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Highlights from the 3rd Annual General Meeting of the Financial Conduct Authority

Article by David Bowden

The Financial Conduct Authority (FCA) was created in April 2013 and inherited legacy regulators such as the FSA and the OFT. The FCA held its 3rd annual general meeting (AGM) at the Queen Elizabeth II conference centre in Westminster on 19 July 2016. This article summarises the main points in the annual report, the presentations made at this AGM and sets out a selection of questions that the Board faced.

The FCA was created by the coalition government. It was felt that the FSA had not been effective enough during the financial crisis. The FCA's 3rd annual report was published in July 2016. How does its replacement regulator the FCA feel it has done in its third year? As well as the main FCA report, accompanying this were 3 companion reports from its Consumer Panel, Practitioner Panel and Smaller Business Practitioner Panel. The board of the FCA also took questions from the floor at its AGM on 19 July 2016 and attempted to answer these. The FCA's annual report is here: www.fca.org.uk/static/documents/corporate/annual-report-2015-16.pdf .

Who was at the AGM?
At the AGM were some of its main executive and non-executive directors. This included its:

- Chairman (**John Griffith-Jones**),
- Chief Executive (**Andrew Bailey**),
- Director of Supervision: Retail and Authorisations (**Jonathan Davidson**),
- Chief Operating Officer (**Georgina Philippou**), and
- Director of Strategy & Competition (**Christopher Woolard**).

These executive directors of the FCA did not attend the AGM:

- Director of Supervision: Investment, Wholesale and Specialists (**Megan Butler**),
- Director of Enforcement and Market Oversight (**Mark Steward**),
- Director of Risk and Compliance Oversight (**Barbara Frohn**), and
- General Counsel (**Sean Martin**).

The only non-executives directors in attendance were Ruth Kelly and Jane Platt. Neither of these 2 spoke or made any visible contribution to the meeting. The other 5 NEDs did not attend (that is Catherine Bradley, Amelia Fletcher OBE, Bradley Fried, Baroness Sarah Hogg and Sam Woods).

What about the FCA Panels?
In previous years, the FSA had always invited representatives of its 3 panels to its AGM to present their companion reports. Rather disappointingly once again the FCA has not followed this practice and no-one was there from these 3 panels. In the interest of completeness, we set out below the main findings from these 3 panels and a link to where these other companion reports can be found.

What was the mood of the meeting?
Attendance at the meeting was down significantly with fewer representatives from authorized firms attending. Although Andrew Bailey has only recently taken over as CEO of the FCA from Tracey McDermott, he had been on the FCA board for some years and was well briefed in all the main areas and answered all questions (even the contentious ones well). There was interest in what the FCA would be doing about Brexit.

Will Brexit mean Brexit for the FCA?
John Griffith-Jones stressed at the outset that London was a global financial centre, and that there would be ramifications of the referendum outcome. The FCA is focused on its overriding objective that markets work well. The FCA will not speculate on what the outcome of the UK Government's negotiations will be. Domestic financial regulation derived from EU law will remain applicable until changes are made either by the UK Government or Parliament.

The FCA will continue to plan for EU legislation already in the pipeline such as MiFID2. Consumer rights and remedies are unaffected by the referendum outcome. The FCA will supply technical advice to the UK Government. The FCA will discuss with firms and consumers what rights are important to them and why. Whilst this is underway the Chairman does not want the FCA to take its eye off the ball in upholding its statutory objectives.

Andrew Bailey agreed that the FCA was working hard to respond to the challenge. The FCA will continue to implement EU rules. The FCA wants to see that UK firms continue to have access to Europe's internal market. There will be trade agreements with other countries. The FCA was to see healthy competition supported by cross-border trade in services with robust global standards and regulation. The FCA is familiar with equivalent standards. However these are unsettling times and the FCA owes it to people to put their minds at rest.

What is the view of the chairman of the FCA on its performance?
John Griffith-Jones is the chairman of the FCA. There has been close scrutiny of high profile activity particularly in these 3 areas:

- Senior Managers Regime.
- Consumer Credit authorisations, and
- Major redress
    - PPI, and
    - Interest Rate Hedging Products ('IRHPs').

