



House of Commons
Treasury Committee

The work of the Financial Conduct Authority: the perimeter of regulation

Thirty-Fifth Report of Session 2017–19

*Report, together with formal
minutes relating to the report*

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The Treasury Committee

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The FCA's perimeter of regulation

Introduction

1. As part of the Treasury Committee's ongoing inquiry, *The Work of the Financial Conduct Authority*, the Committee holds regular hearings with the Chairman and Chief Executive of the Financial Conduct Authority. A range of topics are discussed in these hearings, including issues that stem from correspondence received by the Committee.
2. This Report contains recommendations to the Treasury on the remit and powers of the Financial Conduct Authority. It draws upon the continuing work of the Treasury Committee in scrutinising the Financial Conduct Authority (FCA), as well as evidence from our other inquiries.
3. There are three regular areas of questioning in our evidence sessions:
 - The speed at which the FCA can come to conclusions, including around enforcement action ("timeliness");
 - the information the FCA discloses about its work and decisions ("transparency"); and
 - how the FCA deals with, and is able to deal with, issues beyond the perimeter of regulation ("terrain").

Some of these issues may stem, in part, from the legislative underpinnings of the work of the FCA.

4. This Report concerns the work of the FCA at and beyond the perimeter of regulation. The Committee will continue to scrutinise the work of the FCA in relation to its timeliness and transparency as part of its ongoing inquiry *The Work of the Financial Conduct Authority*.

The Perimeter of Regulation

5. In its broadest sense, the perimeter of regulation determines what the FCA can and can't regulate. The perimeter of regulation is, in the main, defined by what Parliament has said the FCA should regulate, through both primary and secondary legislation. Andrew Bailey, Chief Executive of the Financial Conduct Authority, provided the following description of the perimeter, including its legislative underpinnings:

Certain types of financial services activity require a licence or "permission" before they can be carried on. The definition of these activities, and the "specified investments" to which the activity relates, is at the heart of FCA regulation. The activities are described at a high-level in the Financial Services and Markets Act 2000 (FSMA), and in more detail in the Financial Services and Markets Act 2000 (Regulated Activities) Order (the RAO). We usually refer to such activities simply as "regulated activity" or as being within the "FCA's perimeter". Much of the regulatory framework set out in FSMA, and most of the FCA's powers, are targeted at regulating the conduct of this activity. Persons licensed to perform such activities are

“authorised persons”. Obvious examples of regulated activity are giving advice on whether to invest in particular securities or, since 2014, providing consumer credit. Performing such activities without an FCA permission is a criminal offence.¹

6. However, in its recent Report on the perimeter, the FCA also noted that there was other legislation that affected the perimeter:

Other UK and EU legislation also has a say in defining our perimeter, including, but not limited to, the following:

- We act as the UK’s listing authority. The listing regime applies to firms whether they are authorised under the Financial Services and Markets Act (FSMA) to conduct regulated activities or not. The vast majority of listed companies are not FCA authorised firms.
- The market abuse regime applies to the behaviour of any person, irrespective of whether they are authorised by us.
- We are also responsible for regulating some entities or conduct under standalone legislation outside the FSMA framework. The Payment Services Regulations, for example, set out a separate regime for registering or authorising payment service providers and give us a different set of responsibilities and powers. Similarly, the Money Laundering Regulations 2017 give us specific responsibilities beyond those we have for authorised firms conducting regulated activities.
- We have a specific objective to promote competition in the interests of consumers and have ‘concurrent competition’ powers shared by the Competition and Markets Authority (CMA) and other regulators. All these regulators can use these powers to address ‘financial services activity’ rather than being limited to the regulated activities in the RAO.
- The Financial Promotions Regime requires that most financial promotions should be checked by an FCA-authorised firm for compliance with certain standards set in our rules, in particular that the promotion is clear, fair, and not misleading. But communicating or approving financial promotions is not a regulated activity itself. As a result, our oversight of such activity is limited—there is no requirement to report to us or seek our approval to communicate or approve financial promotions.
- We are able, using injunctive powers, to enforce certain provisions of the Consumer Credit Act 1974, even against unauthorised persons. For example, provisions giving the courts powers for unfair credit relationships, which can also apply to nonregulated credit agreements.²

1 Letter from the Chief Executive of the FCA to the Chair of the Treasury Committee, 30 January 2018

2 Financial Conduct Authority, [Perimeter report 2018/19](#), June 2019, pp4–5, para 1.5

The FCA's Perimeter Report

7. The FCA recently published its first Perimeter Report. In his foreword, Andrew Bailey noted that the question around the FCA's Perimeter had, in part, been particularly important in 2019 as “firms operating on the edges of the perimeter have recently caused serious harm to consumers”.³ Andrew Bailey also told us that the FCA's Perimeter Report “genesis” had been questions asked by the Treasury Committee, and that it was “really out of that that we have done it, so the Committee has been very helpful in this respect, actually”.⁴

