Financial Services Future Regulatory Framework Review: proposals for reform

UK Finance response to consultation from HM Treasury

8 February 2022

Introduction

1. UK Finance is the collective voice for the banking and finance industry. Representing more than 300 firms, we act to enhance competitiveness, support customers and facilitate innovation. We welcome the opportunity to respond to HM Treasury's (HMT) consultation on proposals for reform of the regulatory framework for financial services.[1]

2. We have supported and engaged in the Future Regulatory Framework (FRF) review since its launch in 2019, deeming it a once-in-a-generation opportunity to secure improvements to the overall framework for regulating financial services. As the UK government stated last month in its paper on the Benefits of Brexit:

   We now have the opportunity to set ourselves apart and deliver bespoke UK-orientated regulation that is primarily focused on delivering growth, innovation and competition while minimising burdens on business.[2]

3. Overall, we welcome the measures proposed in HMT's consultation, several of which we recommended in our response[3] to HMT's phase-II consultation on the review,[4] and we agree that they build on the strengths of the existing UK model of regulation established by the Financial Services and Markets Act 2000 (FSMA).[5] Subject to getting the detail of those measures right, we believe the future framework will be well placed to serve the needs and protect the interests of customers, support the government's wider economic and societal priorities (including levelling up the nations and regions of the UK by giving firms greater confidence to invest) and promote the UK as the best place in the world in and from which to provide financial services.

4. We believe that a successful regulatory framework must satisfactorily deliver all three of the following elements:

   - **the legislative context in which regulators operate**. We continue to believe in the broad appropriateness of the FSMA model of independent regulators acting to

[1] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1032075/FRF_Review_Consultation_2021_-_Final_.pdf
[2] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1052148/benefits-of-brexit-document.pdf.
[3] https://www.ukfinance.org.uk/system/files/F2R2-phase-II-consultation-FINAL.pdf
[4] https://www.gov.uk/government/consultations/future-regulatory-framework-frf-review-consultation
[5] https://www.legislation.gov.uk/ukpga/2000/8/contents

advance objectives set for them by Parliament, and we strongly endorse the proposed addition of secondary objectives for growth and international competitiveness to the Prudential Regulation Authority (PRA) and the Financial Conduct Authority. However, we remain disappointed that HMT has not yet decided to extend these and other core measures to other financial-services regulators, principally the Payment Systems Regulator (PSR) and the Bank of England's (BoE) other regulatory functions. Without this, the FRF review will not deliver a coherent and consistent regulatory framework across the sector as a whole. (For similar reasons, we also remain of the view that it would be beneficial to extend the BoE's secondary competition objective when acting as the PRA to its role as the Resolution Authority.) We therefore welcome HMT's parallel consultation on adapting the regulatory framework for central counterparties and central securities depositories,[6] and we look forward to its subsequent consultation in the first half of this year on the regulation of payments firms by the BoE and the PSR, in which it will look to ensure coherence with the principles and objectives of the FRF review. That would also be an opportune time, more than six years after it became operational, to review the status of the PSR;

- **rigour of regulatory decision-making**. As we have argued previously, for regulators to effectively advance their statutory objectives at minimum cost and risk of unintended consequences, it is vital that their interventions be made on a sound evidential footing. To that end, we strongly welcome the proposals to strengthen the requirements governing how the PRA and the FCA conduct cost/benefit analyses (CBAs) and review existing rules. We think that the proposed CBA panel will be most effective if it scrutinises CBAs prior to their publication; and

- **accountability for regulatory decisions**. It is vital that the regulators, like all public bodies, be accountable under the law for meeting their statutory duties. It is inevitable that they will sometimes err and therefore equally important that there be suitable mechanisms for holding them to account. This is the key regard in which the proposals fall short, with the result that the regulators' enhanced roles will not be matched by enhanced accountability, to the detriment of the overall regulatory framework. We recommend a mechanism for triggering a rule review based on the existing supercomplaint model.

5. We comment in detail on the proposed reforms in our answers below to the questions posed in the consultation document. Before doing so, we highlight one further recommendation in our previous response that, while absent from HMT's proposals, we continue to believe may need to be addressed in the future regulatory framework: the introduction of a new process for the Financial Ombudsman Service's (FOS) handling of complaints with implications that go beyond the specifics of the case. As the Treasury Committee argued in its June 2021 report on the Future Framework for Regulation of Financial Services,[7] this is necessary to ensure regulatory certainty and prevent the FOS overstepping the role intended for it by Parliament. We are encouraged by the FOS's publication last month of a Wider Implications Framework,[8] and we look forward to working with the FOS to ensure it addresses our concerns. However, as the Framework recognises, the scope for cooperation between the FOS and the FCA (among other

[6] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1046976/Final_version_FRF_for_CCPs_and_CSDs_consultation.pdf.
[7] https://publications.parliament.uk/pa/cm5802/cmselect/cmtreasy/147/147.pdf.
[8] https://www.financial-ombudsman.org.uk/who-we-are/work-other-organisations/wider-implications-framework#:~:text=The%20Wider%20Implications%20Framework%20is,across%20the%20financial%20services%20industry.

participants) is necessarily limited by their respective statutory roles. We therefore urge HMT to indicate its willingness to pursue reform by statutory means should the operational solutions possible within the Framework prove insufficient to the task.

6. Finally, although the Competition and Markets Authority (CMA) is not within the scope of the FRF review, it nonetheless has significant locus over financial services. As we argued in our response[9] to the Department for Business, Energy and Industrial Strategy's (BEIS) 2021 consultation on reforming competition and consumer policy,[10] it is vital that the CMA's role in relation to financial services and, by extension, to financial-services regulators be clarified. There is a significant degree of overlap between the CMA's powers and activities and those of the FCA and the PSR, both of which have concurrent and sectoral competition powers, and this risks duplicative and confusing regulatory interventions. We look forward to the government addressing this issue.

7. If you have any questions relating to this response, please contact Matthew Conway, Director of Strategic Policy, at matthew.conway@ukfinance.org.uk.

Consultation questions

Q1. Do you agree with the government's approach to add new growth and international competitiveness secondary objectives for the PRA and the FCA?

8. We strongly agree with the proposed addition of secondary objectives for growth and international competitiveness for the PRA and the FCA. As we argued in our response to HMT's phase-II consultation, the contribution of the banking and finance sector to the prosperity of the UK is more vital than ever. It is therefore important that regulators consider the implications for growth and international competitiveness in their decision-making.

9. We agree with HMT's intention for the proposed objectives to be secondary to the regulators' respective primary objectives: promoting the safety and soundness of regulated firms (in the case of the PRA); and securing an appropriate degree of protection for consumers, protecting and enhancing the integrity of the UK financial system, and promoting effective competition in the interests of consumers (in the FCA's case). These should rightly take precedence over all other considerations. However, where the regulators identify alternative courses of action that would all advance these primary objectives, it is right that they should—all things being equal—choose the one that they judge best promotes growth and international competitiveness.

10. In acting on the secondary objective for international competitiveness, the regulators should take into account the importance of broad alignment with international regulatory standards (on which we comment at greater length in answer to question 4 below). Common adherence to such standards by different jurisdictions is an important mechanism for securing high levels of mutual market access and, by extension, an important element of the UK's international competitiveness.

---

[9] https://www.ukfinance.org.uk/system/files/UK%20Finance%20response%20to%20BEIS%20consultation%20on%20reforming%20competition%20and%20consumer%20policy.pdf.
[10] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004096/CCS0721951242-001_Reforming_Competition_and_Consumer_Policy_Web_Accessible.pdf.

11. We urge HMT to carefully consider the precise wording of these objectives as it will bear directly on how they influence regulators' decision-making. We note that HMT's proposal is for the regulators to have a secondary duty "to support the long-term growth and international competitiveness of the UK economy, including the financial-services sector." This would appear to give them responsibility for the competitiveness and long-term growth not only of the financial-services sector but also of the wider economy, yet they have only limited policy levers at their disposal to influence this. Other public bodies, including HMT, BEIS and other sectoral regulators, are better placed to do so. We believe it would not be in the regulators' nor the financial-services sector's interests for the former to be given an objective that they do not have the powers to deliver, and therefore we recommend that the wording of the new objective be restricted to the growth and competitiveness of the financial-services sector only.

12. To aid scrutiny of the way in which the regulators reflect these new secondary objectives in their decision-making, they should have a statutory duty to detail how they believe an intervention is compatible with their objectives and regulatory principles as a whole. Rather than this being a standalone assessment, it should instead be included within the CBAs that they are required to conduct.

13. As a core measure, we believe that these secondary objectives should also be added for the PSR and the BoE's other regulatory functions.

Q2. Do you agree that the regulatory principle for sustainable growth should be updated to reference climate change and a net-zero economy?

14. We strongly agree that the regulatory principle for sustainable growth should be updated to reference climate change and a net-zero economy. This would better reflect the UK's legally binding commitment to achieve net-zero greenhouse-gas emissions by 2050.[11] As we argued in our response to HMT phase-II consultation, the banking and finance sector has an important role to play in achieving this vital target, and so it is right that it be a consideration in the regulation of the sector.

15. Here, too, we urge HMT to carefully consider the precise wording of the updated principle so that its bears on the regulators' decision-making in a way that avoids unintended consequences.

16. As a core measure, we believe that this regulatory principle should also apply to the PSR and the BoE's other regulatory functions.

