, stores and analyses data. In particular, it should consider pulling data directly from banks, introducing a "post and subscribe" web portal, use application programming interfaces to automate communications over various platforms, and use distributed ledger networks to allow for replicated, shared and synchronised data.

123. In its response, the BoE has committed to:

- launch a review in consultation with banks, insurers and financial-market infrastructures to explore a transformation of hosting and using regulatory of data over the next decade;
- identify and implement readily available improvements in the PRA's use of data—including better tools for peer analysis and beginning to exploit the benefits of machine learning and AI—over the next one to three years; and
- complete the process of making the PRA rulebook machine-readable over the next three to five years.

124. We welcome these initiatives, and we and firms stand ready to work with the BoE as it rethinks its approach to data.

95. https://www.fca.org.uk/firms/global-financial-innovation-network

Working with the industry to develop solutions

125. We believe that joint regulator/industry initiatives, particularly involving international banks that are subject to multiple regulatory regimes, can play a role in helping to identify, develop and test new technological solutions that could benefit regulators and firms. Hence, we strongly support the following current initiatives and would encourage regulators to continue to work jointly with the industry and IT firms:

- digital regulatory reporting (DRR).[96] The FCA, the PRA and six firms have been working on a pilot to explore how regtech can enhance regulatory reporting and how machine-readable rules would allow for automation from processing and implementing regulations right through to regulatory submissions. The first pilot phase of the DRR project allowed firms to map their regulatory requirements directly to their data for automated regulatory submissions. The aim was to improve the accuracy of the data, reduce costs and implement changes to regulatory requirements more easily. Furthermore, the economic viability of DRR has been investigated, with the results still to be published.

  The first stage of the pilot developed a draft vision for regulatory reporting, based on developing solutions in three key areas—

  - standardising firms' data;
  - creating machine-executable-code versions of regulatory instructions for how to create and deliver regulatory reports; and
  - developing a system to allow automated creation of regulatory reports that combine the standardised firm data and the machine-executable instructions from the above.

  The second stage of the pilot now aims to identify which regulatory reports are appropriate for a DRR solution, whether there is value in investing in DRR, how best to create machine-executable regulation and whether and how to efficiently standardise firm data. We fully support this important initiative;

- the current UK government pilot on digital identity—API access to the HM Passport Office database—which could provide the basis for more accurate electronic verification and therefore fraud and crime reduction, particularly if combined with reform of the policy framework for electronic identification verification;[97]

- TechSprints.[98] The FCA has held seven TechSprint events to bring together stakeholders from across and outside the financial-services sector to develop technology-based ideas and proofs of concept to address specific industry issues. Themes have included DRR and anti-money laundering (AML), with ideas pointing toward new ways of reporting and sharing information that could increase supervisory effectiveness as well as cut costs for firms. We support regulators' ongoing focus and investment in this area and see it as a catalyst to galvanise the industry to engage and invest and technology firms to obtain an industry and regulatory view of the issues that solutions need to be resolve; and

- regtech proof of concept. As part of its efforts to enhance its understanding of new technologies, the BoE has developed a regtech proof of concept that explored three areas—

  - using XBRL to reduce the time and costs spent on technology- and data-related change;
  - leveraging the BoE's investments in its data-architecture programme; and
  - empowering end-users by providing faster and flexible access to data.

  The proof of concept successfully established the potential of the technologies to meet the stated outcomes and has informed how the BoE thinks about these areas in the future. Having the industry and regulators working together to move forward on these questions will be key to enabling and realising the full potentials of data sharing, but, as discussed above, common standards will be key.

96. https://www.fca.org.uk/digital-regulatory-reporting
97. https://www.gov.uk/government/news/new-plans-to-make-it-safer-for-people-to-confirm-their-identity-online
98. https://www.fca.org.uk/firms/regtech/techsprints

How could new technology enhance regulatory reporting?

126. Specific examples of ways in which new technology could make supervisory reporting more efficient, flexible and less burdensome include:

- using larger data sets and standardised regulatory-submission forms to allow firms to automate their reporting and free up resources to spend time on other, more value-adding activities;
- aligning ad hoc supervisory requests for information, which are currently often bespoke, with established software systems and standardised industry terminology. A more comprehensive information-request system that is built around standardised reporting systems would help achieve this. For example, information requests in relation to regulatory capital should ideally be based on data that feed into Pillar 3 disclosure documents. When information requests deviate from this, substantial time and resources are required to collate and validate them;
- new ways of sharing data between firms and regulators, subject to appropriate data-protection protocols, such as data lakes. These would enable real-time sharing of an increased and more granular amount of data and reduce ad hoc requests. For dual-regulated firms, greater data sharing between the PRA and the FCA would help to ensure that supervision is more joined up and avoid the inefficiencies created by overlaps. A frequent concern heard from dual-regulated firms is the receipt of uncoordinated ad hoc requests, so greater data sharing would help supervisors ensure that they are not duplicating efforts for themselves and firms, particularly when making thematic information requests; and
- using AI to compare firms' submissions and data sets, enabling a prediction of trends in the market or a firm as well as identifying potential risks and threats that may make supervision more active and effective.