8. The FCA's Perimeter Report covers the definition of the perimeter, challenges to the perimeter, the impact of those challenges on consumers, and the future action the FCA will take at the perimeter.⁵

9. **We welcome the FCA's publication of its first Perimeter Report, which has informed this Committee's consideration of this question.**

Complexity

10. In its Perimeter Report, and in its evidence to this Committee, the FCA has raised concerns about the complexity of the perimeter, and what this means for consumers. Andrew Bailey described the perimeter as follows:

[...] the perimeter, which, as a colleague of mine says, looks like the coast of Norway: when you view it from a long way out it looks completely flat, and then you find it is actually 10 times longer than you think it is.⁶

11. The Chair of the FCA, in his evidence to us, noted the recent changes in the landscape for financial services and what this had meant for consumers:

[...] what we have seen over the past few years is a very significant transfer of responsibility and risk from institutions—in particular, private employers—to private individuals who are expected to take responsibility for quite complex and sometimes very high-risk investment decisions.⁷

He described himself as “personally very unhappy [...] with the complexity of the perimeter of regulation”⁸ adding that:

I think my colleagues at the Financial Services Compensation Scheme and the Financial Ombudsman Service would agree with me that it is not clear to consumers where they leave protection and where they remain within it. We have too many hinterlands where they are one foot in and one foot out. This has to stop, because it attracts bad people who wish to exploit those grey areas.⁹

3 Financial Conduct Authority, [Perimeter report 2018/19](#), June 2019, p3

4 Q495

5 Financial Conduct Authority, [Perimeter report 2018/19](#), June 2019

6 Q499

7 Q492

8 Q492

9 Q492

12. The FCA's Perimeter Report highlights how the complexity of the Perimeter has an impact on consumer outcomes:

The current perimeter is complicated. This makes it difficult for consumers to understand which of our protections apply in what circumstances, and what compensation they may be eligible for. The recent behaviour of some firms operating around the perimeter has caused serious consumer harm and reduced trust in regulated financial services markets.¹⁰

The Treasury Committee and the perimeter

13. Concerns about the perimeter, and its complexity, have featured in the work of previous Treasury Committees. The Treasury Committee in the 2010–15 Parliament concluded in its Report *Conduct and competition in SME lending* that so-called Tailored Business Loans (TBL) sold by Clydesdale bank had specifically been designed with the perimeter in mind:

From the point of view of the customer, the services provided by the hedging element of a loan with an embedded interest rate hedging facility—such as a Tailored Business Loan—and a stand-alone IRHP [Interest rate hedging product] are extremely similar, if not identical. But stand-alone IRHPs are regulated, while loans with embedded interest rate hedging facilities are not. It is a logically inconsistent result of the perimeter of regulation that products whose effects may be identical fall on both sides of the perimeter.

Clydesdale understood that TBLs were unregulated. It created TBLs to avoid requirements imposed by the regulator on the sale of a regulated product, IRHPs. It claims that this was to simplify the associated documentation, and to make the product easier for customers to understand. The use of TBLs has left regulators powerless to enforce compensation for customers to whom products were mis-sold, as they have done with IRHPs. Clydesdale created a product that retained the risks and complexities of the regulated product, but had none of the safeguards.¹¹

14. Issues around the perimeter have also been present in the work of the current Treasury Committee. The following list provides examples of topics the Committee has considered or queried that have elements of perimeter complexity to them:

- RBS' Global Restructuring Group (GRG), and the wider issue of SME lending.
- 'Mortgage prisoners' (those who face barriers to switching their mortgage).
- The failure of London Capital and Finance, and wider questions around the regulation of so called 'mini-bonds'.
- The regulation of Cryptoassets.
- The regulation of Funeral plans.

10 Financial Conduct Authority, [Perimeter report 2018/19](#), June 2019, p17, para 4.2

11 Treasury Committee, *Conduct and competition in SME lending*, Eleventh Report of Session 2014–15, HC 204, paras 149–150

15. Many of these issues have seen significant harm done to consumers and small businesses. For example, in the course of its work, this Committee has heard first hand the considerable distress to SME owners brought about by RBS GRG. In part, it led this Committee to initiate its wider inquiry and Report into *SME Finance*. Subsequently, there has been widespread disappointment at the FCA's inability to take action following its publication of its *Report on the Financial Conduct Authority's further investigative steps in relation to RBS GRG*, due to the constraints of the Perimeter.¹² Mr Bailey, when asked whether he would recognise that "there will be individuals out there who feel they have not had justice?", replied "Yes, but I cannot operate outside the law. I am sorry".¹³

16. The perimeter of regulation, as has been seen in the Committee's work, appears to be confusing for consumers of financial services, whether they be individuals or small businesses. In fact, that lack of understanding may well be preyed upon. Some firms may also deliberately game the perimeter to undertake regulatory arbitrage.