Q3. Do you agree that the proposed power for HM Treasury to require the regulators to review their rules offers an appropriate mechanism to review rules when necessary?

17. While we do not disagree with the proposed power for HM Treasury to require the regulators to review their rules, we do not believe that it is sufficient to address the concerns we have previously expressed. As we argued in our response to HMT's phase-II consultation and in keeping with long-standing government policy, it is vitally important that regulators (like all public bodies) be accountable under the law for their actions and that those affected by decisions not made in keeping with the regulators' legal frameworks have a viable means of appealing against them. A viable appeals mechanism makes for

[11] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1033990/net-zero-strategy-beis.pdf

a more responsive regulatory framework and gives regulators a strong incentive to ensure that their interventions are consistent with their statutory duties, observe due process and are formulated on a sound evidential basis.

18. Judicial review, the current mechanism through which firms can challenge regulators' rule-making, does not adequately fulfil this essential role in practice. The risk of jeopardising the supervisory relationship with a regulator by challenging its decision is a key barrier, with a perception among firms that this would have negative repercussions. As our standalone report on the issue found,[12] this appears to be a key concern in other jurisdictions where firms and regulators have a supervisory relationship, but such a disincentive does not appear to arise where the regulator does not interact as closely with individual firms (e.g. in the sectors overseen in the UK by economic regulators).

19. We recommended that HMT consider alternative mechanisms for reviewing regulators' rule-making, informed by a number of important principles including proportionate accessibility, timeliness, transparency, independence and engendering confidence.

20. We do not believe that the proposed power for HMT to require the regulators to review rules provides a sufficient solution to the issues that we identified. Section 77 of the Financial Services Act 2012, on which it is based,[13] is used rarely and typically only after a particularly significant event (e.g. the collapse of London Capital & Finance[14]). We are concerned that the similar nature of the proposed power means it would similarly be used only sparingly and only after significant detriment related to a regulatory rule has already occurred. It does not seem suited to seeking a review of rules that are deficient in less dramatic but equally valid ways.

21. Furthermore, the proposed power would only be exercisable by HMT and therefore would not improve access to an effective appeals mechanism for stakeholders, including both firms and consumer representatives, affected by regulatory rules. Indeed, because of this, HMT is likely to receive informal representations from stakeholders to exercise its power in respect of specific rules. This risks compromising the regulators' operational independence and so is unlikely to engender confidence, particularly if the process by which HMT decides whether to exercise the power is not fully transparent.

22. Subsequent to a request from HMT for further thoughts on what a mechanism for reviewing regulators' rule-making decisions could look like given the problems we identified in our response to its phase-II consultation, we submitted a paper in July 2021 proposing that it establish a mechanism for triggering a rule review based on the supercomplaint model that exists in slightly differing legislative guises. This would permit designated representative bodies be able to require a financial-services regulator to review a rule it has made and respond within 90 days with its proposed reaction. Such a proposal would address our principal concerns about judicial review and HMT concerns about the resource and cost implications of establishing an entirely new appeals body while meeting—satisfactorily if imperfectly—the principles that we proposed should inform a solution. Our full paper is at annex 1 to this response.

---

[12] https://www.ukfinance.org.uk/system/files/The%20principles%20of%20an%20effective%20regulatory%20review%20mechanism%20-%20FINAL.pdf
[13] https://www.legislation.gov.uk/ukpga/2012/21/section/77
[14] https://www.gov.uk/government/collections/independent-investigation-into-the-failure-of-london-capital-and-finance

23. By way of illustration, we suggest that had our proposal been in place at the time, it *may* have been used to require a review of the rules introduced following the Financial Services Authority's Retail Distribution Review on the grounds that they did not achieve their stated effect.

24. Our proposal may well be capable of improvement. However, it remains the best pragmatic solution we have identified to date. A framework that accords greater power to the regulators without matching accountability under the law is inconsistent with government policy and risks failing to deliver the very purpose for which it is intended.

25. As a core measure, we believe that any mechanism for reviewing a regulatory rule should also apply to the PSR and the BoE's other regulatory functions.

Q4. Do you agree with the proposed approach to resolve the interaction between the regulators' responsibilities under FSMA and the government's overseas arrangements and agreements?

26. We agree with the proposed approach to resolve the interaction between the regulators' responsibilities under FSMA and the government's overseas arrangements and agreements. The government is rightly ambitious in seeking maximum market access for UK-based firms in other jurisdictions, including by means of deference arrangements, mutual-recognition agreements and provisions in free-trade agreements. Given the significance of regulation to these arrangements, it is entirely appropriate to require the regulators to consider the potential impacts on deference arrangements and assess compliance with relevant trade agreements as a matter of course when making rules and when general approaches to supervision, where relevant and proportionate.

27. As we argued in our response to HMT's phase-II consultation, the UK's adoption of international regulatory standards, such as those agreed by the Basel Committee on Banking Supervision (BCBS), is key to facilitating cross-border trade and activity. Indeed, as the consultation notes, the UK is a global leader in shaping and setting such standards in international fora.

28. While the detailed implementation by the relevant UK regulators of international standards is rightly subject to the usual standards of consultation, the scope for deviation is, by that stage, necessarily limited. As such, we believe there is a strong case for introducing new requirements for the regulators (e.g. the PRA in the case of the BCBS) to engage with firms and other stakeholders on the positions they propose to adopt *before* pursing them in negotiations in international standard-setting fora. This would help to ensure that the usual rigours of domestic policy-making are applied in formulating positions that will ultimately affect (if not perfectly predict) domestic regulation.

29. As a core measure, we believe that any procedures in relation to the UK's overseas arrangements and agreements should also apply to the PSR and the BoE's other regulatory functions.

Q5. Do you agree that these measures require the regulators to provide the necessary information to Parliament on an appropriate statutory basis to conduct its scrutiny?

30. In order for it to provide effective democratic scrutiny and oversight of the regulators' delivery against their statutory duties, it is vital that Parliament be provided with the relevant information from the regulators in a comprehensive and timely manner. For this

reason, we entirely agree with the proposals to require the regulators to notify the relevant parliamentary committee when a consultation is published and to respond to letters from committees.

31. Effective scrutiny of the regulators' performance would be greatly aided by the regular provision to Parliament of management information and key performance indicators on outcomes in the markets that they regulate, firm and customer sentiment, and operational matters such as staffing and financial performance. Regular, quantitative data will allow for comparisons of performance over time and the early identification of trends that might warrant closer scrutiny.

32. We note that the consultation does not advance a view on how Parliament should organise itself to conduct this scrutiny. While we agree that this a matter for Parliament rather than the government, it is vital that Parliament have the necessary resources and expertise at its disposal to carry out this important democratic function. If existing Parliamentary funding does not allow this, it might be necessary for the government to raise this with the appropriate parliamentary authorities.

Q6. Do you agree with the proposals to strengthen the role of the panels in providing important and diverse stakeholder input into the development of policy and regulation?

33. We agree with the proposals to strengthen the role of the regulators' panels. As the consultation states, the panels have an important role to play in giving voice to a diverse range of stakeholder views to inform the regulators' policy- and decision-making and in providing constructive challenge.

34. Placing the FCA's Listing Authority Advisory Panel on a statutory footing would recognise the importance of the issues with which it is concerned (e.g. those affecting issuers of securities), and we therefore welcome the proposal to this effect.

35. We support the introduction of a statutory requirement for the regulators to maintain a statement on appointment processes for the panels. It is entirely right that there be high standards of governance for the appointment of members to the panels given their important roles, while transparency of process is always desirable.

36. Consistent with our general support for measures that enhance transparency, we agree, in principle, with the proposal to introduce a statutory requirement for the regulators to publish information on their engagement with the panels. However, as the consultation recognises, a degree of confidentiality in the advice provided by the panels to the regulators is desirable. Too great a degree of transparency risks a chilling effect on the panels' willingness to provide candid views on matters on which they are consulted. This would ultimately diminish their usefulness as a critical friend to the regulators.

37. We believe there is significant value in the panels being more forward-looking, with a greater focus on horizon-scanning, examining emerging market trends that might warrant regulatory intervention and providing input at the very earliest stages of regulatory policy-making. At present, regulatory rules are typically introduced after only one round of consultation, limiting the opportunity for stakeholders to provide feedback that might improve a regulator's proposals. The panels have considerable expertise and experience that the regulators could better use when considering their approaches to nascent issues.

Cost/benefit analyses

38. High-quality CBAs are integral to a well-functioning regulatory framework. As a principle of good regulation, it is essential that a regulator be able to confidently demonstrate that the benefits of imposing binding requirements on market participants will exceed the costs and that its chosen course of action will produce the greatest net benefit. Moreover, high-quality CBAs ensure an essential degree of analytical rigour in the policy-making process as undertaking them requires regulators to gather and appraise evidence and model as best they can the impact of a proposed intervention. This ultimately improves the quality of regulation and minimises the likelihood of unintended consequences and regulatory failure.

39. Our response to HMT's phase-II consultation and an accompanying standalone report[15] argued that there was considerable scope for improving the way in which financial-services regulators conduct CBAs. We therefore applaud HMT's recognition of the need to strengthen the requirements for the regulators' CBAs. We look forward to working with HMT and the regulators on the detail of the proposed reforms to ensure they successfully address the issues we have identified.

40. As a core measure, we believe that any requirements in relation to CBAs should also apply to and include the PSR and the BoE's other regulatory functions.

