

APPG - PERSONAL BANKING AND FAIRER FINANCIAL SERVICES – CALL FOR EVIDENCE ABOUT THE FCA

Response from Ken Davy

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Contact Details

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About the writer

I have spent many years in financial services distribution. This included 30 years as a financial adviser, during which time I conducted almost 10,000 client advisory meetings without a single formal complaint. I am currently Chairman of Fintel PLC. I believe passionately in the value good financial advice delivers to consumers, by helping them accumulate savings and protect their families. Throughout my career I have been dedicated to raising the standards of financial advice.

Permissions

- Do you give permission that your name is put into the public domain?
Yes
- Do you give permission that your response is put into the public domain?
Yes (With Email address, phone number and postal address redacted).

Question Set F – For other stakeholders

Q1: Please tell us about yourself and outline, just briefly to begin with, how you came to interact with the Financial Conduct Authority?

I have spent many years in financial services and been involved at every level of financial services

distribution, as well as involvement in product design etc. This included 30 complaint free years as an independent financial adviser.

I believe passionately in the value that good financial advice provides for consumers by helping them accumulate savings and protect their families. Throughout my career, which included a period on the Board of the Personal Investment Authority, I have been dedicated to raising the standards of advice. My fundamental belief is that clients should understand: What they are buying, Why they are buying it, What it is costing, and Who they are buying from. I am an Hon Fellow of the CII and former President of the Life Insurance Association and have served on numerous industry bodies and regulatory groups. Along the way I have received countless accolades, including several “outstanding contribution to financial services” awards.

I am presently Chairman of Fintel PLC which provides compliance support, technology and other services to over 3,000 independent financial advice practices across the UK. All of these firms are directly regulated by the FCA. We therefore have extensive interaction with the FCA, assisting firms to become directly authorised and supporting them throughout their business lives, especially in any dealings with the FCA.

Q2: What is your interest in, or connection with, the FCA?

I would like the firms that we serve and, in turn the many hundreds of thousands of consumers they serve, to benefit from a much more efficient and effective regulator. Unfortunately, too often the regulator is slow to act against reckless or criminal advice or high-risk products, whilst creating overly bureaucratic processes for the sector as a whole. This tarnishes the reputation of the sector, and creates significant liabilities on honest firms through the wholly inappropriate funding method of the Financial Services Compensation Scheme (FSCS).

Q3: Briefly describe the interactions you have personally had with the FCA.

Over the years I have visited the FCA to urge them to address various issues, particularly in relation to the funding of the FSCS. I have responded to relevant Papers and Calls for Evidence etc. and attended meetings and conferences to hear from and meet FCA speakers.

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Q4: In broad terms, what have your dealings with the FCA been like?

My dealings with the FCA have always been conducted very courteously and professionally. Unfortunately, one often feels that their minds are not really open to change, and that they are consulting purely because their terms of reference require them to do so.

Q5: Have you ever witnessed any actions or conduct that, in your reasonable belief, breached any law, regulatory code or applicable or relevant policy? If so, please explain which law, code or policy you believe was breached.

No

Q6: Have you experienced situations where interacting with the FCA has been helpful to either yourself or others? If so, please explain what made the interaction(s) helpful.

About seven years ago, following a detailed personal submission to the FCA in respect of the flawed funding of the FSCS, I met with the then FCA Chair. When the FSCS Review was concluded part of my proposal was adopted, which I attribute to my submission and the related meeting.

I had drawn attention to the fact that, uniquely, product manufacturers in the UK bore no responsibility for their distribution and that 100% of the risk, and cost, fell on the advisers. This is despite advisers having no possibility whatsoever of being aware of the irresponsible or criminal advisers who create the liabilities. Product Providers, on the other hand have a much greater knowledge of the market and therefore a greater likelihood of spotting wrong doing. Product manufacturers now contribute 25% towards the FSCS. This contribution should be increased to 80%.

Q7: What are your thoughts on whether the FCA lacks the powers that it needs; or conversely, that it doesn't make good use of the powers it already has?

In general, the FCA does have the powers it needs. An exception is the Senior Managers Certification Regime, which does not apply to Appointed Representatives, and I understand would require legislation for it to do so. This is a nonsensical situation. A consumer has no meaningful way of being aware of the difference in responsibility between a directly authorised adviser, and one whose advice responsibility is not borne personally, but by his/her principal.