17. Care needs to especially be taken where regulated financial institutions are undertaking an activity that is itself unregulated. Often the realisation that an activity is unregulated comes only after problems emerge, and the regulator's lack of power becomes apparent to those affected.

18. *The Committee recommends that where regulated financial institutions undertake unregulated activity, the regulatory system should ensure that clear and explicit warnings are provided at that point, with the potential consequences of the lack of regulatory cover clearly explained, with sanctions for firms that fail to do so.*

The FCA's powers at the perimeter

19. As discussed above, the FCA is constrained when considering activity outside the perimeter. However, David Raw, Deputy Director, Banking and Credit, HM Treasury, pointed out that this does not mean that the FCA is completely unable to take action beyond that line. He told us that:

It is probably worth saying that even if something is beyond the regulatory perimeter, if that activity is so egregious, widespread or of a particularly bad nature, and is relevant to that firm's fit and proper status, or in the case of banks their standing as a deposit taker, the FCA can take action. Three of the FCA's principles, including around systems and controls that the firms have in place, as well as whether they are communicating with the FCA in an open and transparent manner, apply to all activity of the regulated firm, whether it is unregulated or regulated. [...] It is not quite as clear cut as saying that if it is outside the regulatory perimeter there is nothing they can do about it.¹⁴

20. This point was also considered by the FCA in its Perimeter Report, which noted that:

We have some powers over FCA authorised firms when they conduct unregulated activities, but they are generally more limited than our powers with respect to firms' regulated activities. For example, our principles can

12 FCA, [Report on the Financial Conduct Authority's further investigative steps in relation to RBS GRG](#), June 2019

13 Q533

14 Oral evidence to the Treasury Committee, [SME Finance](#), 27 June 2018, Q290

be applied to unregulated activities in certain circumstances. Similarly, we may be able to take action under the Senior Managers & Certification Regime (SM&CR) against individuals for activities outside the perimeter.¹⁵

The FCA also explained how it decided when to act:

Our Mission explains that we are more likely to act if we become aware that the unregulated activity is illegal or fraudulent, has the potential to undermine confidence in the UK financial system, or is closely linked to, or may affect, a regulated activity.¹⁶

21. However, the FCA also highlighted the limited nature of those powers, and its lack of remit:

[...] we do not actively supervise or intervene in activity or markets outside the perimeter to the same extent as we do inside it. Doing so would ignore the clear choice expressed in legislation, by successive parliaments and governments, about the degree of regulatory scrutiny expected, and would be an inappropriate use of our resources.¹⁷

22. While the FCA does have some powers to act beyond the perimeter, they are more limited than those they can use within the perimeter. Perhaps more importantly, the regulatory system as currently set up does not provide the FCA with the remit to actively monitor or intervene outside the perimeter, with a consequent effect on the FCA's focus and how it directs its resources.

Changing the perimeter

23. While the FCA regulates those firms and activities within the perimeter, HM Treasury is responsible for “establishing both the overall regulatory perimeter—which activities are regulated and which are not—and the dividing line between the PRA and FCA”.¹⁸ At present, the FCA has no formal power to request the Treasury to put forward secondary legislation to make changes to the perimeter of regulation to assist it in delivering its statutory objectives, such as consumer protection.

24. There is precedent for such a power, as it exists in other parts of the regulatory system. Section 9P of the Bank of England Act 1998 (as amended), provides the Financial Policy Committee (FPC) of the Bank of England with the power to recommend to the Treasury changes in the perimeter of regulation. This monitoring role for the FPC was welcomed by the Treasury Committee in the 2010–15 Parliament.¹⁹ It is important to note, though, that the FPC monitors the perimeter solely with its own statutory objective in mind—protecting and enhancing financial stability.²⁰

15 Financial Conduct Authority, [Perimeter report 2018/19](#), June 2019, p6, para 2.4

16 Financial Conduct Authority, [Perimeter report 2018/19](#), June 2019, p7, para 2.7

17 Financial Conduct Authority, [Perimeter report 2018/19](#), June 2019, p6, para 2.5

18 HM Treasury, [A new approach to financial regulation: building a stronger system](#), Cm8012, February 2011, para 2.34, p22

19 Treasury Committee, [Financial Regulation: a preliminary consideration of the Government's proposals](#), Seventh Report of Session 2010–11, HC430-I, para 79

20 Section 95, Bank of England Act 1998 (as amended)

25. When the Committee asked Mr Bailey whether there was merit in the FCA being given a power to recommend changes to the perimeter, he said:

I am fairly attracted to this. [...] One of the things that can get a bit depressing is that there is a correlation between some of the most difficult issues we face and the perimeter: funeral plans, crypto assets and GRG. These all have one thing in common, which is unsurprising, in a way.²¹