Q7. Do you agree that the proposed requirement for regulators to publish and maintain frameworks for CBA provides improved transparency for stakeholders?

41. We strongly agree with the proposed requirement for regulators to publish and maintain frameworks for CBAs. As the consultation states, this improved transparency will give stakeholders a greater degree of confidence in the soundness of the regulators' CBAs and therefore in the proposed interventions that they justify.

42. The effectiveness of these frameworks will ultimately depend on the level of analytical rigour to which they commit the regulators. We recognise HMT's intention not to specify the content of the frameworks in detail, to allow regulators flexibility in their operations. However, to ensure that stakeholders' concerns are properly considered, we strongly recommend that HMT require the regulators to consult on their frameworks before finalising them. Indeed, it is unclear why the PRA and the FCA should adopt different frameworks—HMT's Green Book provides guidance on appraising policies, programmes and projects to the whole of central government[16]—so we further recommend that they be required to consult jointly on a single framework. We recognise that organisational differences may necessitate some operational differences between the two regulators, but they should both adhere to the same methodology.

43. As a minimum, we believe that this joint framework should require CBAs to:

    - account for the cumulative impact of a proposed intervention. The underlying complexities of banking and finance markets cannot be fully assessed through static

[15] https://www.ukfinance.org.uk/system/files/Improving%20cost-benefit%20analyses%20by%20financial-services%20regulators%20-%20FINAL.pdf
[16] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/938046/The_Green_Book_2020.pdf

or standalone CBAs that focus on the immediate impacts of single policy proposals by a single regulator;

- analyse a full spectrum of options, from "do nothing" through to formal rule-making;
- undertake an appropriate sensitivity analysis of options to assess the range of benefits and costs under varying assumptions;
- include an international comparison, where relevant, examining whether rules with the same policy objectives exist in other financial centres with which the UK competes, supporting the proposed secondary objective for international competitiveness; and
- include a full explanation of how the proposed intervention is compatible with the regulators' objectives and regulatory principles, including the proportionality principle that "a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction".[17]

44. Although many of the current deficiencies in the regulators' CBAs can be addressed through the joint framework, we believe that the relevant statutory requirements still require strengthening. In particular, we are concerned that sections 138I and 138J of FSMA permit the regulators not to quantify the expected benefits and/or costs of a proposed rule if they believe that they cannot reasonably be estimated.[18] The FCA invoked this provision in its further consultation on its proposed new Consumer Duty, stating that "it has not been possible to reasonably estimate the benefits due to the broad and pre-emptive nature of our proposals".[19] While this seems to meet the legal requirements of FSMA, it resulted in a CBA whose unquantified benefits were asserted to compare favourably with costs of £1.2-3.6 billion (net present value—NPV—over a 10-year period at the Green Book's social time-preference rate of 3.5 per cent). An analysis of the FCA's Consumer Duty CBA against the requirements of the Green Book and the proposals in our standalone report is at annex 2 to this response.

Q8. Should the role of the new CBA Panel be to provide pre-publication comment on CBA or to provide review of CBA post-publication?

45. We welcome HMT's proposal to establish a new CBA Panel. Provided it has the requisite resources and expertise, the Panel will be an important source of independent and external challenge to the regulators' CBAs, holding them to the high standards to which we expect their joint framework will commit them.

46. We feel strongly that the Panel's role should be to comment on a CBA *before* publication. This would afford the regulators the opportunity to revise their CBA and, if necessary, their proposals in light of the Panel's feedback. Such an *ex ante* approach would be consistent with the model followed by the Regulatory Policy Committee (RPC) in its role of scrutinising impact assessments of select initiatives by government departments.[20] Indeed, we would expect to see the same results:

---

[17] https://www.legislation.gov.uk/ukpga/2000/8/section/3B/2018-01-03
[18] https://www.legislation.gov.uk/ukpga/2000/8/part/9A/chapter/2/crossheading/procedural-provisions/2015-04-06
[19] https://www.fca.org.uk/publication/consultation/cp21-36.pdf
[20] https://www.gov.uk/government/organisations/regulatory-policy-committee/about

- better regulatory outcomes for society produced by the regulators;
- less likelihood of businesses being burdened by regulation that is not supported by robust evidence;
- a drive for cultural change in both using evidence and reducing regulation;
- more-accurate estimated costs and benefits of regulatory proposals;
- enhanced credibility for the regulatory framework; and
- increased transparency of evidence and the regulators' use of it.

47. In contrast, if the Panel were to comment only post-publication, the opportunity to provide feedback and effect positive change at the most significant moment would be lost and the Panel would be no more than any other stakeholder responding to a consultation.

48. HMT will need to decide whether the Panel's opinions are binding on the regulators—such that they could not proceed with proposals whose CBAs were judged unsatisfactory—or only advisory. While we see merit in both options, we believe it would be more consistent with the FSMA model for the regulators to be both responsible and accountable for deciding how to react to advisory opinions (again, consistent with the RPC approach). It would nonetheless be vital for the Panel's opinion to be published at the same time as the CBA and the regulator's reasons for not addressing any concerns in the interests of promoting transparency, scrutiny and accountability.

Q9. Do you agree that the proposed requirement for regulators to publish and maintain frameworks for how the regulators review their rules provides improved transparency to stakeholders?

49. We strongly agree with the proposed requirement for regulators to publish and maintain frameworks for how they review their rules. As we argued in our response to HMT's phase-II consultation, it is right that the regulators assess whether an intervention has had the impact (including the costs and benefits arising) that they expected it to have at the time that it was introduced. Such a reappraisal of the evidence provides the opportunity to revise a rule if the regulator concludes that it is not having its intended effect.

50. In particular, we recommend that these frameworks require the regulators to survey a representative sample of affected firms on the actual one-off and ongoing costs of implementing the rule under review. Comparing these with the costs estimated in the original CBA would help bring to light any systematic over- or underestimation in CBAs of the costs of regulatory interventions. Reviews should also assess the extent to which the impact of a rule varied according to firms' business and operating models.

51. As with the CBA framework, the regulators should be required to consult on and adopt a joint methodological approach to post-implementation reviews (PIRs), including the criteria against which they are conducted. However, as with the CBA framework, we recognise that implementing the joint framework, including procedures for conducting PIRs, should be allowed to be differ between regulators.

52. As a core measure, we believe that any requirements in relation to PIRs should also apply to and include the PSR and the BoE's other regulatory functions.

Q10. Do you agree with the government's proposal to establish a new Designated Activities Regime to regulate certain activities outside the RAO?

53. As we stated in our response to HMT's phase-II consultation, we support its intention of, and rational for, transferring regulation currently enshrined in retained EU law to the regulators' rulebooks. To this end, we agree with the proposal to establish a new Designated Activities Regime (DAR) to regulate certain activities outside the Regulated Activities Order (RAO). As the consultation argues, the DAR provides an elegant mechanism for "domesticating" retained EU law without requiring (as the RAO would) those undertaking certain activities (e.g. derivatives trading) to be authorised. We agree that this would be wholly disproportionate.

54. The notion that firms should follow the relevant rules when undertaking certain activities but need not be individually authorised in advance is well precedented. For example, the Communications Act 2003 is premised on firms' freedom to provide electronic communications networks and services, without individual authorisation, as long as they comply with conditions set by Ofcom for prescribed reasons.[21]

55. We also see potential for the DAR to be developed beyond the purpose of domesticating retained EU law. In particular, we believe it could become as a vehicle for reorienting financial-services regulation away from entity-based and toward activity-based where the former is not necessary. Some activities do not pose systemic risk, so the need for firms to be individually authorised before conducting them is weaker. Placing such activities within the DAR would also make it easier for the regulatory framework to adhere more closely over time to the principle of "same activity, same risk, same regulation," for which we argued in our response to HMT's phase-II consultation. We therefore recommend that the Treasury explore this potential use-case. However, if the DAR is used for purposes other than domesticating retained EU law, care will need to be taken to ensure a level playing field between authorised and non-authorised firms conducting the same activity, recognising that authorised firms are subject to several cross-cutting requirements and the Senior Managers and Certification Regime. The same requirements should apply to all firms undertaking a given DAR activity, again consistent with same activity, same risk, same regulation.

56. The DAR would provide the government with an alternative mechanism to the RAO for placing activities within the regulatory perimeter. Decisions about the perimeter are inherently political, and it therefore important that any proposals to designate an activity under the DAR be subject to appropriate Parliamentary scrutiny and approval.

57. The scope of any regulatory powers granted in relation to the DAR should be clearly set out. This should include, in particular, their territorial scope. There should be a clear process for establishing how questions relating to interpretation of the scope of DAR should be addressed.

[21] https://www.legislation.gov.uk/ukpga/2003/21/contents

Q11. Do you agree with the government's proposal for HM Treasury to have the ability to apply "have regards" and to place obligations on the regulators to make rules in relation to specific areas of regulation?

58. This question addresses two related but separate issues.

59. First, we agree with the proposal for HMT to have the ability to apply "have regards" to specific areas of regulation. As we argued in our response to its phase-II consultation, we believe this provides an efficient means for the government and Parliament to ensure that a regulator considers factors that are appropriate in the context of a specific activity but inappropriate if generalised to all other activities within the regulatory perimeter. Without activity-specific "have regards," the discretion afforded by the FSMA model could see the regulators left to make significant policy trade-offs in respect of specific sectors that the need for democratic accountability suggests the government and Parliament should make instead.

