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Our response to FSA consultation, “Regulatory fees and levies: policy proposals for 2013/14”, CP 12/ 28

Background

The Building Societies Association represents mutual lenders and deposit takers in the UK including all 47 UK building societies. Mutual lenders and deposit takers have total assets of over £375 billion and, together with their subsidiaries, hold residential mortgages of £245 billion, 20% of the total outstanding in the UK. They hold more than £250 billion of retail deposits, accounting for 22% of all such deposits in the UK. Mutual deposit takers account for 31% of cash ISA balances. They employ approximately 50,000 full and part-time staff and operate through approximately 2,000 branches.

Introduction

Our key message is that comment on the proposed policies is hard to formulate in the absence of actual fee rates and levies, and of actual annual funding requirements, for the new Prudential Regulation Authority and Financial Conduct Authority.

There is concern that the rates for the two new regulators will be significantly higher combined than the current FSAõs, which has itself risen steeply each year since the regulatorõs inception. Over the past five years, for example, it has risen 92.7%. The FSA itself states of the proposed changes: ñThe amendments in themselves will not increase the amount of fees firms pay.ò Our view exactly, it is the rates that have the greatest effect.

We realise rates, levies and AFRs will not be published until April 2013. Nonetheless, we feel disquiet at discussing aspects of fees and levy policies at such a crucial stage of regulatory change without knowing the projected expenditure of the new framework. At this juncture, we consider the regulator should have issued, on an exceptional basis, individual consultations for the new regulators outlining proposed rates together with the proposed underlying policies.

We note the ending of fees discounts on financial penalties, announced in October this year. Now financial penalties received by financial services regulators, net of enforcement case costs for the year, will go to the Exchequer. This change will apply to financial penalties received from 1 April 2012. We consider this a political move and one which potentially discriminates against those firms that follow the FSAõs regulations.

Future reviews of funding for the new regulators must take into account the unique, low-risk nature of mutuals. For too long, mutuals have been grouped with riskier, shareholder-driven banks. Now is the time to decouple them. The reviews should also examine the funding of the Money Advice Service, the costs of which are borne solely by part of the FSA regulated industry and not those institutions that cause the majority of debt enquiries ï energy companies and OFT-regulated credit providers being just two examples.

Specific questions

Q1: *Do you have any comments on the proposed amendments to the FSA’s periodic fees rules to enable them to be adapted for the PRA and FCA?*

Chapter 2 discusses the substantive proposed changes to the existing fees manual necessary to adapt it for the PRA and FCA to fund their first period of operation – 2013/14. The proposed amendments relate only to the A fee blocks through which currently approximately 94% of the FSA’s annual funding requirement is raised. It would have been helpful to know why the other 6% is not impacted.

While it may be slightly inconvenient for our members, all dual regulated firms, to be subject to two sets of fee blocks, we acknowledge there is no other clear way of arranging fees and levies in the new regulatory structure. To allocate the annual funding requirements of the PRA and FCA to firms in the same way as currently, for example, keeping the same tariff bases in 2013/ 2014 appears a sensible starting point. Having one collection agent for all charges (PRA, FCA, FOS, MAS and FSCS) – the FCA – and fully itemised invoices also seem sensible.

There is concern, however, that the rates for the two new regulators will be significantly higher combined than the current FSA level, which has itself risen steeply each year since the regulator’s inception. Over the past five years it has risen 92.7%. The building society sector, by contrast, has reduced its management expense ratio by more than a third over the past fifteen years. The FSA itself states of the proposed changes: “The amendments in themselves will not increase the amount of fees firms pay.” Our point exactly, it is the rates that have the greatest effect. We consider a commitment to lowering the AFRs in future years, or at least stabilising them, is the very least the new regulators should do.

We realise actual rates, levies and AFRs will not be published until April 2013. Nonetheless, we feel disquiet at discussing aspects of fees and levy policies at such a crucial stage of regulatory change without knowing the projected expenditure of the new framework. At this juncture, we consider the regulator should have issued, on an exceptional basis, individual consultations for the new regulators outlining proposed rates together with the proposed underlying policies.