26. However, John Glen MP, Economic Secretary to the Treasury, appeared unsure that there was a need for such a formal power of recommendation and suggested the onus was on the FCA to take the initiative:

I have active conversations with Andrew Bailey on a frequent basis. Where there is activity that [Andrew Bailey] does not feel he has sufficient power on, it is for him to set that out clearly and the Government should respond to that. There are, as I say, careful calibrations to be made about the impact of extending new regulations in terms of impeding access to the same products that were offered in an appropriate way.²²

He argued that “We are in a situation where we are not sitting here passively not responding to what the FCA says”.²³

27. The case of the failure of London Capital and Finance (LC&F) also highlights other ways in which the position of the perimeter may come under investigation. Following the failure of LC&F, in March 2019 the Chair of this Committee wrote to the FCA and the Treasury to query whether independent investigations were required into both the failure of the LC&F, and the question of the regulation of so-called ‘mini-bonds’ more widely, using powers granted to those organisations under section 73 and section 77 of the Financial Services Act 2012.²⁴ In response to a request from the FCA Board, the Treasury directed that such an investigation should happen, while also noting that “the Treasury will also consider the regulatory arrangements currently in place for the issuance of these investments, including the Financial Promotions regime which governs the marketing of those products”.²⁵

28. This Committee also recommended changes to the perimeter in its Report on *SME Finance*. There, the Committee argued that:

Experience has shown that the justification for leaving commercial lending outside the regulatory perimeter is feeble, and it is unclear whether this issue was subject to sufficient public debate when the regulatory perimeter was first established.²⁶

21 Oral evidence to the Treasury Committee, [The Work of the Financial Conduct Authority](#), 13 June 2018, Q347

22 Oral evidence to the Treasury Committee, [SME Finance](#), 27 June 2018, Q292

23 Oral evidence to the Treasury Committee, [SME Finance](#), 27 June 2018, Q292

24 Correspondence from the Chair of the Treasury Committee to the Chair of the FCA, 30 March 2019; Correspondence from the Chair of the Treasury Committee to the Economic Secretary, 30 March 2019

25 HM Treasury, [Press release: Investigation into London Capital & Finance launched](#), Published 23 May 2019

26 Treasury Committee, [SME Finance](#), Twenty-Fourth Report of Session 2017–19, para 85

The Committee therefore argued that “it is clear that extending the regulatory perimeter is now necessary. Waiting for another high-profile misconduct scandal before pursuing it would be irresponsible”.²⁷ The Government disagreed, arguing that given other changes to the financial system since the crisis:

[...] the Government does not believe that there is a clear case for bringing SME lending into regulation, as there would be a number of direct and indirect costs associated with such a move. Direct costs would include annual FCA fees, product reviews and increased compliance and monitoring costs; while indirect costs would include stifled product innovation, narrower product choice for SMEs, and higher barriers to entry leading to reduced competition in the SME lending market. These changes could in turn impact on the price and availability of credit for small businesses, which is not a desirable outcome.²⁸

29. **The present system of regulation relies on an informal relationship between the Treasury and the FCA to consider whether the perimeter lies in the correct place. Alongside this, sections 73 and 77 of the Financial Services Act 2012 provide scope for investigations that may also provide stimulus to perimeter changes.**

30. **The Committee considers this ad-hoc system now to be insufficient. The FCA has made recent efforts to monitor the perimeter, most recently via the analysis published in its Perimeter Report. Its warnings on the potential harm to consumers at, and beyond, the perimeter must be heeded. The concerns around the actions of RBS Global Restructuring Group, mortgage prisoners and the failure of London Capital and Finance are all examples seen by this Committee of the need for further action.**

31. *We therefore recommend that the FCA be given the formal power, and necessary remit to be able to formally recommend to the Treasury changes to the perimeter of regulation, where that would enhance its ability to meet its objectives, in particular to prevent consumer harm. It should set out any costs, both to firms and consumers, from such a move at the same time. It would then be for the Treasury to consider such a recommendation promptly. All such recommendations and Treasury replies should be publicly disclosed. This would formalise the relationship described by the Minister, and in so doing provide greater transparency and focus to the process.*

FCA warnings

32. This Committee’s inquiry, and subsequent Report, into Crypto-assets, highlight another seeming limitation on the FCA in its ability to protect consumers of unregulated financial services—the remit to provide warnings and information.