60. Separately, we agree, in principle, with the proposal for HMT to have the power to place obligations on the regulators to make rules in relation to specific areas of regulation, subject to appropriate safeguards on its exercise and to its scope being clearly defined. As noted above, we support HMT's intention to domestic retained EU law, and we recognise that this will be a significant undertaking. Used in that context, such a power would be an expeditious means to a legitimate end insofar as it would minimise the need for lengthy and resource-intensive primary legislation simply to compel the regulators to recreate existing statutory requirements in their rulebooks.

61. Nonetheless, such a power would need to be subject to appropriate safeguards. In particular:

    - its use should be restricted to areas already subject to requirements in statute. The power is justified if used to recreate existing statutory requirements, as will be the case when domesticating retained EU law. However, it should not be used as a substitute for primary legislation in areas that lack requirements simply because the government wishes the regulators to create some; and

    - statutory instruments (SIs) laid pursuant to it should be subject to the affirmative parliamentary procedure, requiring Parliament to actively approve them before they become law. This is important as a matter of democratic principle and would also afford Parliament the opportunity to meaningfully disagree with the government's proposed pacing of the domestication process (e.g. if it felt that the regulators' resources were better deployed on other activities).

62. In domesticating retained EU law, the regulators should be required to signpost at consultation any proposed material policy changes. We understand that the domestication process will afford this opportunity and are supportive (though our members have different views on the desirable degree of change and to which requirements). However, regulatory initiatives of this scale are typically expensive for firms to implement, so any measures that make it easier to identify and comment on proposed changes (e.g. marking up the proposed rules with commentary) would be welcome. This would be best practice under any circumstances but is particularly important given that much retained EU law does not exist in consolidated form and is therefore very difficult for market participants to fully understand. Moreover, if a regulator does propose a

material change to an existing requirement, it should provide firms with sufficient time to comply.

Views on other proposed measures

63. In this section, we provide views on proposed measures not covered in the consultation questions.

Measure 3. Requirement for regulators to respond to HM Treasury recommendations letters

64. We agree with the proposal to require the FCA and the Prudential Regulation Committee to respond to the recommendation letters that HMT is required to send them at least once per Parliament. We believe it right that both bodies should be required to formally explain how they have taken into account HMT's recommendations on issues of broader economic policy and any impact these have had on policy. Requiring these responses to be published and laid before Parliament will facilitate scrutiny of the regulators' actions in respect of these recommendations.

Measure 14. A power to repeal parts of retained EU law, including the direct regulatory requirements that apply to firms

65. We agree with the proposal for HMT to take a power to repeal parts of retained EU law, including the direct regulatory requirements that apply to firms. As with the proposed power to require the regulators to make rules in relation to specific areas of regulation, such a power is justified by the sheer volume of retained EU law to be domesticated.

66. Nonetheless, safeguards on the exercise of the proposed power will be crucial, both as a matter of democratic accountability and to ensure that material policy changes are not made inadvertently. Specifically:

- SIs laid pursuant to this power should be subject to the super-affirmative parliamentary procedure. Under this procedure, an SI is laid in draft before Parliament and the government must have regard to any representations made before it can seek the approval of both Houses to the final measure. As well as increasing transparency and scrutiny, this makes it possible for the government to make changes (minor or otherwise) to the draft SI in response to representations made;

- a requirement for full consultation by the relevant regulator on draft rules that recreate or replace retained EU law. HMT rightly proposes that a repeal should not have effect until the replacing rules from the relevant regulator come into force. This safeguard should be strengthened to make any repeal conditional on the regulator having consulted in line with its usual statutory requirements. Full consultation will be particularly important where a regulator proposes material changes, but, in any circumstances, it would help to guard against unintended changes to the effect of the requirements where the regulators' intention is merely to recreate them. As we recommended in answer to question 11 above, the consultation should include a mark-up of existing rules, including explanatory commentary where appropriate; and

- close coordination between HMT and the regulators. The PRA and the FCA already have significant responsibilities and finite resources with which to discharge them.

Continuous dialogue between HMT and the regulators is necessary to avoid the pace of the domestication process exceeding the regulators' capacity to play their significant role in it and firms' ability to comply with the resulting rules. HMT and the regulators should agree a clear timeline for the domestication process and include it in the Regulatory Initiatives Grid. In devising this timeline and deciding the order in which requirements in retained EU law should be domesticated, they should take into account the wider regulatory context, including other domestic and international initiatives, to ensure that firms have the requisite capacity and resources to monitor, review and track the process.

Annex 1

Financial-services future regulatory-framework review

Review of regulators' rule-making decisions

12 July 2021

Recommendation

HM Treasury (HMT) has asked for UK Finance's further thoughts on what a mechanism for reviewing regulators' rule-making decisions could look like given the problems we identified with judicial review (JR) in our response[22] to its phase-II consultation[23] on the financial-services future regulatory-framework (FRF) review earlier in the year.

2. We recommend that designated representative bodies be able to require a financial-services regulator to review a rule it has made and respond within 90 days with its proposed reaction. Such a proposal:

   - addresses our principal concerns about JR and HMT's concerns about the resource and cost implications of establishing an entirely new appeals body;
   - draws heavily on precedent, particularly the ability of designated consumer bodies to make "super-complaints" about markets whose features are significantly harming the interests of consumers; and
   - meets—satisfactorily if imperfectly—the principles that we proposed in our FRF consultation response should inform a solution.

Background

The problem

3. Our FRF consultation response argued that as regulators take on more powers, they need to be subject to additional scrutiny and accountability. This would improve the quality of regulatory decision-making and enhance the UK's attractiveness as a destination for banking and finance firms. The particular focus of our response was that regulators' rule-making decisions should be subject to a new review mechanism that is independent, expert, accessible and timely.

4. The principal way in which firms can currently challenge decisions by regulators is through a formal JR. However, JR has a number of features that mean it is regarded in practice as neither a viable nor a desirable solution for firms to pursue. In particular:

[22] https://www.ukfinance.org.uk/system/files/F2R2-phase-II-consultation-FINAL.pdf
[23] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/927316/141020_Final_Phase_II_Condoc_For_Publication_for_print.pdf

- it is difficult to argue that regulators' decisions are ultra vires because their statutory objectives and powers are so wide;

- firms perceive that challenging a regulator's decision will jeopardise the supervisory relationship; and

- JRs are inevitably high profile and attract a level of publicity that may be distracting and counterproductive.

5. While we did not consider the detailed form that an alternative review mechanism might take, we identified seven principles that we believed should inform such consideration: engendering confidence; skills and experience; onward appeal; independence; proportionate accessibility; timeliness; and transparency.

6. The full text of our FRF consultation response on this issue is annexed [NB: not included here]. It is supported by a detailed paper[24] jointly written with Norton Rose Fulbright.

The ask

7. In light of our response and our reiteration of the importance of this issue in subsequent discussions, HMT officials have asked us as follows:

   On the suggestion that rulemaking should be subject to a new independent review mechanism as an alternative to JR, I understand the concerns you've set out but also conscious of the resource and cost implications of an entirely new body and how we may need to manage those. With that in mind, it would be great to get any further thoughts on what such a review mechanism could look like and if you think there are any alternative solutions to the address the problems you see within the structure of the existing framework?

The recommendation

8. Our recommendation develops the comment in our FRF consultation response that:

   . . . it may be appropriate to consider including a mechanism for representative bodies to challenge particularly important issues for the industry. An example of this on the consumer side is the "super-complaints" regime under section 11 of the Enterprise Act, which allows a designated consumer body to make a complaint to the CMA [Competition and Markets Authority] that certain features of a market are or appear to be significantly harming the interests of consumers.

9. Similar provisions in the Financial Services and Markets Act 2000 (FSMA) allow designated consumer bodies to make such super-complaints to the Financial Conduct Authority (FCA),[25] while scheme operators and regulated persons can complain to the FCA that consumers are suffering loss or damage as a result of a regular failure to comply with regulatory requirements.[26] Under the Financial Services (Banking Reform) Act 2013 (FSBRA), a designated representative body can complain to the Payment Systems Regulator (PSR) that features of a payments market are significantly damaging the interests of service users.[27] In all cases, the public authority in question must respond within 90 days stating how it proposes to deal with the complaint. Additionally, under section 29A of the Police Reform Act 2002, a designated body can complain to HM Chief

[24] https://www.ukfinance.org.uk/system/files/The%20principles%20of%20an%20effective%20regulatory%20review%20mechanism%20-%20FINAL.pdf
[25] https://www.legislation.gov.uk/ukpga/2000/8/section/234C
[26] https://www.legislation.gov.uk/ukpga/2000/8/section/234D
[27] https://www.legislation.gov.uk/ukpga/2013/33/section/68

Inspector of Constabulary that certain features of policing in England and Wales by a police force are or appear to be significantly harming the interests of the public.[28]

10. ***Echoing these provisions and reflecting the particular focus of our response, we recommend that a representative body designated by HMT be able to complain to a financial-services regulator (including the Bank of England/Prudential Regulation Authority, the FCA and the PSR) that a rule it has made is deficient and should be reviewed. The regulator in question would have to respond within 90 days stating how it proposed to deal with the complaint.***

11. Key elements of this recommendation are as follows.

Nature of representative bodies	This need not be spelled out in legislation (it is not in FSBRA) and, as such, would encompass representative bodies including trade associations and consumer bodies.