On pension choices, the FCA wants a fair and effective market review. There will be a comprehensive work programme from the FCA. The Regulator does not operate in a bubble. Hard evidence is sometimes difficult to come by. The FCA does not know what harm it has prevented. Firms should tackle 'old' cases before material detriment is caused. The FCA will remain alert to emerging risks.

What about the forthcoming year?
Andrew Bailey stressed that it was not feasible for the FCA to be '*everywhere on the landscape at all times*'. He said the FCA has to make choices and that the FCA needs a clear mission and needs to balance its obligations to firms and consumers with its role as a regulator. This needs further explanation from the FCA as to how that will operate. The FCA has many regulatory tools. The FCA is working on something on this which it hopes to publish in autumn 2016 on the FCA's mission. It will be seeking views but there is a lot yet to be done.

The FCA Business Plan for 2016-17 is here: www.fca.org.uk/static/documents/corporate/business-plan-2016-17.pdf. There are 4 main priorities:

- Financial crime,
- Pensions,
- Wholesale markets, and
- Innovation.

The FCA's core work is in developing policy, promoting competition, authorizing or supervising firms and enforcing its rules. The headline numbers are:

- 56,000 authorised firms,
- 125,000 approved persons,
- 14,300 authorised consumer credit firms,
- 1,014 whistleblowing cases,
- 1020 sanction reports, and
- 400,000 queries from firms or consumers to the FCA call centre.

What is the view of the chief executive of the FCA on its performance?
Andrew Bailey became the chief executive of the FCA in July 2016. This was his first AGM as CEO.

On Supervision, the implementation of CONC in April 2014 meant extra resources were needed at the FCA and the volumes were higher that it expected. 31,000 consumer credit firms had been authorized by the FCA by March 2016. 90% of applications from high risk firms had been dealt with by the statutory deadline. The FCA has conducted a thematic review into the quality of debt management advice. 400,000 consumers are in commercial debt management plans. In the high cost short term credit market, it is unacceptable that firms were failing to recognize financial difficulty cases. Some firms have addressed this by staff training.

The FCA's thematic review of life insurance in March 2016 looked at fair treatment of long standing customers. In that market there is £153billion of funds in firms held on behalf of 9.3m customers.

In addition to LIBOR, several other benchmark rates entered the regulated perimeter and since 2013 have been regulated by the FCA. The FCA has carried out supervision visits to the 20 banks which provide the LIBOR data. The FCA published its report on this in July 2015. There have been some positive changes made but there is significant further work needed to ensure risks are managed appropriately.

The Senior Manager's Regime came into force on 7 March 2016. These represent the most important reforms since the financial crisis of 2008. There was a lack of clarity within firms as to who was responsible for failure. This is a cohesive yet flexible accountability regime across firms with a sensible and credible deterrence to misconduct.

On PPI, £24billion has been paid by firms in redress. Last year there were 2.3million customer complaints about PPI. The FCA intends to set a deadline for receipt of PPI complaints with a long stop date being 2 years after the conclusion of an advertising campaign on this funded by an industry levy. A fine of £117million was levied on Lloyds Bank, Bank of Scotland and Black Horse for its handling of PPI complaints.

On pensions the FCA works closely with Government. Pension freedom represents the single biggest challenge ahead for the FCA. On consumer protection, the FCA is reviewing the rules. In January 2016 HM Treasury said there should be a cap on early exit charges set at 1%. The FCA maintains a list of cold calling companies and those it knows are operating a scam and these are on its website.

In August 2015 the Financial Advice Market Review ('FAMR') was published jointly with HM Treasury. There is a barrier to the less well-off who can't afford to pay for advice. The Retail Distribution Review has sought to remove opaque charges but this has contributed to this advice gap. The FCA has a working group on this.

On competition, the FCA has focused on these 3 areas:

- Cash savings (*ensuring customers are aware of better rates on other savings accounts*),
- General insurance add-ons (*banning opt-out selling*), and
- Credit cards.

On the latter, whilst the FCA notes there are 34million credit card customers, there are 2 million in these cohorts:

- Customers in arrears,
- Persistently late in payment, and
- Making the minimum payment each month.

The FCA is shortly to publish its recommendations on this.