33. When faced with Initial Coin Offerings, products in respect of which this Committee warned that “investors should be prepared to lose all their money”, the FCA issued a consumer warning.²⁹ However, David Geale, then Director of Policy at the FCA, conceded that in providing such warnings on products beyond the perimeter, the FCA may “have

27 Treasury Committee, [SME Finance](#), Twenty-Fourth Report of Session 2017–19, para 88

28 Treasury Committee, [Government and Financial Conduct Authority Responses to the Committee’s Twenty-Fourth Report: SME Finance](#), Ninth Special Report of Session 2017–19, pp 9–10

29 Treasury Committee, [Crypto-assets](#), Twenty-Second Report of Session 2017–19, HC910, para 89; FCA, [Consumer warning about the risks of Initial Coin Offerings \(“ICOs”\)](#), initially 12 September 2017

gone a little bit outside of our remit”.³⁰

34. *The FCA must not in future be constrained, or feel constrained, from providing warnings on financial products that may cause consumer detriment. The FCA should be given the remit to highlight the risks faced by financial services consumers including where an activity is beyond the perimeter of regulation. This should be written into the relevant primary legislation, and include any necessary powers needed to fulfil that remit. This would allow the FCA to identify and provide clear warnings about products and activities that might pose risks to consumers, without fear of breaching its remit. In providing such a remit, the Government should ensure that the FCA has the power to act swiftly and without undue restraint as it sees risks arise.*

Necessary information gathering powers

35. The ability of the FCA to issue warnings and make recommendations about activities around the perimeter will in part depend on the information it has about the nature of that activity. However, in its Perimeter Report, the FCA explains the limitations of its information gathering powers at the perimeter:

Currently, the perimeter determines the amount and type of information that firms must send us. Unauthorised firms are not generally required to provide us with information about their activities or finances. Firms we authorise are inside the perimeter for their regulated activities, but do not generally have to provide us with the same level of information about their unregulated activities. So, if we do choose to take action in respect of unregulated activity, it is likely to be on a reactive basis after we find a specific problem. In that regard, intelligence that stakeholders proactively pass to us is important.³¹

36. The Committee has seen the limits of the FCA’s information gathering powers in its work on ‘mortgage prisoners’. In a letter to the Committee, Andrew Bailey, when asked by Members of the Committee for more information about how many ‘mortgage prisoners’ might be helped by the FCA’s proposed rule changes to combat the problem, noted that:

Firms that are not authorised by the FCA for mortgage lending do not need to report to the FCA on the mortgages they hold, and we therefore do not hold substantial data on these mortgages. Our assumptions and analysis were therefore impacted by significant data limitations including a lack of data at a consumer level, use of different sources of data at different reporting dates and the possibility that the sale of mortgage books to firms occurred between the time periods reviewed.³²

37. To support the FPC in making recommendations about the regulatory perimeter, the Bank of England Act 1998, as amended, provides the FPC with the power to recommend to the Treasury that the PRA gather information from other, unregulated, entities.³³ The Bank of England explained in its supplementary evidence to the Joint Committee on the Financial Services Bill why it thought such a power was necessary:

30 Treasury Committee, [Oral evidence: Digital Currencies](#), HC 910, Wednesday 4 July 2018, Q199

31 Financial Conduct Authority, [Perimeter report 2018/19](#), June 2019, p7, para 2.6

32 [Correspondence from Andrew Bailey to the Chair of the Treasury Committee](#), 15 February 2019

33 Bank of England Act 1998 (as amended), Section 9P(2)(e)

In particular, the FPC has to make recommendations to the Treasury about the regulatory perimeter and for that it must be able to obtain information from those over whom the PRA and the FCA may have no authority. Put another way, the PRA has authority over banks, but the FPC needs the ability to find out about shadow banks.³⁴

38. Without greater information gathering powers, the FCA will always struggle to assess the risks to consumers at, and beyond, the perimeter. It will therefore be, in its own words, reactive.

39. The FPC has the power to recommend that the Treasury order additional information from unregulated entities to help meet its objectives. At the very least, this should be replicated for the FCA in relation to its own present objectives. Indeed, there may be a good case to exceed the FPC's power, given the fast-paced nature of risks consumers may face at the perimeter, and the FCA itself should be able to determine whether it should gather data from non-regulated entities, as needed to meet an expanded remit beyond the perimeter. The Committee recommends the Treasury undertake research on this point, and in doing so canvass the views of FCA. The Committee would then welcome the Treasury's views in its response to this Report.