Grounds for complaint	We believe a good starting point for discussion is the grounds on which decisions of the Civil Aviation Authority[29] and the Office of Gas and Electricity Markets[30] can be appealed to the CMA as well as the grounds for appeal against decisions by Australian federal departments and agencies:[31]
	• a breach of the rules of natural justice occurred in connection with the making of the decision;
	• there was no evidence or other material to justify the making of the decision;
	• the regulator did not have proper regard to a matter;
	• the regulator gave inappropriate weight to a matter;
	• the regulator erred in fact;
	• the regulator did not achieve its stated effect;
	• the regulator erred in law, whether or not the error appeared on the record of the decision, including because—
	  • procedures that were required by law to be observed in connection with the making of the decision were not observed;
	  • the person who purported to make the decision did not have jurisdiction to make the decision;
	  • the decision was not authorised by the enactment in pursuance of which it was purported to be made;
	  • the making of the decision was an improper exercise of the power conferred by the enactment in pursuance of which it was purported to be made; or
	  • the decision was otherwise contrary to law;
	• the regulator erred in the exercise of discretion; or
	• the decision was induced or affected by fraud.

Rejection of complaint	Regulators would be able to reject complaints that were frivolous, vexatious or made in bad faith.
Fit with existing processes	The review process would need to preserve firms' existing rights of redress. In particular, it should neither preclude nor complicate a parallel or subsequent JR.

[28] https://www.legislation.gov.uk/ukpga/2017/3/part/2/chapter/2
[29] https://www.legislation.gov.uk/ukpga/2012/19/section/26
[30] https://www.legislation.gov.uk/ukpga/1986/44/section/23D and https://www.legislation.gov.uk/ukpga/1989/29/section/11E
[31] See section 5 at https://www.legislation.gov.au/Details/C2021C00035

12. We see three principal arguments in favour of this recommendation.

    - First, because we envisage complaints being made by representative designated bodies, this should go a long way to mitigating individual firms' concerns about the implications for their supervisory relationship and reputation. It is, of course, possible that regulators will be able to deduce which firms are instrumental in prompting a complaint, but there is equally likely to be safety in numbers in such circumstances.

    - Second, because a complaint would be considered by the regulator that made the rule in question, the process would not be judicial, not involve the creation of any new bodies and not result in that regulator being second-guessed by another body.

    - Third, the regulator's response to the complaint would itself be subject to JR, so the process should ultimately enhance that route rather than detract from it.

13. We also believe that it fits—satisfactorily if imperfectly—with the principles we set out in our FRF consultation response.

Engendering confidence	◘	The recommendation balances a right of review with ensuring that the system as a whole functions efficiently and enabling regulators to take decisions in an efficient and timely way to achieve their duties.
Skills and experience	◘	Regulators will largely have these (although successful complaints may reveal where they are somewhat lacking).
Onward appeal	◘	JR would remain an option.
Independence	☐	This would not be delivered by a regulator reviewing a rule that it made. However, at the very least, the rule should be reviewed by a different team from the one responsible for introducing it. This would be consistent with the requirement of the Regulators' Code in respect of appeals that, "Individual officers of the regulator who took the decision or action against which the appeal is being made should not be involved in considering the appeal."[32] It would also mirror the requirement for a CMA phase-two market investigation to be conducted by different individuals from those who conducted the preceding phase-one market study.
Proportionate accessibility	■	Our consultation response envisaged precisely such a role for representative bodies.
Timeliness	■	90 days represent a quick turnaround for a complaint.
Transparency	■	There is no reason for complaints and responses to be anything other than public.

[32] See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/913510/14-705-regulators-code.pdf. It is unclear whether the Code applies to current financial-services regulators as its predecessor, the Regulators' Compliance Code, once applied to the Financial Services Authority.

Annex 2

Analysis of the FCA's Consumer Duty CBA

Introduction

1. This annex evaluates the FCA's guidelines for undertaking CBAs[33] with the approaches of other regulatory bodies. It goes on to evaluate the CBA for its proposed Consumer Duty—one of the most significant regulatory interventions proposed in recent times—against all those standards. We believe these evaluations underline the importance of improving the quality of financial-services regulators' CBAs as argued in the main body of our response to HMT's consultation.

Evaluation: the FCA's guidelines for undertaking CBAs

2. The main point of comparison with the FCA's guidelines is HMT's Green Book. This is the official guidance relating to government decision making and is seen as the gold-standard benchmark on which the Office of Rail and Road (ORR), the Office of Gas and Electricity Markets (Ofgem) and the Office of Communications (Ofcom) have based aspects of their CBA frameworks. We have also considered the guidelines and frameworks of the PRA and the PSR; the approaches of international regulators including the European Commission (EC), the US Office of Information and Regulatory Affairs (OIRA) and the Australian Office of Best Practice Regulation (OBPR); and the recommendations we made in our response to HMT's phase-II consultation and the accompanying standalone report.

3. The evaluation compares the FCA's CBA guidelines to these benchmarks across the following quantitative and qualitative elements:

   - **purpose**—whether the CBA is being used as an evidence-based tool for decision making or a different purpose;
   - **transparency of options**—whether there is a requirement to consider and publish a number of different options in the CBA;
   - **theory of change**—the level of evidence required to demonstrate that the intervention will lead to the desired outcomes/benefits;
   - **costs and benefits**—the requirements for quantifying these and the level of evidence required;
   - **counterfactual**—whether there is a requirement to quantify the level of harm that the intervention is seeking to address and the costs and benefits associated with the counterfactual scenario of no intervention;
   - **assumptions**—the level of detail, transparency and supporting evidence required for assumptions that are included in the CBA;

[33] https://www.fca.org.uk/publication/corporate/how-analyse-costs-benefits-policies.pdf.

- **treatment of uncertainty**—the level of transparency of the risks and uncertainties of the CBA's inputs and assumptions and how this uncertainty should be dealt with in the analysis; and

- **outputs**—how the CBA's outputs should be presented and analysed to feed into the decision-making process.

4. The table below summarises the findings from this evaluation.

	FCA	Green Book	Other frameworks	UK Finance proposals
Purpose	• Mandatory requirement to produce a CBA for regulatory proposals in line with FSMA requirements. • FSMA does not require the FCA to prove (mathematically) that benefits exceed costs. It does need to show that the proposed rules advance its operational objectives.	• Process of "assessing the costs, benefits and risk of alternative ways to meet the government objectives" to aid decision making. • Structured evaluation framework to determine the option that represents the best value for money.	• OBPR: "provides an objective framework for weighing up different impacts that occur in different periods." Measures the resource-allocation effects of a regulatory change. • Ofgem: "CBAs are taken at an activity level" to quantify a range of options. • EC: establish the best intervention compared to alternatives by establishing the most "effective allocation of resources."	• Single CBA model for regulation to allow consistent application across the regulation of banking and finance, specifically through an enhanced FSMA model consistent with the Green Book approach.

	FCA	Green Book	Other frameworks	UK Finance proposals
Transparency of options	• High-level CBA is used in the early stages to choose among several options. • There is no requirement to publish analysis of options that are considered and rejected.	• Requirement to use CBAs to consider relative costs and benefits across a range of different proposal options and provide transparency in the assessment of options. • Structured process to consider long list of options and detailed evaluation of short list of options.	• OBPR: identify a range of genuine, viable, alternative policy options to be analysed. At least three options are presented, including one that is non-regulatory. • Ofcom: aims to consider a wide range of options. This includes non-regulatory risk-based, targeted approaches to regulation and alternatives to formal regulation. • OIRA: "at a minimum agency should compare, with their preferred option, a more stringent and less stringent alternative." • ORR: applied across different options with the same unit of measure to allow comparison.	• Full options analysis of competing policy initiatives, capturing non-regulatory solutions, improved supervision, improved enforcement, and guidance.

	FCA	Green Book	Other frameworks	UK Finance proposals
Theory of change	• No explicit requirement to evidence a causal chain through an evidence base. • Field trials can be applied to complex areas to evidence behavioural changes. These only occur when it is deemed possible and appropriate.[34]	• Requires the nature of change to be transparently explained. This requires a "credible explanation of the change process" with an "objective evidence base." • Requires objective evidence in support of data and assumptions within the change process.	• OBPR: requires the CBA to capture how costs and benefits are likely to vary, accounting for general economic conditions and other wider influences.	• Use post-implementation review of policy and supervisory change to establish the effectiveness of the regulatory change. Such a review can only be informed by having a clear and well evidenced understanding of the theory of change. • Use cumulative-impact analysis to establish how the proposal may be affected by wider initiatives.
Costs and benefits	• The CBA needs to include an "estimate of costs and benefits unless, in our opinion, they cannot be reasonably estimated, or it is not reasonably practicable to produce an estimate." • Costs and/or benefits can be addressed through qualitative analysis if they cannot be quantified. • FSMA does not require the FCA to "prove mathematically that benefits exceed costs."	• Ensures quantification is made, even when difficult. Specifically ensures the benefits and risks are considered, even when "beyond direct monetisation." • Further steps are made to reveal the cost of different options by analysing alternative scenarios to ensure transparency.	• Ofcom: quantifies the cost and benefit, including wider impacts. This follows the same discount rate as recommended by HMT. • OIRA: recommends identifying "the potential benefits and costs for each alternative, its timing and likelihood."	• Conduct a cumulative-impact analysis, a full option analysis, a sensitivity analysis and wider market assessments.