127. There are a number of examples of other financial-services regulators making innovative use of regtech. For example, the Monetary Authority of Singapore (MAS) is now collecting data from regulated entities in real time rather than have firms submit periodic reports and has enshrined reusability in its data collection, ensuring that firms need not submit the same data twice.[99] UK regulators might also consider the model employed by the European Central Bank (ECB) and a number of US regulators, which provides firms with direct access to data houses for the purposes of regulatory reporting. This would allow for more efficient processing of information for the regulator while reducing the scope for human error.

Non-technological challenges

128. While the greater use of new technologies by regulators is to be welcomed, it does need to be balanced against what firms are able to implement. It is important to be mindful that firms may be subject to legal restrictions on their ability to facilitate information sharing. For example, international banks that are subject to US requirements in relation to confidential supervisory information can be prevented from sharing that same information with other regulators, both in the US and elsewhere. Hence, while we support the facilitation of information sharing between firms and regulators, legal restrictions may prevent sharing of some data. Industry feedback on technology solutions, in advance of policy decisions, will therefore be key to ensuring they are fully implementable both legally and operationally. (c.f. the UK mobile-telephone recording technical challenges firms faced due to the lack of availability of vendor solutions.)

129. While greater and better use of technology is likely to have a significant impact on the efficiency of supervision, including the tools available to supervisors, developing supervisory expertise will remain critical, particularly given digital transformation. It will be important that regulators continue to develop their skills and talent, including in new competencies.

130. The Financial Services Skills Taskforce, announced by the chancellor, chaired by Mark Hoban and convened by TheCityUK with support from the City of London Corporation and EY, identified in its June 2019 interim report a series of major skills challenges facing the financial sector. [100] In particular, "skills needs are evolving faster than roles can be filled," while the "demand for highly skilled technical expertise will grow and the majority of the workforce will be in skilled roles that blend sector knowledge with technical expertise, and place more emphasis on skills and behaviours." It will be crucial that regulators have access to, develop and retain staff with the equivalent levels of technical expertise, skills and

99. https://www.gov.sg/-/sgpcmedia/media_releases/mas/press_release/P-20180314-1/attachment/MAS%20moves%20towards%20zero%20duplication%20of%20data%20requests%20to%20financial%20institutions.pdf

100. https://www.thecityuk.com/research/financial-services-skills-taskforce-interim-report/

behaviours. Additionally, to be effective, and notwithstanding greater use of technology, supervisors will still need a sound understanding of their sector and the firms they supervise. An industry secondment programme for regulators' more senior staff could be considered to help build levels of experience and understanding.

131. Although policy is developed separately from the "day job" of supervision, it is important to develop the connection between the behaviour of supervisors and regulators' policy intentions. Supervisors who conduct the bulk of interactions with firms must clearly act in the spirit of the latest strategic direction taken by their regulator and be able to give their firms context if there are concerns about certain markets, products or processes, including, for example, explaining the reason for data requests. Firms are of the view that context is an important as part of the supervisory process as it enables them to both ensure regulators receive the appropriate information and, if appropriate, suggest alternative data that would provide a better answer to the question regulators are asking. We would encourage regulators to consider how the connection between policy and supervision could be enhanced, including by the use of technological tools.

2b. How might firms allow or facilitate data sharing between regulators to improve regulatory coordination?

132. As a general observation, and as discussed in our response to question 2a above, data sharing would be facilitated, both in the UK and internationally, by the creation of standards and standardisation as a joint project between regulators and the industry. Standardisation of regulatory processes, technologies and data repositories can support the enablement of industry utilities, which would provide a cost-efficient way for firms to manage their regulatory processes and allow for data sharing between regulators. While standardisation of data in one jurisdiction in isolation would provide significant improvements to the regulatory process, it needs to be done across regulators and jurisdictions for full value to be realised as significant changes to a firm's in-house taxonomies and technology solutions would be needed for alignment to the standards.