Role of the Treasury

40. In its Perimeter Report, when looking to the future, the FCA highlights how it will continue its work around the perimeter:

[...] we continue to monitor activity outside the perimeter that may cause consumer harm and require the perimeter to be widened. Where appropriate, this includes taking enforcement action. We base our monitoring on intelligence we receive. It will still remain a very small part of our activity, as we must prioritise our resources on the activities specified by legislation. Activity around the perimeter will continue to cause consumer harm. Our aim is to identify this quickly and make recommendations to Government and Parliament.³⁵

41. Yet a potential window for change has arrived. The then Chancellor, in his 2019 Mansion House speech, announced a plan to “launch a major, long-term review into the future of our regulatory framework”.³⁶ He explained that its first phase would be to “take action to improve coordination between the regulatory authorities—starting with a summit of all the relevant regulators at No11 in a few weeks’ time, leading to a Treasury call for evidence before the summer”.³⁷ In July 2019, the Treasury then issued a call for evidence on Regulatory Coordination as part of its Financial Services Future Regulatory Framework Review.³⁸

34 Joint Committee on the draft Financial Services Bill Evidence, [Bank of England – further supplementary written evidence](#)

35 Financial Conduct Authority, [Perimeter report 2018/19](#), June 2019, para 4.5, p17

36 HM Treasury, [The Chancellor's 2019 Mansion House dinner speech](#), delivered on 20 June 2019

37 HM Treasury, [The Chancellor's 2019 Mansion House dinner speech](#), delivered on 20 June 2019

38 HM Treasury, [Financial Services Future Regulatory Framework Review: Call for Evidence: Regulatory Coordination](#), July 2019

42. This Report contains a number of recommendations about the remit and powers of the FCA. The Treasury is currently considering the wider scope of financial regulation, including potential action to improve coordination between the regulatory authorities. If the Treasury is not content to provide the changes in remit and further powers to the FCA as recommended by this Committee in this Report, the Treasury must acknowledge that it has itself fully retained these responsibilities. If that is the decision of the Treasury, this Committee recommends that the Treasury reports annually on the work it will do to monitor the perimeter of regulation, the risks that may have arisen beyond the perimeter, and how it has acted to detect and prevent consumer detriment. This could usefully be done in response to the FCA's annual Perimeter Report.

The impact of Brexit

43. As noted earlier in this Report, some of the Perimeter is defined by EU legislation. Andrew Bailey, in his foreword to the FCA's Perimeter Report notes that:

[...] the FCA perimeter is not a single piece of legislation but a patchwork, set at UK and EU level, which creates multi-tiered complex regimes. We may have an opportunity to create a simpler approach post-Brexit. This year we have started to consider the future of regulation to help determine the UK financial services framework after Brexit. The perimeter is a critical part of that work and I hope this report informs the important discussions ahead.³⁹

44. The Committee notes Andrew Bailey's comments around the potential to change the perimeter following Brexit. The previous recommendations in this Report, in our view, do not need to await that event, and should be considered and brought forward by the Treasury as soon as possible.

Conclusions and recommendations

The FCA's perimeter of regulation

1. This Report contains recommendations to the Treasury on the remit and powers of the Financial Conduct Authority. It draws upon the continuing work of the Treasury Committee in scrutinising the Financial Conduct Authority (FCA), as well as evidence from our other inquiries. (Paragraph 2)
2. The perimeter of regulation, as has been seen in the Committee's work, appears to be confusing for consumers of financial services, whether they be individuals or small businesses. In fact, that lack of understanding may well be preyed upon. Some firms may also deliberately game the perimeter to undertake regulatory arbitrage. (Paragraph 16)
3. Care needs to especially be taken where regulated financial institutions are undertaking an activity that is itself unregulated. Often the realisation that an activity is unregulated comes only after problems emerge, and the regulator's lack of power becomes apparent to those affected. (Paragraph 17)
4. *The Committee recommends that where regulated financial institutions undertake unregulated activity, the regulatory system should ensure that clear and explicit warnings are provided at that point, with the potential consequences of the lack of regulatory cover clearly explained, with sanctions for firms that fail to do so.* (Paragraph 18)
5. While the FCA does have some powers to act beyond the perimeter, they are more limited than those they can use within the perimeter. Perhaps more importantly, the regulatory system as currently set up does not provide the FCA with the remit to actively monitor or intervene outside the perimeter, with a consequent effect on the FCA's focus and how it directs its resources. (Paragraph 22)
6. The present system of regulation relies on an informal relationship between the Treasury and the FCA to consider whether the perimeter lies in the correct place. Alongside this, sections 73 and 77 of the Financial Services Act 2012 provide scope for investigations that may also provide stimulus to perimeter changes. (Paragraph 29)
7. The Committee considers this ad-hoc system now to be insufficient. The FCA has made recent efforts to monitor the perimeter, most recently via the analysis published in its Perimeter Report. Its warnings on the potential harm to consumers at, and beyond, the perimeter must be heeded. The concerns around the actions of RBS Global Restructuring Group, mortgage prisoners and the failure of London Capital and Finance are all examples seen by this Committee of the need for further action. (Paragraph 30)
8. *We therefore recommend that the FCA be given the formal power, and necessary remit to be able to formally recommend to the Treasury changes to the perimeter of regulation, where that would enhance its ability to meet its objectives, in particular to prevent consumer harm. It should set out any costs, both to firms and consumers, from such a move at the same time. It would then be for the Treasury to consider such*

a recommendation promptly. All such recommendations and Treasury replies should be publicly disclosed. This would formalise the relationship described by the Minister, and in so doing provide greater transparency and focus to the process. (Paragraph 31)