One source of pressure on the upward trajectory of regulatory fees will undoubtedly come from the PRA transition cost through which the accumulated regulatory reform costs of the Bank of England are to be recovered over a “number” of years. Not specifying the duration of this surcharge – or, by implication, a target date for completion of the transition phase - means the surcharge is in danger of becoming unchecked and a permanent item. As a transitional cost, it should be a transitional provision. We do welcome, however, the exclusion of smaller firms that pay only the PRA minimum fee from this additional cost.

On the subject of the minimum fee, we note that it will be split 50:50 between the PRA and FCA for dual regulated firms in 2013/ 2014. While we have no issue with this, we wonder why the proposed treatment of special project fees is different (see question 4). In the case of SPFs, the threshold remains at £50,000 but will be applicable to each regulator meaning that the threshold could be reached theoretically in 2013-2014 when regulatory costs hit £100,000.

A draft of the existing fees manual to indicate the way in which its contents are being transitioned to the PRA and FCA is planned "before legal cutover". While no date is given, we urge the FSA to publish this, and update the fees calculator, as soon as practical in 2013.

Q2: *Do you have any comments on the proposed revised amendments to the FSA's fees discount rules for passported in EEA firms to enable them to be adapted for the PRA and FCA?*

Q3: Do you have any comments on the proposed revised amendments to the Money Advice Service fees discount rules for passported in EEA firms to enable them to be adapted for the FCA?

We have no comment on EEA firms but do have serious concerns about the Money Advice Service and its funding model. These are discussed later in this response.

Q4: *Do you have any comments on the proposed revised amendments to the FSA's restructuring SPF rules to enable them to be adapted for the PRA and FCA?*

We somewhat reluctantly agree that the PRA and FCA should separately levy SPFs if their respective conduct or prudential costs for the same transaction exceed £50,000. Our preference would be to reduce the £50,000 figure. With the "dual" £50,000 figure we foresee there will be fewer SPFs levied and therefore less targeted financial recovery to the firms that receive the extra regulatory attention. We strongly suggest that these revised rules are examined again in the near future to prevent costs of the mainly larger firms' projects that are under the "dual" thresholds being borne by all firms.

We note that this treatment differs to that proposed for the minimum fees where the fee, currently £1,000, will be split between each regulator for dual regulated firms.

Q5: *Do you have any comments on the proposed Option 1 for allocating the FSA defined pension deficit costs under the FCA?*

We consider Option 1 - allocate the pension deficit costs across FCA fee blocks in the same proportion as the FCA's overall ongoing regulatory activities is allocated - as the more appropriate of the two options. In being asked to fund such a large deficit, it would have been helpful for the firms that have to pay to have had more detail as to the nature of the problem, and the steps taken already to remedy it. Telling is the sentence: "*We contributed* £19.5m to the reduction of this deficit for 2012/13 …" *We* ie FSA did not, regulated firms did.

Q6: *Do you have any comments on the fees governing principles that we propose the FCA will have regard to when making changes to its methodology for raising fees?*

The high level principles – fair, risk aligned, transparent, predictable, flexible, proportionate and legal – cannot be argued with. We would, however, add that on the proportionality and transparency principles the FCA should openly and clearly have regard to the low risk nature of mutuals such as building societies.

For too long mutuals have been grouped together with plc enterprises that have a much higher risk profile. We understand that enhanced supervision is targeted at the larger and systemic firms - and note that the premium fee is designed to capture that. But mutuals still appear to be paying for the mistakes made by the now nationalised big banks and failed demutualisers. We consider mutuals should have their own fee block as a matter of urgency.

Q7: *Do you agree with the amendments and clarifications we are proposing for fees under the listing rules, as set out in Chapter 4 of this CP?*

No comment.