133. Areas in which the use of standardisation would facilitate data sharing between regulators include lexicons and dictionaries and standardised data formats and tooling.

- Defining a lexicon library and dictionaries to structure regulatory text and act as a gold standard in defining the terminology used in regulation will be central for regtech to gain ground. Taxonomies should classify terms and concepts to a standard set of reusable vocabulary and business concepts to be used in implementing regulation as well as streamlining and simplifying regulatory reporting. For example, the joint HMT/FCA/BoE Cryptoassets Taskforce developed a taxonomy to bring order to a large range of cryptoassets.[101] This was subsequently amended by the FCA.[102]
- Lexicons and dictionaries can also act as the reference point and provide a linkage between terms and concepts across regulations and jurisdictions, allowing firms, particularly international wholesale investment firms, to better interpret regulation and manage the linkages to their in-house taxonomies (which should be technology and vendor agnostic).
- Such taxonomies could allow for tagging and indexing regulation. Using tags to help identify regulations that overlap or are contradictory will enable analysis, action and remediation. Firms can thus have standardised in-house taxonomies and definitions and map them individually to regulations. This would allow for and enable data sharing between firms and regulators, and between regulators, by removing ambiguity.
- Standardised data sets and tools (e.g. for machine-readable formats in which regulations are published, without the need for significant data transformation) will be required to support the lexicon and dictionary. Standardised data-reporting formats and specifications and improved quality and governance will drive consistency in data elements required for issuing regulations and regulatory reporting.

101. https://www.gov.uk/government/publications/cryptoassets-taskforce
102. https://www.fca.org.uk/publication/policy/ps19-22.pdf

- The development of standards for reporting and data sharing in the UK and internationally (e.g. ISO standards for data taxonomies and standardised reporting across multiple jurisdictions) would be a significant benefit. The ECB is currently working on the use of XBRL and how regulatory colleges obtain and share data between regulators should be developed around standards for data and operations to reduce the cost to supervisors and the wider industry.

134. A consistent format for data reporting by firms would save regulators the time and money that is currently spent transposing data to a usable format. Identifying critical data elements to tag against regulation can enable firms to more easily manage data that will flow into regulatory submissions. Increased data integrity can be attained with consistent and complete taxonomies that reduce duplication of data and inaccurate reporting. Using specific formats and applying consistency to regulatory returns across financial institutions will allow regulators to better assess the financial industry and identify trends in the market.

2c. How might firms go about making sufficient investment in their systems and controls to ensure these are fit for the future?

135. This is primarily a question to which some firms will respond individually. However, regulation clearly plays a significant role in the degree to which firms can invest in their systems and controls. Discretionary spending on systems is often dictated what is left after mandatory regulatory changes and maintenance of current systems to ensure resilience are accounted for.

136. As discussed in our response to question 1 above, uncoordinated regulation—be it changes needing to be made at the same time or simply badly timed—will have a cumulative impact on resources, including, crucially, the bandwidth of experienced IT professionals. This is all the more so if that regulation is not proportionate to the nature, scale and complexity of the firm.

137. The Financial Services Future Regulatory Framework Review needs to consider the tipping point at which regulation designed to protect consumers and financial stability has a greater negative effect on innovation and competition, particularly in markets that are themselves changing as a result of new technologies, new risks (e.g. increasing cyber-attacks), changing demographics and consumer needs (including an increased focus on vulnerability). In the meantime, as discussed in our response to question 1, better regulatory coordination, while only part of the wider debate, could help to reduce costs, free up resources and allow time and budget for firms to invest in discretionary future-proofing enhancements that complement or enhance regulatory changes.

7. ISSUES FOR THE FINANCIAL SERVICES FUTURE REGULATORY FRAMEWORK REVIEW

138. We have focused this response on the issue of regulatory coordination. However, as noted in HMT's call for evidence and addressed in section 1, subsequent phases of the Financial Services Future Regulatory Framework Review will need to cover broader issues. We would urge it to address the following, all of which were raised by firms in the course of contributing to this response:

