

Competition in UK banking The Cruickshank report

Government response

November 2004



HM TREASURY



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1

INTRODUCTION

1.1 In “Competition in UK Banking, The Cruickshank Report, Government Response” published by HM Treasury in August 2000, the Government committed to look at seven of the Cruickshank Report's recommendations as part of the two-year review of the Financial Services and Markets Act 2000 (FSMA). This document provides the Government's responses to those seven recommendations.

2

GOVERNMENT RESPONSE

RECOMMENDATION 5A

In reviewing the operation of the FSMA, the Government should give consideration whether to continue to appoint to the FSA members who are, or recently have been, employed by any of the firms authorised by the Financial Services Authority (FSA).

Government response

The Government has confidence in the way the FSA board is structured and constituted. The board's non-executive directors, who make up the majority of board members, have a broad range of relevant experience and bring much expertise to FSA decision-making. Some of this up-to-date expertise might be lost if the board did not include people who are, or recently have been, employed by firms authorised by the FSA.

Under FSMA the board must have regard to applicable principles of good corporate governance. The board's non-executive directors act in a personal capacity and not as representatives of any organisations. The board recognises that potential conflicts of interest might arise for board members given the wide range of issues with which the FSA deals. The board has in place a robust framework for managing potential conflicts of interest to preserve the independence of the FSA and the integrity of individual board members.

Given these factors the Government believes that appointments to the FSA board should continue to include people who are, or recently have been, employed by firms authorised by the FSA.

RECOMMENDATION 5B

In reviewing the operation of the FSMA, the Government should give consideration whether to give Ministers a general power of direction over the FSA, to be used only in appropriate exceptional circumstances, with direction subject to public disclosure.

Government response

The Government believes that the current accountability framework within which the FSA operates is working effectively. This comprises a number of carefully balanced accountability mechanisms. For example, the FSA is required to produce an annual report to the Treasury which explains how the FSA has delivered its statutory objectives; FSA board members are appointed by the Treasury and may be removed by the Treasury; the Treasury may hold an inquiry into the operations of the FSA in certain circumstances; and the Treasury may appoint an independent person to conduct a review of the economy, efficiency and effectiveness with which the FSA has used its resources in discharging its functions.

Other features of the accountability framework ensure that the FSA is appraised of consumer and industry views via Financial Services Consumer, Practitioner and Small Business Practitioner Panels, and that complaints arising in connection with the exercise of, or failure to exercise, any of the FSA's functions (other than its legislative functions) are considered by an independent Complaints Commissioner.

Given that the current accountability framework is working well the Government does not believe that providing Ministers with a general power of direction over the FSA would be necessary or proportionate.

RECOMMENDATION 5C

In reviewing the operation of the FSMA, the Government should give consideration whether to restrict the grounds of removal of members of the FSA to 'incapacity or misbehaviour'.

Government response

As explained in the Government's response to recommendation 5b, the Government believes that the current accountability framework within which the FSA operates is working effectively. One of the accountability mechanisms within this framework is that under FSMA the FSA board, or members of the board, are liable to removal from office by the Treasury.

The Government considers - and the FSA agrees - that this particular provision does not unduly harm the FSA's independence, especially as the Government would be accountable for the use of this power. The Government considers that if this provision was restricted to apply only in instances of 'incapacity or misbehaviour', the current balance of accountability mechanisms might be affected, with potential implications for other provisions.

Accordingly the Government considers that the existing grounds for removal of FSA board members should remain as they are.

RECOMMENDATION 7

The Treasury should re-examine its relationship with the FSA, in particular ensuring its objectives, operations and staffing reflect the fact that the FSA is a regulator independent of government.

Government response

The Government agrees that the establishment of the FSA and the introduction of FSMA have enabled the Treasury to take a wider perspective in its consideration of financial services issues. The Chancellor's December 2001 Letter of Understanding to the Chairman of the FSA formalises the split in institutional operations between the FSA as the UK's independent financial services regulator and the Treasury's wider responsibility for financial markets and for the economy as a whole. The Treasury recently re-examined its principal financial services objective with the aim of ensuring that it clearly reflects the Treasury's broad role in this area. This objective is stated in the Public Service Agreements (PSA) 2005-2008.

In conclusion the Government considers that the Treasury's relationship with the FSA reflects the fact that the FSA is a regulator independent of government.

RECOMMENDATION 10

The Government should ensure that the Memorandum of Understanding between the Treasury, Bank of England and FSA reflects the new policy framework.

Government response

The Government considers that the arrangements set out in the Memorandum of Understanding between the Treasury, Bank of England and FSA are working well and do not at present require substantial amendment. The Treasury, Bank of England and FSA are reviewing the existing document and the need for any modifications.

RECOMMENDATION 28

In its review of the operation of the FSMA the Government should consider establishing an independent Financial Services Consumer Council covering all financial services, not just those which are supplied in the course of carrying on activities regulated by the FSA.

Government response

The Government has considered carefully the merits of creating a Financial Services Consumer Council covering all financial services, not just those supplied in the course of carrying on activities regulated by the FSA.

On balance and after discussions with consumer organisations and the FSA, the Government does not consider that the case for establishing a Financial Services Consumer Council is justified, on the grounds of both needs and costs. It is unclear whether such a Council would provide sufficient added value, compared to the consumer organisations which already exist, to justify the costs that would arise from its establishment and running. The FSA's remit has recently been extended to cover mortgage advisers and will shortly be extended to cover general insurance intermediaries. Following these extensions most financial services will be provided by persons regulated by the FSA.

The Government continues to encourage existing consumer organisations to consider how best they might ensure that the financial services industry pays due regard to the interests of consumers of all financial services, and not just those regulated by the FSA.

RECOMMENDATION 33

In its review of the operation of the FSMA, the Government should consider giving robust legal powers to the FSA to require information from suppliers of retail financial services, including information relating to those services which are not supplied in the course of carrying on regulated activities for the purpose of publication for the benefit of consumers.

Government response

The Government commends the work undertaken to date by participating firms and the FSA in producing targeted comparative tables. The FSA's voluntary scheme seems to be effective, and the Government welcomes the willingness of firms to provide information to the FSA. In light of this success, the Government considers that it is not necessary to give the FSA additional legal powers to enable it to require information from the suppliers of retail financial services.