[34] https://www.fca.org.uk/publication/corporate/how-when-we-use-field-trials.pdf.

	FCA	Green Book	Other frameworks	UK Finance proposals
Counterfactual	• Similar to the quantification of costs and benefits, there is no explicit requirement to quantify the counterfactual. Instead, it can be simplistic in nature, with only an aggregate quantification of those affected by harm. • Quantification of harm can be further simplified as the total number of consumers in a given market for which harm is present or, if a richer dataset is available, quantifying those within a market who are particularly affected by harm.	• The counterfactual is explicitly required to be included and quantified to ensure a comparable benchmark with the proposed options.	• OIRA: counterfactual captures a pre-statutory baseline of what the world would look like in the absence of the intervention. • Ofcom: takes a similar approach to OIRA, with quantification of the costs and benefits that would be incurred without any additional measures. • Ofgem: requires quantification of a baseline NPV to allow comparison across separate options instead of against a zero value.	• Extend the benchmark to capture wider options or policy approaches instead of a standard “do nothing” counterfactual. • Improved measurement of regulatory outcomes to ensure a “credible counterfactual in economic terms.”

	FCA	Green Book	Other frameworks	UK Finance proposals
Assumptions	• Requirement to list key assumptions but no explicit reference to requirement to provide supporting evidence base for assumptions.	• Requires transparency with clear articulations of assumptions. These require an explanation on which all assumptions are made. • There is a further requirement to evidence assumptions with links to the sources of data and assumptions provided in the summary. • This is also the case when non-market prices or items have been used and assumptions of the valuation methodology.	• Ofgem: requires a supporting commentary in the CBA of what assumptions have been used. • OIRA: requires clear documentation for "all of the assumptions and methods used in the analysis." • EC: recommends transparency in the main assumptions, parameters, values, trends and coefficients with clear expression.	• Conduct an "appropriate sensitivity analysis of options to assess the range of benefits and costs under varying assumptions."
Treatment of uncertainty	• Utilises a sensitivity analysis when dealing with uncertainty. • This utilises ranges and rounding with no requirement to account for optimism bias.	• Requirement to state areas of uncertainty in assumptions with defined confidence levels to ensure transparency in sensitivity analysis. • Recommends using Monte Carlo modelling to analyse areas of significant uncertainty. • Requires assumptions to be adjusted to reflect optimism bias.	• Ofcom: use sensitivity analysis when faced with uncertainty. • Ofgem: recommends sensitivity analysis, in line with HMT, when faced with uncertainty. • ORR: use sensitivity analysis and estimates with adequate justification when faced with uncertainty.	• Sensitivity analysis to ensure options are appropriate, in line with the Green Book approach.

	FCA	Green Book	Other frameworks	UK Finance proposals
Outputs	• Does not need to demonstrate that the benefits of the initiative exceed the costs. Instead, a positive net benefit can be determined at the discretionary judgement of the FCA. • No further articulation is required in terms of empirical evidence to determine whether the initiative will be beneficial.	• Requires an evidence base to determine the best option. This is based on the best allocation of resources factoring in costs, benefits, risks and unmonetisable factors.	• Ofgem: establish an evidence base against each preferred option and utilise the initiative that corresponds with its business plan and work programme. • OIRA: recommends a summary that captures the benefits and costs for each initiative. This allows comparison of the preferred and competing proposals.	• Extend the requirement to conduct CBAs to ensure reasonable cost or benefit calculations. This will allow increased measurement and reporting of regulators' performance.

5. This evaluation demonstrates that the Green Book and other regulators have adopted a more rigorous and analytical framework, with less scope for judgement-based and qualitative analysis, than the FCA.

Evaluation: the FCA's Consumer Duty CBA

Introduction

6. As set out below, the findings from our review of the FCA's Consumer Duty CBA highlight that, while it may broadly meet the requirements of FSMA, the framework raises the risk of a judgement-based outcome. The FCA has not prepared evidence to support a theory of change, there is limited quantification of benefits, and there is no substantiation of key assumptions. Costs are presented using a broad range, highlighting the level of potential uncertainty of the intervention. No further sensitivity analysis is conducted other than the presentation of the range of costs. The FCA has been unable *to "reasonably estimate the scale of benefits,"* including improved consumer welfare, a reduced need to seek financial compensation and changes to competitive dynamics.

7. These factors raise questions about the robustness of the analysis supporting the Consumer Duty and the efficacy of the FCA framework under which the CBA was developed. In particular, there is a risk that firms will be burdened with significant costs to realise limited benefits.

Purpose

8. Section 138I of FSMA requires the FCA to publish a CBA alongside any proposed rule changes. This is a mandatory requirement to inform the FCA's analysis and decision making.

9. The FCA's guidelines require that a "robust assessment of expected impacts is reported in the CBA." This includes outlining the baseline and key assumptions, costs, benefits, impact analysis, risk analysis and summary of the costs and benefits of the associated intervention. The guidelines set out that this should be supported with sufficient evidence, based on the best available information at the time of consulting, to ensure a FSMA-compliant CBA.

10. This allows the FCA a high degree of discretion. By way of illustration, the Consumer Duty CBA appears to lack a granular evidence base to support the FCA's decision making. This has led the FCA to make judgements and theoretical estimates of the impact of the Consumer Duty to support a judgement-based conclusion. This includes, but is not limited to, improved consumer welfare, the reduced need to seek financial compensation and the costs associated with change and IT projects. This approach appears to have significant gaps from an evidence-based policy-making approach.

11. The FCA's guidelines highlight that, "FSMA does not require us to prove mathematically that benefits exceed costs. We do though need to show that the proposed rules advance our operational objectives, having regard to the principle that a burden or restriction which is imposed should be proportionate to the benefits which are expected to result." Section 1C of FSMA highlights the FCA's consumer-protection objective "to apply their resources and interventions to achieve the greatest impact for consumers and the greatest public value."[35] However, the FCA's approach to the Consumer Duty CBA does not quantify the benefits or different options, causing a potential risk of misallocating its resources and failing to advance this objective.

12. As we set out below, the FCA can present a CBA for a single option and not fully quantify costs and benefits if it is deemed too complex to do so. The FCA's framework therefore enables it to make a qualitative judgement that an intervention would be net beneficial despite not requiring it to substantiate this conclusion. The FCA's guidelines also enable it to proceed with policy interventions without demonstrating with evidence, where not reasonably practicable, that the costs are proportionate to the benefits and the intervention provides the best balance of costs, benefits, risks and unmonetisable factors.

13. While there will always be policy considerations that are difficult to quantify, other regulatory bodies have sought to develop a more objective evidence base for decision making. A notable example is the Green Book, which provides detailed guidance for objective analysis to support the decision-making process to achieve the stated policy outcome. The Green Book's methodology requires an assessment of the impact of several options using a structured, evidence-based framework to identify which option "provides the best balance of costs, benefits, risks and unmonetisable factors thus optimising value for money." This approach is also consistent with OBPR, Ofcom and OIRA, all of which require similar evidence-based frameworks in their CBAs.

[35] https://www.fca.org.uk/publication/corporate/approach-to-consumers.pdf.

14. As the FCA's guidelines enable CBAs that consider only a single option, they may lead to CBAs that are compliant with FSMA's requirements but without a robust basis for decision making. Instead, they amount to a loosely defined framework that lacks specificity and includes caveats allowing the FCA to justify its desired policy decisions with limited analysis or evidence. This is not an appropriate framework for determining the most appropriate regulatory interventions.

Transparency of options

15. Prior to identifying a preferred option, the FCA assesses "different options with high level, mostly qualitative analysis" and uses in-house information or information gained from engagement with industry participants. This enables the identification of a preferred option that is included within a consultation and its CBA. In addition to capturing the preferred policy initiative within the CBA, a counterfactual is included as the FCA's point of comparison.

16. The baseline counterfactual consists of a "business as usual" or "do nothing" scenario, with no policy or alternative interventions. The FCA's Consumer Duty counterfactual appears to have been defined in qualitative terms with an unspecified quantum of harm in the market and no detailed narrative of how this may evolve over time. We have previously highlighted that a "do nothing" scenario alone does not present a credible alternative to the proposed policy option in a CBA and that other potential options should also be considered in detail.

17. The FCA's approach to options assessment allows it to discard any options that are deemed ineffective, disproportionate or less effective at an early stage in its process. There are no explicit requirements to publish these options, leading to a lack of transparency in the policy-making process. Such transparency is fundamental to confidence in decision making in a regulatory regime.

18. The table below compares different CBA frameworks.

Options considered in benchmark CBA approaches				
Source	**Counterfactual "do nothing"**	**Preferred initiative**	**Alternative initiatives**	**Less-ambitious initiative**
FSMA	✓	✓	✗	✗
Consumer Duty CBA	✓	✓	✗	✗
Green Book	✓	✓	✓	✓
Ofgem[36]	✓	✓	✓	✓
Ofcom	✓	✓	✓	✓
ORR[37]	✓	✓	✓	✓
EC[38]	✓	✓	✓	✓
OBPR	✓	✓	✓	✓
OIRA	✓	✓	✓	✓
UK Finance proposals	✓	✓	✓	✓

19. The FCA's method of publishing only the preferred option and a counterfactual diverges from other regulatory guidelines and frameworks, notably, the Green Book, Ofcom,[39] Ofgem and overseas frameworks including OBPR.[40] These approaches capture a rational and viable set of shortlist options, with a framework to determine which represents the best value for money.