In October 2014 the FCA launched Project Innovate designed to help firms and offer support to those seeking to innovate. There is a 'safe space' open for the 1st wave of applicants and this has attracted a good response. The FCA has obtained agreement with the Australian financial regulator in March 2016 and signed one recently with its opposite number in Singapore. Others are in the pipeline.

Operation Tabernacle has been a complex insider dealing case. There were 8 suspects resulting in 5 convictions and 3 guilty pleas. This was the culmination of an 8 year investigation and 3 month trial.

How does the Financial Services Consumer Panel (FSCP) see things?
The FSCP Annual Report 2015-16 can be found in full here:
www.fs-cp.org.uk/sites/default/files/financial_services_consumer_panel_annual_report.pdf

Sue Lewis is the Chairwoman of the FSCP. She is a Consumer Advocate Member of the Chartered Insurance Institute's Professional Standards Board, Trustee of the Personal Finance Education Group and of StepChange debt advice charity.

The panel sets out 3 groups of priorities for 2016-17:

- From previous years:
  - Banking culture
  - Duty of Care
  - Investment costs
  - Small businesses as consumers of financial services
- New priorities:
  - Consumers as drivers of competition
  - Measuring the FCA's effectiveness
  - Peer-to-peer lending
  - Technology and financial services
- European ones:
  - new Prospectus Regulation,

- legislative initiatives flowing from the Retail Financial Services Green Paper,
- PRIIPs Regulation
- EIOPA's work on the technical standards for the Insurance Distribution Directive,
- EBA's work on standardised terminology under the Payment Accounts Directive.

How does the Financial Services Practitioner Panel (FSPP) see things?
António Simões is the Chairman of the FSPP. He is also Chief Executive Officer, HSBC Bank plc. The FSPP Annual Report 2015-16 has not yet been published but will appear on its website in due course: www.fca-pp.org.uk

How does the Smaller Business Practitioner Panel (SBPP) see things?
Clinton Askew is the chairman of the SBPP. He has worked in the independent sector since 1986 and was until 2003 a partner in a small family IFA business. He is a former Director of the IFA Association and Chairman of its London region. The SBPP Annual Report 2015-16 has not yet been published but will appear on its website in due course: www.fca-sbpp.org.uk/fcasbp-publications/annual-reports

What questions were asked from the floor at this AGM?
In total 19 questions were asked at the AGM. In this piece not all of those questions are set out and questions have been grouped according to theme. The contentious questions fell into 8 main groups:

- Brexit
- Interest rate hedging products (IRHPs),
- Financial technology,
- Skilled persons reports under s166 of the Financial Services and Markets Act 2000,
- Global Restructuring Group ('GRG') at the Royal Bank of Scotland,
- Authorisation process
- Accountability of the board of HSBC, and
- Report into HBoS failure.

Brexit
Andrew Bailey said the FCA would work closely with the Bank of England with the UK Government in the lead. The FCA will provide technical assistance. The FCA needs to work out the effect of choices made for the existing FCA regime. The current rules will remain in place. MiFID2 will be implemented because the UK still remains a member of the EU. There will be changes following the inter-governmental negotiations but the FCA cannot yet determine them. Deregulation will not lead to a bonfire of regulations. The passporting regime is very important for wholesale banks but operates less for retail banks. EU legislation comes from either Directives or Regulations. Regulations are directly enforceable. More EU legislation in recent years has been by way of Regulation. It is for the UK government to fill the gap.

Many UK firms want their FCA passported authorisation to continue. Chris Woolard said there had already been discussions on this but the FCA will not be in the lead in Brexit negotiations. The FCA has set up a co-ordinating unit which is a re-pointing of existing resources. Andrew Bailey said that passports under the UCITS regime are different as this is based on domicile and presence.

IRHPs
Keith Bates said that over 18,000 SMEs had been affected by this. Andrew Bailey said there had been 20 meetings of the FCA representative group on this issue. The FCA has 2000 pieces of correspondence which relates to 400 different firms. The FCA has received correspondence on this issue from 200 different Members of Parliament. It is an issue that the FCA is taking seriously. 91% of cases have been assessed as in default and in 86% of those cases redress representing a full refund has been offered. Andrew Bailey said he had received a stream of emails about this which started to arrive on Sunday night but he has not yet had the chance to read them.