9. *The FCA must not in future be constrained, or feel constrained, from providing warnings on financial products that may cause consumer detriment. The FCA should be given the remit to highlight the risks faced by financial services consumers including where an activity is beyond the perimeter of regulation. This should be written into the relevant primary legislation, and include any necessary powers needed to fulfil that remit. This would allow the FCA to identify and provide clear warnings about products and activities that might pose risks to consumers, without fear of breaching its remit. In providing such a remit, the Government should ensure that the FCA has the power to act swiftly and without undue restraint as it sees risks arise. (Paragraph 34)*
10. *Without greater information gathering powers, the FCA will always struggle to assess the risks to consumers at, and beyond, the perimeter. It will therefore be, in its own words, reactive. (Paragraph 38)*
11. *The FPC has the power to recommend that the Treasury order additional information from unregulated entities to help meet its objectives. At the very least, this should be replicated for the FCA in relation to its own present objectives. Indeed, there may be a good case to exceed the FPC's power, given the fast-paced nature of risks consumers may face at the perimeter, and the FCA itself should be able to determine whether it should gather data from non-regulated entities, as needed to meet an expanded remit beyond the perimeter. The Committee recommends the Treasury undertake research on this point, and in doing so canvass the views of FCA. The Committee would then welcome the Treasury's views in its response to this Report. (Paragraph 39)*

Role of the Treasury

12. *This Report contains a number of recommendations about the remit and powers of the FCA. The Treasury is currently considering the wider scope of financial regulation, including potential action to improve coordination between the regulatory authorities. If the Treasury is not content to provide the changes in remit and further powers to the FCA as recommended by this Committee in this Report, the Treasury must acknowledge that it has itself fully retained these responsibilities. If that is the decision of the Treasury, this Committee recommends that the Treasury reports annually on the work it will do to monitor the perimeter of regulation, the risks that may have arisen beyond the perimeter, and how it has acted to detect and prevent consumer detriment. This could usefully be done in response to the FCA's annual Perimeter Report. (Paragraph 42)*

The impact of Brexit

13. *The Committee notes Andrew Bailey's comments around the potential to change the perimeter following Brexit. The previous recommendations in this Report, in our view, do not need to await that event, and should be considered and brought forward by the Treasury as soon as possible. (Paragraph 44)*

Formal minutes

Wednesday 24 July 2019

Members present:

Nicky Morgan, in the Chair

Rushanara Ali	Alison McGovern
Mr Steve Baker	Wes Streeting
Mr Simon Clarke	Alison Thewliss
John Mann	

Draft Report (*The Work of the Financial Conduct Authority: The perimeter of regulation*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 44 read and agreed to.

Resolved, That the Report be the Thirty-Fifth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 3 September at 1.30 pm]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Tuesday 31 October 2017

Andrew Bailey, Chief Executive, and **John Griffith-Jones**, Chairman, Financial Conduct Authority [Q1–170](#)

Wednesday 7 February 2018

Andrew Bailey, Chief Executive, and **John Griffith-Jones**, Chairman, Financial Conduct Authority [Q171–288](#)

Wednesday 13 June 2018

Andrew Bailey, Chief Executive, Financial Conduct Authority, **Charles Randell**, Chairman, Financial Conduct Authority [Q289–373](#)

Tuesday 15 January 2019

Andrew Bailey, Chief Executive, Financial Conduct Authority, **Charles Randell**, Chairman, Financial Conduct Authority [Q374–441](#)

Tuesday 25 June 2019

Andrew Bailey, Chief Executive, Financial Conduct Authority, **Charles Randell**, Chairman, Financial Conduct Authority [Q442–568](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

FCA numbers are generated by the evidence processing system and so may not be complete.

- 1 Financial Conduct Authority ([FCA0004](#))
- 2 Financial Conduct Authority ([FCA0005](#))
- 3 Financial Services Consumer Panel ([FCA0001](#))
- 4 Macmillan Cancer Support ([FCA0002](#))
- 5 Specialist Adviser's report to the Treasury Committee: the FCA's interim summary of the skilled person's report on RBS Group's treatment of SME customers referred to the Global Restructuring Group ([FCA0003](#))