20. The other UK regulators above all use an approach consistent with the Green Book, which is seen as a "gold standard." This methodology captures a counterfactual and proposed policy initiative, consistent with the approach taken by the FCA in its Consumer Duty CBA but takes the additional step of quantifying the associated costs, benefits and risks of a range of different policy options. This helps to ensure better decision making, creating improved long-term public value.

21. We also continue to advocate the consideration of improved supervision and enforcement and the provision of guidance instead of introducing new regulatory requirements.

Theory of change

22. The FCA's guidelines note that it will, where appropriate, include a casual chain in the CBA. However, there is no regulatory requirement to evidence it. The lack of an explicit

[36] https://www.ofgem.gov.uk/sites/default/files/docs/2019/11/riio-2_eso_cba_guidance.pdf.
[37] https://www.orr.gov.uk/sites/default/files/om/revised-safety-cba-guidance-05022016.pdf.
[38] https://ec.europa.eu/regional_policy/sources/docgener/studies/pdf/cba_guide.pdf.
[39] https://www.ofcom.org.uk/__data/assets/pdf_file/0029/45596/condoc.pdf.
[40] https://obpr.pmc.gov.au/sites/default/files/2021-09/cost-benefit-analysis.pdf.

reference to a causal chain reduces the evidence and transparency that demonstrate a proposed intervention will lead to the desired outcome.

23. The FCA's guidelines note that evidence to support a causal chain can be in the form of field trials to understand the likely impact of interventions to increase their degree of certainty and mitigate risks. Field trials are usually run where the FCA considers "the consumer behaviour is a key driver of benefits of the proposed policy and there are high costs/high risks with intervention" and only then if it considers that it is proportionate to undertake a field trial. The FCA states that it would not undertake a field trial if "existing evidence we have demonstrates that the costs of the policy are known to be small and the benefits are large" because "conducting further research would not be a proportionate use of resources."

24. Field studies are a helpful source of evidence for estimating benefits where the proposed intervention requires changes in consumer behaviour, there is limited existing evidence to support the intervention and the estimated cost of intervention is high. We consider all these factors to be present in the context of the Consumer Duty as the proposed measures are designed to increase customer engagement, increase confidence in the market and enable customers to make better informed decisions and switch to more suitable products and services.

25. Implementing the Duty is estimated to cost firms up to £2.4 billion in initial one-off costs in addition to ongoing costs. The CBA does not provide any evidence to support its causal chain, presenting a real risk of high costs being imposed with little consumer gain. As a result of the lack of evidence, the theory of change remains highly theoretical, undermining the analysis of both the costs and the benefits of the proposed intervention.

26. The Green Book uses a more evidence-based approach to the theory of change, noting its importance to the intervention. The Green Book states that (emphasis added):

    It is vital to understand both the context within which policy objectives are being delivered and the process of change that will result from the proposed intervention and cause the desired policy objectives. . . . The supplementary guidance on Business Cases covers in more detail the steps needed to develop, understand, and explain, the objective basis of this expectation and provide reasonable evidence. It is the foundation of the rationale for intervention in the way that is proposed.

27. A key aspect highlighted in the Consumer Duty CBA (without quantification) is the benefits associated with improved consumer communication and customer service. The CBA highlights the potential improvements leading towards an improved customer journey. However, a large percentile of customers in the FCA's Financial Lives Survey had low knowledge about financial matters or felt overwhelmed.[41] The FCA does not consider in detail the potential impacts across different customer segments or the root causes of the potential harm in the market (which may be cognitive barriers that are difficult for firms to address) and does not provide any evidence that its intervention will benefit vulnerable customer groups due to the risks of customers not engaging with the market irrespective of changes made by firms.

28. Improving the FCA's guidelines to include a requirement to evidence the theory of change would be beneficial in future CBAs. It would specifically engender more confidence that there is a clear and well evidenced basis for intervention and provide a clearer and more

[41] https://www.fca.org.uk/publications/research/financial-lives-2020-survey-impact-coronavirus.

transparent link to the costs and benefits. It would also better support the evaluation of the success of interventions.

Costs and benefits

29. The FCA's guidelines require the estimation of costs and benefits, subject to this being reasonably possible. In the context of the Consumer Duty, the FCA states that the impacts in terms of benefits cannot reasonably be estimated. This is compliant with FSMA's requirements but does not provide a sufficient evidence base to substantiate that the proposed intervention is the most appropriate.

30. The benefits section in the CBA is largely qualitative in nature and relies heavily on expected benefits from other FCA interventions. It provides no evidence from any evaluations that these interventions are delivering the benefits that were expected. Despite this, the overall conclusion of the CBA is that the benefits will exceed the costs. However, this is based on the FCA's judgement.

31. The Consumer Duty has estimated the direct costs to firms as ranging from £688.6 million to £2.4 billion, with no further clarification of costs for different firms based on the markets in which they operate. The FCA's guidelines note that it uses ranges as a mechanism for dealing with uncertainty (see below), but, without further analysis, it is not possible to determine what it considers to be the most likely outcome.

32. A number of indirect costs that firms would bear (e.g. loss in profits due to changes to product design and pricing) have been captured by the FCA in a qualitative analysis. However, there is no analysis to quantify the potential indirect cost among firms or at a sector level, including loss of profits due to a change in product design and changes to pricing structures. This risks causing an inaccurate quantification of the full costs of intervention, calling into question the positive net benefit deriving from the policy.

33. It is difficult to interpret and comment on the defined costs within the Consumer Duty CBA. This is due partly to the lack of evidence supporting the theory of change but partly to a lack of supporting evidence for the assumptions that underpin the FCA's cost modelling (see below).

34. In contrast to the FCA's guidelines, the Green Book recommends an approach of quantifying costs and benefits, even when they are unmonetisable or unquantifiable, by providing options with and without specific variables to produce alternative scenarios and reveal their intrinsic value. This is achieved through non-market valuation methods and techniques outlined within the change-process section of our recommendations.

35. Ofcom uses an approach consistent with the Green Book that quantifies the costs and benefits of each initiative over the implementation period and applies a discount rate to establish the realised timing. OIRA uses a similar approach, although the methodology only aims to capture timing and likelihood. In comparison, OBPR assesses several separate alternative policy options, qualifying that at least three separate options should be presented, including a non-regulatory option to ensure a robust comparison.

36. Application of our previous CBA recommendations could help to ensure the FCA has a robust CBA methodology. This could involve a more suitable, robust, evidence-based CBA or leveraging existing valuation and CBA models, including the Green Book, to more appropriately estimate the net benefit of the Consumer Duty. It may also enable a more

accurate estimation of potential one-off direct and indirect costs that firms may incur, with a smaller cost range and lower levels of unquantified uncertainty.

Counterfactual

37. The FCA is not required to create a counterfactual in a CBA, especially where impacts cannot reasonably be estimated. As a result, it may decide not to produce a rigorous counterfactual with meaningful quantification of the harm that exists in the market and how it may evolve absent the intervention. Instead, it uses a point of comparison as an alternative "future" without the policy (also known as a "do nothing" approach) unless stated otherwise.

38. This approach emphasises harm arising because of the policy not being implemented in the form of harmful practices by firms in retail sectors. However, table 6 of the FCA guidelines outlines harm as a simple quantification of consumers in a market for which harm is present where a richer dataset is not available. This is the case in the Consumer Duty consultation, where the quantification of harm is articulated solely with reference to the number of consumers across the entire retail-banking customer base. This approach is compliant with the FCA's own guidelines but does not identify the scale of the harm that the FCA is seeking to address, nor does it quantify the size of vulnerable-customer groups where it indicates that harm may be more pronounced.

39. HMT explicitly requires a counterfactual baseline based on continuing business as usual and clearly articulating harm, even when a continuation of the current arrangements will have negative consequences. This counterfactual quantifies the costs and benefits of the baseline in absolute terms instead of incremental differences between the baseline and intervention options. It improves transparency of the actual implications of the policy, outlining comparable costs and benefits across all initiatives, including the baseline.

40. The Green Book approach is based on a core appraisal framework under which initiatives can be compared across several separate criteria based on a 90 per cent confidence interval. This confidence interval can be made wider, subject to approval, in instances where there are non-standard costs. It is also deemed that the use of two or more appraisal summary tables is required for UK-wide appraisals to ensure a robust summary of results and those of interest.

41. The Green Book approach enables key comparisons between initiatives, including their costs, benefits, impact over time and risks. It also captures inherent biases that may arise during the policy-making process, including the requirement to make allowances for optimism bias. If applied to the Consumer Duty consultation, it may put in question whether there is truly a positive net benefit derived from the initiative.

42. Other regulators use different approaches in quantifying their counterfactuals. OIRA captures a pre-statutory baseline of what the world would look like in the absence of intervention. Ofcom takes a similar approach, quantifying the costs and benefits without additional measures. Ofgem takes a robust approach requiring quantification of a baseline NPV to allow comparison against separate competing proposals, deviating from comparison against a zero value.

43. Ofgem's approach allows consistency when comparing a range of different options to the baseline due to a consistent formulation. The Green Book highlights that the calculation

of a benefit-to-cost ratio should be used for all options, allowing the relative benefits of public expenditure across the baseline and each initiative to be established and compared.

Assumptions

44. There is no explicit reference to a requirement to provide a supporting evidence base for any assumptions made in FCA CBAs. This risks inherent biases being introduced in such assumptions.