In other areas, whilst the FCA has the power it needs, it is often far too slow to respond to issues, nor does it make use of some of the market intelligence it either has, or should have, at its disposal.

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Q8: Have you experienced any difficulties or shortcomings in your interactions with the FCA?

The application process to become a directly regulated firm of the FCA is disgracefully slow. It can be several months before a case officer is nominated to look at an application. Then, even for the most straightforward of applications, it can take several more months before approval is granted. This

amounts to a significant restraint of trade and potentially disadvantages consumers.

Q9: Have you experienced the FCA being reluctant to give clear answers to questions?

This is not something which has impacted on me personally.

Q10: What is your perception of the culture of the FCA, and what do you think of it?

My perception is that it is overly bureaucratic. This not helpful to the firms it regulates, nor does it enable it to act quickly enough when a problem or potential problem arises. This often results in increased consumer detriment which could, and should, have been avoided.

Q11: Have you ever complained officially about the FCA; if so to whom? What happened, and how do you feel about what happened? What feedback, if any, have you had about your complaint? How helpful was the feedback? How long has it taken for your complaint to be processed?

Not personally, however I am aware of a number of cases over the years which have resulted in serious harm and/or injustice to the firms or individuals concerned.

Q12: What do you think about the possibility of conflict of interest issues at the FCA?

Without knowledge as to how FCA personnel manage and share market sensitive information internally, this is difficult to answer. It must, however, be a concern where senior executives within the FCA leave and take up high-level roles within the private sector.

Q13: Do you believe there should be spot checks by the FCA on regulated and/or unregulated entities, perhaps similar to the spot-checks by VAT inspectors

One would expect that the possibility of a spot check would be a deterrent to irresponsible or criminal advisers or firms. I doubt that it is a silver bullet however, and it would be unwise to expect it to have more than a limited impact on wrong doers.

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Q14: What positives are there about the FCA that you would like to comment on?

Considering its enormous cost and its 4,000 plus staff it is highly questionable as to whether it delivers value for money either to consumers, the Government, or the financial services sector.

Q15: If you could change three things about the FCA, what would they be?

- 1) The grotesquely unfair funding method of the FSCS needs further reform.
- 2) Apply the SM&CR to Appointed Representatives.
- 3) Establish a small group of experienced financial services individuals, half from product providers and half from the advice sector, to risk assess every new financial product and advise the FCA of its potential for consumer detriment. The FCA could then regulate it appropriately.

Q16: The FCA is undertaking a Transformation Project. Do you have any comments to make about that?

The Transformation Project, whilst centred around LCF, highlights systemic regulatory failures. Not counting the cost of the LCF review, or the cost for redress to be borne by the taxpayer, it is the damage to consumer confidence by the regulatory inadequacies and inaction in meeting its Statutory Objectives, which needs to be addressed.

The irony is the FCA regulates individual accountability within firms under SM&CR, but they themselves appear to be unable to identify any individuals accountable for this regulatory catastrophe. Deferral of discretionary pay awards demonstrates inadequate empathy to investors who have lost their life savings. This is a sad indictment of the culture of those responsible for establishing market standards.

It is too early to judge whether the right outcomes will be achieved by the Transformation Project, I sincerely hope it will, but I also hope it will be extended to include the Woodford saga.

Q17: Are there any other comments that you would like to make?

For a regulatory system to operate well and serve the interests of all stakeholders, it has to be proportionate to the different types of firms being regulated. It should also be simple to understand and implement, with regulatory supervision targeted at the risks within a firm.

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I would urge every member of the APPG to read the FCA Handbook. It is complex and often a transcript of legislation without meaningful interpretation or basic guidance. It is produced for all types and sizes of firms, from FTSE 100 companies to sole proprietors. It is therefore wholly disproportionate for smaller firms. The number of individual advisers has reduced from a previous

c.250,000 to currently approximately 25,000, which is a 90% reduction. This not a sign of good or effective regulation.

The overall result is a significant reduction in the availability of advice when all the evidence is that consumers who receive advice, are significantly better off in later years than those who do not benefit from advice. We therefore need more advisers if we are genuinely serious about improving consumer outcomes.

A handwritten signature in black ink, appearing to read 'Ken Davy', with a stylized flourish at the end.

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