- the need for cross-border regulatory-coordination mechanisms, not least between the UK and the EU, to avoid fragmented approaches that create mismatches, inefficiencies and conflict between jurisdictional requirements for international firms. The UK should continue to work actively with international peers to highlight areas of concern, as through the recent IOSCO[103] and FSB[104] reports to the G20 on market fragmentation. The FSB's subsequent updates on the work on market fragmentation—particularly its exploration of establishing a repository that provides information on regulatory initiatives that could have a cross-border relevance —is also noteworthy;[105]
- the UK's role in influencing and helping to set international standards;
- a review of the UK's implementation of existing global standards, particularly in respect of prudential and resolution reforms, to consider whether the UK remains a competitive location for international firms operating here and UK-based firms seeking to compete globally. We note that the mission of the US Board of Governors of the Federal Reserve System is to promote optimal macroeconomic performance,[106] while the Hong Kong Monetary Authority strives to enhance the competitiveness of Hong Kong's financial platform through promoting market development and world-class financial infrastructure,[107] and MAS has as one of its principal objects growing Singapore as an internationally competitive financial centre;[108]
- the HMT-led review of the payments landscape announced by the then-chancellor in his June 2019 Mansion House speech;
- policy- and rulemaking after the UK leaves the EU, including the roles of the UK parliament, government and regulators. For example, how can regulators' activities collectively be scrutinised to identify whether and where any coordination issues lie?
- consolidating UK legislation, particularly given the onshoring of the EU acquis;
- the number, nature, duties and powers of regulators, ombudsmen and other public bodies specific to the banking and finance sector to maximise coherence and efficiency;

103. https://www.iosco.org/library/pubdocs/pdf/IOSCOPD629.pdf
104. https://www.fsb.org/2019/06/fsb-report-on-market-fragmentation-2/
105. https://www.fsb.org/wp-content/uploads/P141019.pdf
106. https://www.federalreserve.gov/publications/gpra/2011-mission-values-and-goals-of-the-board-of-governors.htm
107. https://www.hkma.gov.hk/eng/key-functions/international-financial-centre/
108. https://sso.agc.gov.sg/Act/MASA1970

- the purpose and "style" of UK regulation after it leaves the EU and the appropriate balance between principles and rules, as recently rehearsed by the chief executives of the FCA[109] and the PRA;[110]
- the suitability of the regulatory perimeter given rapid changes to the banking and finance ecosystem, which have involved new markets being brought within scope (e.g. consumer credit[111]) and existing ones subjected to increased levels of scrutiny (e.g. credit-reference agencies[112]), as well as some functions previously performed by firms within the perimeter now being undertaken by, or critically dependent on, firms without;
- the importance of a technology-neutral approach to regulation (i.e. one that does not favour one form of technology over another to deliver regulatory objectives) and the protection afforded by regulation to consumers, irrespective of whether they are served by established firms or new entrants;
- the potential role for technology in improving risk-management and assurance, particularly as such services increasingly become standardised;
- the proportionality of regulation, particularly as it relates to mid-tier and international banks. We note that the final report of the independent review of the FRC called for a new Audit, Reporting and Governance Authority to have a duty to act in a way that is "proportionate, having regard to the size and resources of those being regulated and balancing the costs and benefits of regulatory action";[113]
- the desirability of diverse business models to promote innovation and financial stability;
- greater formal regulatory forbearance/relief, mirroring the use by authorities such as the US Commodity Futures Trading Commission and Securities and Exchange Commission of "no action" letters as a tool to react agilely to market conditions as well as mitigate any unintended or extraterritorial consequences resulting from regulation;
- the implications of competition- and consumer-policy reform, not least for the future relationship between the CMA and sectoral regulators, as broached by CMA chair Lord Tyrie in February 2019;[114]
- the many public-sector initiatives focused on data, including the work of the Digital Competition Expert Panel;[115] and
- the role of the banking and finance sector in tackling climate change and achieving net-zero greenhouse-gas emissions by 2050.

109. https://www.fca.org.uk/news/speeches/future-financial-conduct-regulation
110. https://www.bankofengland.co.uk/-/media/boe/files/speech/2019/stylish-regulation-speech-by-sam-woods.pdf?la=en&hash=C63CBBE35E4CFEB15133D1B0D836A347757FD19D
111. http://www.legislation.gov.uk/uksi/2013/1882/contents/made
112. https://www.fca.org.uk/publications/market-studies/ms19-1-credit-information-market-study
113. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/767387/frc-independent-review-final-report.pdf
114. https://www.gov.uk/government/publications/letter-from-andrew-tyrie-to-the-secretary-of-state-for-business-energy-and-industrial-strategy/summary-of-proposals-from-andrew-tyrie-cma-chair-to-the-secretary-of-state-for-business-energy-and-industrial-strategy
115. https://www.gov.uk/government/publications/unlocking-digital-competition-report-of-the-digital-competition-expert-panel

APPENDIX I. AD HOC INFORMATION REQUESTS

139. A common area of concern for dual-regulated firms relates to ad hoc information requests, including the level of coordination between the regulators (e.g. requests asking for the same or similar information with a different cut) and the timing (e.g. requests from one regulator, which are often resource and leadership-time intensive, arriving when firms have competing demands from another).