Q8: *Do you agree with our proposed amendment to FEES 4.2.7BR, which will allow newly authorised firms to use projected tariff data until they have been trading for a full year during the relevant reporting period?*

We have no comment on the proposal to allow newly authorised firms to annualise the data from which fees relating to the relevant regulated activities are calculated if they have not been able to complete a full data period in relation to their third or subsequent FSA financial year.

Q9*: Do you agree with our proposal to remove the 30% fees discount for wholesale banks?*

The FSA is proposing the withdrawal of the 30% fees discount as ñwholesale banksò now require the same amount of supervisory attention from the FSA as other firms (the reason for the discountõs introduction in 2003/ 2004 was because such ñbanksò were considered to require reduced supervision). Since the banks ï a mix including credit institutions, large mutual associations and central/ local government bodies - are not part of our membership, we do not have strong views on the matter. We do, however, note that only 18 such firms qualified for the discount in 2012/13 meaning the overall saving to the FSA is minimal.

Q10: *Do you have any comments on the proposal to remove the 30% discount for wholesale banks in relation to Money Advice Service levies?*

See our answer to question 9.

We make additionally high level comments on the funding of the Money Advice Service, about which we have long been concerned. The comments do not relate to wholesale banks.

Activities of MAS are divided into money advice and debt advice. The former is paid for by industry through fee blocks A.1 to A.19. The latter, until 2012/13, was funded by government but that burden has now fallen to industry.

Money advice

Rather like the FSA, the cost of the money advice part of MAS has been increasing far more quickly than inflation. In the two years of the serviceõs existence its requirement from industry for funding has risen 40.7%. Continued above inflation increases in future financial years for this service, particularly given the re-focus of activity towards majority online, will be totally unacceptable to the mutual sector. Yet we see no accountability, and few if any tangible results.

Debt advice

2012/ 2013 saw the inclusion ï without consultation - for the first time of the debt advice part of the Money Advice Service. Previously, this had been underwritten by government. Our members wonder why they, part of a regulated and secure sector of the market, are required to pay for a service that supports, among others, the OFT sector of payday, peer-to-peer and motor loans.

We understand that consideration had been given to using consumer credit providers to pay their share but the idea was rejected because the information the OFT holds on them is not sufficiently robust and that the OFT is unable to differentiate between large and small providers. That is a poor reason to burden building societies (and banks) with the costs.

Problem debts arise from many additional sources including gas, electricity, telephone and water utilities, personal tax and council tax. National Debtline figures show the proportion of callersô debt problems relating to non-financial services continues to rise each year. For example, in 2006 the proportion comprised 23.79% of the total, in 2007 28.04% and by 2012[1] it comprised 42.01%.

It is thus our contention that it would be fairer to apportion the costs for debt advice across other sectors in addition to financial services on the basis of ñpolluter paysò, rather than total lending.

Yet again, we note how the cost of the debt advice part of the Money Advice Service has spiralled. In 2012/13, the cost is £40.5 million, yet in 2010/11 ï when the credit crisis had already taken hold ï the cost was £12.5 million. How can the costs have risen by 224% in two years?

Marketing

We expect the Money Advice Service to live within its means, perform efficiently and deliver results against an agreed, measurable and transparent set of criteria. We accept that some marketing/ communications is required to establish awareness and trust in MAS. We were concerned however, by the proportion of the 2012/13 budget that had been earmarked for such expenditure. In 2011/12, a total of £5.7 million representing 13% of the overall budget was spent on marketing and communications. In the 2012/13 budget, this figure had increased to £21.4 million or 46% of the budget. In absolute terms, this figure exceeded the advertising spend by the personal banking divisions of Santander, Halifax, NatWest and Lloyds.

Conclusion

We therefore strongly suggest that the FCA pays particular attention to the funding of the MAS when making changes to its methodology for raising fees.

Q11: *Do you have any comments on our proposed amendment to the FEES 4.3.6R on account rule to incorporate RIEs, RCHs and DPBs?*

No comment.

[1] First 11 months only