A lengthy speech was again given by Jeremy Rowe of Bully Banks. This concluded with his asserting that the FCA had ample hard evidence based on 16,500 mis-selling cases of IRHPs. He said the major outstanding problem related to consequential loss claims. He claimed most small business owners had been forced to take what was offered to them and that in 3250 cases the consequential loss offered by the banks was less than £10k. Andrew Bailey said that the FCA made agreements with the banks affected in 2012 and this was supplemented in January 2013. The stress testing that the PRA implemented of banks did not seek to water down the impact of IRHPs. *Holmcroft Properties* **[2016] EWHC 323 (Admin)** remains the subject of an outstanding application for permission to appeal to the Court of Appeal. However Mr Bailey conceded that Mr Rowe made valid points and he promised to read the emails and offered to meet him to discuss this.

Financial technology
Chris Woolard said the FCA was committed to Project Innovate. The FCA is assisting 300 new firms in the innovation space. The FCA has a 'regulatory soundbox'. The FCA continues to pursue 3rd country agreements having concluded ones already with Australia and Singapore.

Skilled Persons Reports
Mr Ian Morris raised his case of a structured collar sold to him by RBS in January 2007 and made assertions about the skilled persons report in his case. He said in 2015 he was offered a 'take it, or leave it' deal. Andrew Bailey promised to look further into his case. He stressed the independent review could only be done when the outcome of the *Holmcroft Properties* case was known.

GRG
The FCA is not yet finished with its review on this. The FCA is working hard on this but cannot comment on the process. Mr Bailey undertook that the FCA's work will be completed as soon as possible.

Authorisation process
John Donachie of Castle Harbour Securities asked why this process took so long. Jonathan Davidson said authorisation was a very important tool for the FCA. The FCA expects high standards. The FCA has 56,000 firms to supervise. The quality of applications received by the FCA varies. If a received application is complete, then the FCA endeavours to deal with it within the statutory 6 month deadline. Firms vary in their complexity. The FCA looks to firms to convince it that they are resourced to predicted volumes. The 13,000 consumer credit cases were in excess of anticipated numbers. The FCA has added staff and is looking at what else it can do to speed things up. 49,000 firms transferred to the FCA from OFT regulation. 6000 firms applied to be authorized representatives. 90% of authorization applications have been determined in the statutory 6 month period.

Debt Management Firms
Jonathan Davidson said there are 400,000 customers of fee paying debt management companies. In June 2015 the FCA conducted a thematic review. The FCA regards many of these customers as vulnerable. The FCA has concerns about an unacceptable standard of treatment. 293 firms applied for authorization to conduct debt adjusting but so far only 39 firms have been authorized for debt counselling with 120 firms having withdrawn their authorisation applications. A further 89 firms are awaiting a decision from the FCA.

Accountability of the board of HSBC
Andrew Bailey said that the FCA is a party to a deferred prosecution agreement of HSBC reached in the US by its Department of Justice. The FCA is not blocking the release of the Monitor Report (which was released to the US House of Representatives in July 2016). The DoJ view is that the best way forward is if this report is not published. Mr Bailey said that he had read the report and maintained that the FCA was doing a good job as HSBC's lead regulator. However Mr Bailey stressed if was the job of the chairman and CEO of HSBS to sort this out and that if it was not then it will have to take the consequences.

HBoS Report
Philip Meadowcroft asked for an update on this noting that this issue had been raised at 5 previous AGMs. Andrew Bailey said there were 2 reports – 1 on the failure of HBoS and the other on the FSA's conduct of enforcement action. This latter was written by Andrew Green QC who concluded there were shortcomings in the FSA's processes. This is something the FCA is re-examining and it is accepting the recommendations of the Green Report. HM Treasury Select Committee looked at this in December 2015. The FCA will look at the evidence and reach a conclusion.

Connaught investors
Emma Burton asked for an update on this – the FCA having been questioned on this at last year's AGM. Andrew Bailey said this was a serious issue, it was subject to an on-going investigation and there were limits to what he could say. He said the FCA would use whatever powers it can.

19th July 2016