ABCUL
Association of British Credit Unions Limited

Regulatory Coordination Call for Evidence
Financial Services Regulatory Strategy
1 Red
HM Treasury
1 Horse Guards Road
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HM Treasury - Financial Services Future Regulatory Framework Review

We welcome the opportunity to contribute through this Call for Evidence process to the future direction of the financial services regulatory framework. ABCUL is the primary trade association representing credit unions in England, Scotland and Wales with around two thirds of credit unions in mainland Great Britain affiliated to the Association.

Credit unions are co-operative societies who provide financial services – primarily savings and loans facilities – to their member-owners. They are registered as Co-operative Societies under the Co-operatives and Community Benefit Societies Act 2014 and the Credit Unions Act 1979. As deposit-takers they are dual-regulated by the Prudential Regulation Authority and the Financial Conduct Authority.

Credit unions have since their inception in Britain in 1964 been closely associated with anti-poverty and financial inclusion. They tend to provide savings and loans facilities to those with limited or no access to financial services from mainstream providers, generally due to their low income and / or lack of a developed credit profile. They have been a central element of numerous government and philanthropic initiatives to extend financial inclusion and address the lack of adequate provision of affordable credit and secure savings facilities for large sections of the population. They are capped in the interest that they can charge at 42.6% APR under the Credit Union Act 1979 and provide credit in competition with high-cost lenders.

They are numerous, with around 300 credit unions active in mainland Great Britain today, and have around 1.3 million members and £1.5 billion in assets under management. They range from mid-sized businesses of up to 50 staff to small voluntary organisations.

Response to consultation

Credit unions provide a vital buttress within the retail financial services and banking services market between the mainstream providers and those that provide alternative services for those with limited options, such as high-cost credit. They do so within a bespoke legislative and regulatory framework which includes a uniquely-low interest rate cap on lending at 42.6% APR, a common bond requirement or field of membership test for member-customer eligibility, a tailored

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prudential regime based on a key exemption from EU capital requirements regulations, and a bespoke conduct regime based on a specialist sourcebook – CREDS – maintained by FCA and made possible by number of regulatory exemptions such as, most notably, from consumer credit regulation.

By and large, this peculiar legislative and regulatory settlement for credit unions functions well. It provides for a proportionate regulatory regime which allows for lower absolute regulatory capital sums to support start-up and smaller credit unions, reduced consumer credit oversight in light of restrictions on interest rates and light touch regulatory supervision in recognition of what credit unions do to provide inclusive services and disrupt high-cost alternatives. This proportionate and specialist approach to credit union regulation is vital to provide the regulatory space for credit unions to continue to develop their offering and support more of the British population. It is crucial that it is maintained.

However, we also recognise that the approach brings with is some significant drawbacks. Firstly, in relation to the powers that credit unions have to innovate and diversify the products that they offer, the legislative framework for credit unions is anachronistic and poorly worded with a lack of clarity on the true extent of the legitimate retail financial services that credit unions can and cannot offer. This has been particularly evident in relation to the forms of credit agreement which credit unions might enter into – the FCA has interpreted the word "loan" in the Credit Unions Act literally to mean personal (cash) loan, whereas elsewhere in the Act credit unions are defined as providing "sources of affordable credit".

For this reason we believe strongly that there is a case to modernise and overhaul the Credit Unions Act to provide a much clearer legislative basis for the sector's activities which would make the job of the regulatory authorities much easier by providing an enabling presumption in support of credit unions offering new products where they meet the prevailing regulatory requirements to do so. This would allow, for example, credit unions to diversify and innovate in support of their sustainability and market relevance while providing a platform for credit unions to disrupt new credit markets where high-cost alternatives persist such as logbook lending in the used car market.

Secondly, in relation to the "ownership" of co-operative legislation by the FCA's Mutuals Register we believe that there is a strong case to review the effectiveness and responsiveness of the FCA's role. We find that the Mutuals Register is inefficient and ineffective and that there is a case to move this function elsewhere to, for instance, Companies House, which performs this role more generally in relation to most corporate forms. The co-hosting of credit unions' registration and regulation functions at FCA also creates unhelpful conflicts between the various and inconsistent roles of the regulator in respect of credit unions which we believe would be helpfully addressed by moving the registry elsewhere.

Finally, the reliance of credit unions upon a specific regulatory settlement reflective of their size, scale, role and current level of maturity begs certain questions about how this will and should evolve as credit unions grow and become more complex in the products and services that they provide. This also relates to the question of the EU and the fact that much of the credit union settlement today is based on exemptions and carve-outs from a range of EU legislation. We believe very strongly that it is crucial that this exemption–based settlement is maintained and continued post-Brexit in order to preserve proportionality in relation to our sector. But over time the sector, government and regulators are likely to need to work closely together to coordinate a process of evolution of credit union regulation in order that it is deepened and enhanced as credit unions grow but that this is done in synchronisation with the sector's development to always maintain proportionality.

In more general terms, we appreciate the way in which the PRA approaches the regulation of credit unions in the context of a sector which is significantly smaller than the vast majority of the firms that they regulate. Likewise, the FCA has a broadly positive and proportionate approach. However, in the case of the FCA we do periodically experience instances where the specific needs and challenges of the credit union sector are not taken into account and, worse still, the FCA's action in respect of credit unions specifically directly conflicts with its stated aims elsewhere such as in relation to boosting the availability of alternatives to high-cost credit.

We do strongly support the measures that the FCA has taken in consumer credit markets to address poor practice and the detriment within the high-cost credit market. This is long overdue and reflects how weak the prior regime for consumer credit regulation under the OFT was and the high levels of detriment it allowed to accumulate. We believe that there is a strong case for FCA to be endowed with further powers to extend those it already has in relation to regulated debt advice and debt management into the arena of personal insolvency. Our membership sees a significant detriment arising from the poor practices of profit-making firms who encourage people to become insolvent through Individual Voluntary Arrangements and (in Scotland) Protected Trust Deeds in ways that only benefit insolvency practitioners and the firms for whom they act. We believe the FCA would have strong success in raising standards and reducing detriment in this market given its track record in addressing similar poor practices elsewhere.

Finally, we like many firms are concerned with the increasing challenges that we collectively face in respect of the rising dominance of several large tech giants and their clients' increasing dependence upon these teach firms for critical infrastructure within financial services and many other sectors. These technology firms – both the giants and smaller providers – sit outside the regulatory perimeter but are absolutely critical to what goes on within it. Firms both large and small struggle to maintain their continued compliance with regulatory requirements where they depend upon these unregulated outsourced tech providers. While we appreciate this is a vexed and intractable problem across society, it is incumbent upon us to raise it as one of the defining regulatory challenges of contemporary governance

We would be very happy to discuss this further if you wish.

Yours sincerely,

M. Bland

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