45. The FCA lists its key assumptions in the Consumer Duty CBA, as required in its guidelines. The FCA's procedures highlight that typical assumptions include prices and average costs/benefits, the period covered by the analysis, discount rates and compliance considerations. In addition to these, the FCA makes wider assumptions in the Consumer Duty CBA based on customer behavioural reactions, price changes impacting consumers and competition. The FCA highlights that benefits affecting consumer behaviour can be measured through discrete choice modelling, revealed preference and subjective well-being modelling, as outlined in its 2018 occasional paper on estimating the benefits of interventions that affect consumer behaviour.[42] The aforementioned models have not been applied to the Consumer Duty CBA, leading to judgement and theoretical assumptions being made about the expected benefits for consumers.

46. When using assumptions, there is an inherent risk that optimism and framing biases may be present, especially if assumptions are not substantiated through evidence and articulated assumptions.

47. The FCA sets out its assumptions in the Consumer Duty CBA as being based on responses received to its first consultation, discussions with stakeholders, internal data and data from the Financial Lives survey, conducted prior to the consultation. Firms' responses to the first consultation solely capture existing policies and processes and expected changes. However, there is no clear articulation of the evidence that has been captured, the firms included in the discussions or any wider assumptions made.

48. The Green Book requires a clear articulation of assumptions and their objective basis, especially when they have a significant impact on the decision being made. Further granularity is required in objectively evidencing, explaining and defining any assumptions, with links to data sources and highlighting any uncertainty. The Green Book also emphasises that "application of assumptions with no basis on objective data is not a satisfactory approach."

49. The EC and OIRA require assumptions to have supporting commentary where applied, to allow transparency of what assumptions have been made. OIRA use a similar approach, recommending the use of clear documentation for all assumptions and methods captured within CBAs.

Treatment of uncertainty

50. The FCA's guidelines highlight that key risks and uncertainties may arise due to the potential for errors in sampling, modelling or wider behavioural aspects. It applies sensitivity analysis to help identify areas of uncertainty and risks to the success of a policy.

[42] https://www.fca.org.uk/publication/occasional-papers/occasional-paper-39.pdf.

To mitigate the uncertainty, ranges and rounded estimates are used, with varying ranges based on the level of uncertainty present.

51. The inherently uncertain nature of initiatives can cause limitations to establishing accurate statistics. The FCA's use of ranges can enable a degree of quantification in terms of costs and benefits, subject to accuracy and transparency. However, the sensitivity analysis appears to have no requirement to reflect or account for optimism bias in the FCA's approach. This risks ranges and estimates not accurately reflecting the implications of an initiative. This is the case in the Consumer Duty consultation, which may not accurately establish direct and ongoing costs that firms may face and estimates benefits that do not consider cognitive, inertia, and *status quo* biases, inherent when customers process information. This has the potential for overoptimism about key cost and benefit parameters and the predicted net benefit of the initiative.

52. The Consumer Duty also lacks transparency of the uncertainties presented in the CBA, specifically by using wide-ranging outputs for cost assessments with no indication of the likely outcomes. The absence of sensitivity analysis has created outputs without assigned confidence levels, risk analysis or an assessment of the potential for unintended adverse consequences. This contributes to a lack of transparency due to wide-ranging uncertainties, which may have a material impact on whether a positive net benefit is truly achieved.

53. The Green Book notes a requirement to state areas of uncertainty within assumptions to quantify risks and account for optimism bias for both costs and benefits. This requires an optimism-bias adjustment to be made, evidencing mitigating or contributory factors. When faced with uncertainty, there is a requirement to define confidence levels based on the degree of uncertainty involved in an initiative.

54. The Green Book uses the following valuation methods in overcoming uncertainty and ensuring a decision is based on credible underlying statistics. The non-market valuations are included within sensitivity analysis, testing whether the valuation is critical. Key valuation methods used by HMT are used to capture the following approaches:

    - identifying closely comparable market prices when unavailable;
    - establishing generic prices using the Green Book's approved transferable price;
    - using hedonic pricing to establish consumers' revealed preference;
    - using a questionnaire to establish consumers' willingness to pay to receive or avoid an outcome;
    - using a questionnaire outlining compensation to avoid a loss;
    - using direct well-being-based responses to estimate relative prices of non-market goods from existing data or questionnaire-based research; and
    - estimating a central reference value and range.

55. The EC recommends several steps (e.g. utilising credible benchmarks and reference class forecasting) to reduce optimism bias in its CBA guidance, noting that special attention should be taken when dealing with uncertainty in forecasting future variables. It

emphasises World Bank findings that optimism bias and strategic misrepresentation are likely to be the largest biases in non-routine projects.[43] There is a risk that this may be the case in the Consumer Duty due to a lack of empirical evidence captured in the CBA and supporting the theory of change, leading to inherent uncertainty in the assessment of the costs and benefits.

56. Other regulators, including Ofcom, the ORR and Ofgem, use sensitivity analysis, similar to the Green Book approach. This enables adequate justification to be determined when facing uncertainties associated with a proposal. Ofgem highlights that its approach is "consistent with the HM Treasury Green Book guidance." It also calculates a switching value to establish how much a variable would change in order to make an option no longer viable.

57. HMT's approach requires a sensitivity analysis to be undertaken when faced with uncertainty. It also applies Monte Carlo analysis to produce a simulation-based risk model where there is significant uncertainty. This approach produces a more robust output, less uncertainty for the reader and increased transparency compared to estimated ranges in instances of high uncertainty. The model also has specific provisions to mitigate optimism based on option selection, risk management, sharing and defined confidence levels. This enables multipoint probabilities to be associated with each proposal, establishing an estimated probability across different confidence intervals.

58. Application of a Monte Carlo analysis appears consistent among other regulators, including the EC and OBPR. OBPR has highlighted this approach as a more statistically robust approach to sensitivity analysis. In addition to using Monte Carlo simulation, OPBR highlights the application of worst/best-case analysis and partial-sensitivity analysis.

Outputs

59. The Consumer Duty proposal posits a net benefit based on estimated cost ranges and no quantification of benefits or detailed sensitivity analysis. This has caused there to be no further quantification or demonstration of how the benefits exceed the costs under a range of different potential outcomes. It appears to have been established through limited empirical evidence and based on FCA judgement. There is no detailed summary of the outputs of the CBA given the non-quantification of benefits and the broad range of costs presented.

60. The application of judgement-based estimates has limitations where time-based analysis is not fully undertaken within the FCA's methodology. Instead, values are considered through rounded estimates, with no indication of how costs and benefits will evolve over time and when the proposed consumer benefits will occur and hence when the value for money would be delivered. In comparison, the Green Book utilises NPV approaches to capture the future costs and benefits across a wider time interval. This enables a further articulation of whether the benefits truly exceed the costs of an initiative and the ability to compare different options on a consistent basis where these options may deliver a different profile of benefits over time.

61. Measurement of useful outputs is required to have an evidence base to determine the preferred option among competing options. HMT's evidence base aims to determine

[43] https://openknowledge.worldbank.org/bitstream/handle/10986/8579/wps3781.pdf.

which option provides the best balance of costs, benefits, risks and wider unmonetisable factors. When applied to the Consumer Duty, this approach would establish a framework for maximising value for money among customers and firms and efficiently mitigate harm.

62. OIRA recommend using a summary table to capture the benefits and costs for each regulatory initiative to allow comparison of the preferred and competing proposals to establish a preferred initiative.

Conclusion

63. We have previously highlighted that effective CBAs are important in ensuring an appropriate and proportionate use of regulators' powers, with several recommendations to enhance future CBAs. Based on those recommendations, our assessment of the FCA's guidelines and their application to the CBA for its proposed Consumer Duty demonstrate that a more robust framework is required.

64. Based on a review of the Consumer Duty CBA, we conclude that the analysis conducted does not provide sufficient quantitative and objective evidence to produce a high degree of confidence in the estimated net benefit and wider findings. Instead, it has key limitations where broad assumptions, unsubstantiated estimates and judgements are made in order to reach conclusions.

65. As set out above, many reasonable questions remain unanswered in respect of the Consumer Duty CBA, many of which we consider would have been better addressed under the frameworks of other regulators. There are also areas that appear to conflict with the FCA's own guidelines for analysing and estimating the costs and benefits of its policies. Many of these unanswered questions and areas of potential conflict result from a lack of specificity in the guidance, ambiguous thresholds for using certain analyses and what we consider to be a lower bar for evidence requirements compared to other regulators.

66. Under the FCA's guidelines, there is a material risk that larger and more complex interventions will continue to be supported by insufficient evidence and more qualitative analysis and judgement. Ofcom has noted that the Better Regulation Taskforce emphasised that in the absence of empirical data and quantified outcomes, "[t]he option of not intervening . . . should always be seriously considered. Sometimes the fact that a market is working imperfectly is used to justify taking action. But no market ever works perfectly, while the effects of . . . regulation and its unintended consequences, may be worse than the effects of the imperfect market." This highlights that, rather than relying on the best available data at the time of the Consumer Duty consultation, more effort should have been made to gather a sufficiently robust evidence base on which to propose a better-informed intervention. A strengthened CBA framework could ensure that this would happen on a more consistent basis across the waterfront of financial-services regulation.

67. HMT has proposed that the regulators take on more powers. These should be accompanied by increased robustness, scrutiny and transparency in a new CBA framework.