

FT Advisor - 10 October 2019

Govt denies new powers for regulator



The government has denied calls to make it easier for the Financial Conduct Authority to crack down on unregulated business.

HM Treasury said it did not deem it necessary to give the FCA formal powers to request changes to its regulatory scope.

This was in response to MPs warning the current system by which the FCA requests any changes to this scope was "informal" and created a "grey area" between regulated and unregulated activities which risked being exploited, as was seen in cases like London Capital & Finance, which saw the funds of more than 14,000 bondholders put at risk.

The committee is concerned the regulator might feel it can't act on unregulated business that sits outside its scope unless it has received permission from the government, and the current process of achieving this is inefficient.

In a report published in August it therefore [called for the regulator to receive formal powers to ask for changes to its remit.](#)

The committee's report had the backing of FCA chairman Charles Randell, who told MPs he was "personally very unhappy [...] with the complexity of the perimeter of regulation" and warned "bad people" may exploit the grey area between where a consumer is protected by regulation and is not.

The committee recommended "clear and explicit" warnings should be provided where regulated financial institutions undertake unregulated activity and warned current challenges such as the regulation of mini-bonds, including the London Capital & Finance scandal, and mortgage prisoners sat in this so-called grey area.

But in its response published today (October 10) the government maintained it did not see a case for providing a formal power for the FCA to request changes to the perimeter.

The government said: "Decisions on which activities should be within the perimeter of regulation should ultimately be for ministers, with approval by parliament.

"The government therefore takes full responsibility for consulting on and proposing any changes to the perimeter to parliament. The government monitors the perimeter on an ongoing basis and acts when it sees consumer detriment."

The committee warned in August that the current set up meant the regulator's work would always be retrospective.

It said: "The FCA's current inability to gather information on the risks to consumers both at and beyond the perimeter means that it will always be reactive."

It said if the Treasury refused to implement its recommendations it must instead "acknowledge that it has itself fully retained these responsibilities" and report annually on the work it intends to do to monitor the regulatory perimeter instead.

HM Treasury said it already engages "regularly" with financial regulators, including the FCA, at both official and ministerial level to determine whether perimeter need to be changed.

It also said it was already working with the FCA to determine whether additional steps can ensure consumers understand what regulatory protections "they may or may not be entitled to when engaging with unregulated products", which was partly in response to the failure of London Capital & Finance earlier this year.

It added: "The government agrees that the FCA must not be constrained from providing warnings on financial products that may cause consumer detriment.

"Under section 139A of the Financial Services & Markets Act 2000, the FCA has the power to give guidance on 'any matter which it appears to the FCA to be desirable to give information or advice'.

"The FCA regularly highlights the risks faced by consumers who engage with activities outside of the perimeter, such as through issuing consumer warnings and guidance, including recent examples of mini-bonds and cryptoassets."

Catherine McKinnell MP, interim chairwoman of the Treasury committee, said it was "disappointing" the government does not see the case for providing a formal power for the FCA to request changes to the perimeter.

She said: "It would formalise the relationship that the committee are told already exists between ministers, officials and the FCA, thus providing greater transparency to the process.

"The Treasury committee will continue to raise these issues in our evidence sessions with HM Treasury and the FCA."

Ms McKinnell added: "There are signs in the government's response to our report that it has started to engage with our recommendations on the remit and powers of the FCA. We look forward to the further work promised in this response."

An HM Treasury spokesperson said: "To ensure we get the balance right, we regularly monitor the system and are engaging with the committee's recommendations on the FCA and regulation.

"By taking this approach, we can continue to attract business and create jobs, while making sure consumers are properly protected."

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