List of reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2017–19

First Report	Appointment of Sir Dave Ramsden as Deputy Governor for Markets and Banking at the Bank of England	HC 472
Second Report	Appointment of Professor Silvana Tenreyro to the Bank of England Monetary Policy Committee	HC 471
Third Report	The Solvency II Directive and its impact on the UK Insurance Industry	HC 324 (HC 863)
Fourth Report	Transitional arrangements for exiting the European Union	HC 473 (HC 850)
Fifth Report	Autumn Budget 2017	HC 600 (HC 757)
Sixth Report	Appointment of Elisabeth Stheeman to the Financial Policy Committee	HC 758
Seventh Report	Student Loans	HC 478 (HC 995)
Eighth Report	Appointment of Charles Randell as Chair of the Financial Conduct Authority and the Payment Systems Regulator	HC 838
Ninth Report	Childcare	HC 757 (HC 1196)
Tenth Report	Re-appointment of Alex Brazier to the Financial Policy Committee	HC 936
Eleventh Report	Re-appointment of Donald Kohn to the Financial Policy Committee	HC 937
Twelfth Report	Re-appointment of Martin Taylor to the Financial Policy Committee	HC 938
Thirteenth Report	The Motability Scheme	HC 847
Fourteenth Report	Re-appointment for Gertjan Vlieghe to the Monetary Policy Committee	HC 1056
Fifteenth Report	Women in finance	HC 477 (HC 1567)
Sixteenth Report	Appointment of Bradley Fried as Chair of Court, Bank of England	HC 1319
Seventeenth Report	Appointment of Professor Jonathan Haskel to the Monetary Policy Committee	HC 1318
Eighteenth Report	Appointment of Andy King to the Budget Responsibility Committee of the OBR	HC 1340

Nineteenth Report	Household finances: income, saving and debt	HC 565 (HC 1627)
Twentieth Report	Appointment of Jill May to the Prudential Regulation Committee	HC 1511
Twenty-first Report	Appointment of Professor Julia Black to the Prudential Regulation Committee	HC 1512
Twenty-second Report	Crypto-assets	HC 910 (HC 1845)
Twenty-third Report	Re-appointment of Sir Jon Cunliffe as Deputy Governor for Financial Stability at the Bank of England	HC 1626
Twenty-fourth Report	SME Finance	HC 1626 (HC 1873)
Twenty-fifth Report	The UK's economic relationship with the European Union: The Government's and Bank of England's Withdrawal Agreement analyses	HC 805
Twenty-sixth Report	Budget 2018	HC 1819
Twenty-seventh Report	Appointment of Kathryn Cearnas as Chair of the Office of Tax Simplifications	HC 1606 (HC 2111)
Twenty-eighth Report	Economic Crime - Anti-money laundering supervision and sanctions implementation	HC 2012
Twenty-ninth Report	Consumers' access to financial services	HC 2010 (HC 2187) (HC 2530) (HC 2535)
Thirtieth Report	Re-appointment of Michael Saunders to the Monetary Policy Committee	HC 1642 (HC 2423)
Thirty-first Report	Re-appointment of Dr Ben Broadbent as Deputy Governor for Monetary Policy at the Bank of England	HC 2294
Thirty-second Report	The appointment of Dame Colette Bowe to the Financial Policy Committee	HC 2235
Thirty-third Report	The re-appointment of Professor Anil Kashyap to the Financial Policy Committee	HC 2237
Thirty-fourth Report	Disputing tax	HC 1914
First Special Report	Transitional arrangements for exiting the European Union: Government Response to the Treasury Committee's Fourth Report	HC 850
Second Special Report	The Solvency II Directive and its impact on the UK Insurance Industry: Bank of England Response to the Committee's Third Report of session 2017–19	HC 863
Third Special Report	Autumn Budget 2017: Government and Office for Budget Responsibility responses to the Treasury Committee's Fifth Report	HC 757
Fourth Special Report	Student Loans: Government and Office for National Statistics responses to the Committee's Seventh Report	HC 995

Fifth Special Report	Childcare: Government Response to the Committee's Ninth Report	HC 1196
Sixth Special Report	Women in finance: Government Response to the Committee's Fifteenth Report	HC 1567
Seventh Special Report	Household finances: income, saving and debt: Government Response to the Committee's Nineteenth Report	HC 1627
Eighth Special Report	Government and Financial Conduct Authority Responses to the Committee's Twenty-Second Report: Crypto-assets	HC 1627
Ninth Special Report	Government and Financial Conduct Authority Responses to the Committee's Twenty-Fourth Report: SME Finance	HC 1873
Tenth Special Report	Government Response to the Twenty-Sixth Report: Budget 2018	HC 2111
Eleventh Special Report	Government Response to the Committee's Twenty-Eighth Report: Economic Crime - Anti-money laundering supervision and sanctions implementation	HC 2187
Twelfth Special Report	Consumers' Access to Financial Services: Financial Conduct Authority response to the Committee's Twenty-Ninth Report	HC 2423
Thirteenth Special Report	Consumers' Access to Financial Services: Government Response to the Committee's Twenty-Ninth Report	HC 2530
Fourteenth Special Report	Consumers' Access to Financial Services: Payment Systems Regulator and Bank of England responses to the Committee's Twenty-Ninth Report	HC 2535