140. Examples include but are not limited to:

- information and meeting requests from multiple regulators with short timescales (e.g. an information request received in a peak holiday period with a requested two-week turnaround);
- separate requests to provide information to both the PRA and the FCA that covers similar data, often cut in different ways, doubling the cost of provision (e.g. almost identical information relating to a firm's business model but covering different time periods and requested in different formats; information regarding LIBOR);
- challenges with the submission of information. For example—
  - issues with the FCA's Connect system template format and final submissions for a PSD2 breach report (particularly the limited word count);
  - large (>100MB) files for an IRB application having to be couriered to the PRA on CD-ROM when it would have been more secure and timely and less costly to transfer them digitally;
  - difficulties submitting copies of governance committee packs through the PRA's email firewall; and
  - problems meeting large information requests from the FCA due to the maximum file size (we understand 15MB) that its email system is able to accept; and
- several detailed requests for data received by a firm during the CMA retail-banking market investigation, which it was often unable to meet in the way stipulated as its reporting did not produce the data (i.e. they were not otherwise required to be produced) or were requested with infeasible deadlines.

141. A particular concern is whether the impact that vast data requests can have on resources across a firm—particularly a smaller one that does not have the same resource and infrastructure as larger counterparts—is understood by regulators, particularly when the pressure is exacerbated by requests received during periods of focus on other regulatory issues. While regulators are often open to discussion on dates to accommodate a firm's concerns, enhanced coordination and the use of regtech will be important to enhance the supervisory process for both supervisors and firms.

APPENDIX II. SUPERVISION

142. Firms of all sizes have raised the issue of proportionality and the cost of regulation. We believe an outcome of improved regulatory coordination and greater use of technology should be to lower the cost of supervision while increasing its quality. Supervisory examples include the following.

- A UK global systemically important bank has seen each of the PRA and the FCA formally communicate overlapping areas of supervisory focus and associated workplans—addressing *inter alia* non-financial risks and operational resilience—without either acknowledging the related work of the other. This has resulted in some regulatory-change workstreams needing to solve for subtly different expectations despite the desired outcomes being aligned in principle.
- A relatively small bank's regulatory interaction to date has been mainly with the PRA, but its interaction with the FCA has been growing over the last year. It has seen little coordination between the two. Although there is an annual college between PRA and FCA supervisors for banks of its size, the number of banks in the sector (50+) means that there is unlikely to be time to discuss individual firms in detail.
- Another small bank often has both the PRA and the FCA on site for routine visits, covering different topics, in the same month. Logistically, this means a concentration of regulatory interaction (including data requests, interviews and feedback) in a short period, which is burdensome for a firm with limited resources. It does seem that there is any coordination by the regulators on visit planning.
- A firm finds it not uncommon for four or more supervisors to attend meetings, which is both costly and potentially overwhelming for some staff.
- A firm finds that the regulators can have a London-centric approach. In particular, the PRA or the FCA can request face-to-face meetings at short notice with key staff who are based in offices around the UK. Technology (e.g. videoconferencing) could be used to bridge this gap in a way that is efficient, cost-effective and good for the climate.
- A firm engaged on areas such as payment incidents, business strategy, portfolio disposal and PPI complaints with both the PRA and the FCA, with the same topic being challenged from their different perspectives, duplicating work across the same staff.
- After PSD2 incident notifications are submitted to the FCA via Connect and both the PRA and the FCA have been actively updated by email, a firm sometimes receives similar follow-up queries from each regulator individually.
- If the UK leaves the EU without a deal, UK regulators will require firms subject to UK regulation to use the information they have published from exit day rather than continue to rely on the information published by EEA authorities (e.g. UK-regulated trading venues will be listed on a schedule produced by the FCA and will no longer be listed among the trading-venues list produced by ESMA). Hence, UK regulators are in a position to confirm on what types of EEA information they expect firms no longer to rely if the UK leaves the EU without a deal. However, as regulators have not provided this information, firms are required to undertake a large-scale stocktake of all EEA information currently relied upon and then identify whether that information should no longer be used in a no-deal scenario. We would encourage UK regulators to be as "user friendly" as possible and assist firms with their compliance obligations by providing clarity when requested and to the extent possible by sharing information.