



FINANCIAL CONDUCT AUTHORITY (FCA)

CP21/13: A NEW CONSUMER DUTY

JULY 2021

[Fair By Design](#) welcomes the invitation to respond to the FCA's consultation on a new Consumer Duty.

Please note that we consent to public disclosure of this response.

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ABOUT FAIR BY DESIGN

Fair By Design is dedicated to reshaping essential services, such as energy, credit and insurance, so they don't cost more if you're poor.

People in poverty pay more for a range of products including energy, through standard variable tariffs; loans and credit cards with high interest rates; and higher insurance premiums, through postcodes considered higher risk. This is known as the poverty premium.

We collaborate with industry, government, and regulators to design out the poverty premium.

Our Venture Fund provides capital to help grow new and scalable ventures that are innovating to make markets fairer.

The Barrow Cadbury Trust manages our advocacy work, and Ascension Ventures manage the Venture Fund.

SUMMARY OF RECOMMENDATIONS

1. The FCA should carry out a public consultation on a statutory Duty of Care.
2. The FCA must describe where and how the voice of the consumer fits within the structure of the Consumer Duty. We would be happy to advise the FCA in this regard.
3. Firms need to bring in the consumer voice by engaging with consumers directly, including experts by experience of, for example, poverty and wider vulnerabilities. Firms need to be familiar with the principles of Inclusive Design.
4. The FCA should add an extra outcome: Redress: When retail clients have suffered harm they receive redress promptly and efficiently.
5. The FCA needs to recommend that firms, and their third party providers, understand the principles of Inclusive Design in order to design services and products around real people's lives rather than assumed consumer lives. Designing around assumed consumers excludes those consumers who designers do not typically think about; those whose lives are much unlike their own. That's why we advocate working with experts by experience.
6. The FCA needs to clearly explain how this duty will be supervised and enforced.
7. The FCA needs to put appropriate resource into enforcing and supervising the rules which amplify the Consumer Principle.
8. The FCA must explain in more detail how the Consumer Duty enhances vulnerability guidance.
9. The FCA needs to explain exactly how the Consumer Duty enhances Treating Customers Fairly principles and how this new approach provides more ability for the FCA to ensure better outcomes for consumers than present.
10. Compliance with the Consumer Duty should be a board level responsibility, backed with strong personal accountability.
11. The FCA needs to be more explicit about what additional protections the Consumer Duty provides to avoid consumer harm across the financial services market.
12. The Duty should expect firms to consider the affordability issues of consumers.
13. The FCA should have an objective on financial inclusion, ensuring that all of its interventions also address the needs of people who are financially excluded.

14. The FCA needs to be clearer on what additional protections will be needed to address the information asymmetry between firms and consumers. We would consider price protections to be at the forefront of options to ensure low income consumers do not end up paying a poverty premium for their essential financial services, like consumer credit or insurance.
15. The FCA needs to be clearer in the information it is providing firms on what represents fair value for consumers.
16. There should be a Private Right of Action established at the same time as a Consumer Duty.

Q1: What are your views on the consumer harms that the Consumer Duty would seek to address, and/or the wider context in which it is proposed?

This paper explicitly sets out “a higher standard of care and expectation beyond our current set of Principles and Rules.” The FCA does this through what it calls “a package of measures that has been specifically designed to more effectively tackle the harms we see in financial services markets, and their causes.” What this is *not*, is a Duty of Care.

We believe the FCA should still carry out a public consultation on a statutory Duty of Care. We don’t believe the Consumer Duty is the same, or an equivalent, to a statutory Duty of Care. Stakeholders should have the opportunity to have their say on whether there should be an introduction of one.

Recommendation: The FCA should carry out a public consultation on a statutory Duty of Care.

Taken on its own merit, we believe the proposals set out here for a Consumer Duty are very important.

Part of the stated reason for this consultation is in response to stakeholders that have previously said that the FCA’s approach has been “too rules-based and not sufficiently outcomes-focused”. We are very supportive of the FCA taking an outcomes-focused approach in regulation. We agree with colleagues at New City Agenda that the Consumer Duty would benefit from an honest assessment of why previous attempts to build an outcomes-focus into the FCA approach have not led to the desired reduction in harm suffered by consumers.

We are well aware of the fact that many low income consumers experience particular harms within financial services markets. A particular example of this in recent times has been outcomes from using high cost credit products, which tended to negatively impact those on low incomes the most. This resulted in those low income consumers paying a poverty premium for access to emergency credit.

Research by the Personal Finance Research Centre at the University of Bristol, commissioned by Fair By Design, found that someone using high cost short term credit (e.g. payday loans) will be paying an annual poverty premium of £237¹.

Further research by the same organisation, also commissioned by Fair By Design, showed that the likelihood of paying extra costs on consumer credit increased depending on someone's particular protected characteristics²: survey data found that lone parents and those under 35 were most likely to have used some form of high-cost credit, and there is wider evidence that those with mental health issues are also more likely to use high cost credit. There is also some wider evidence that Black households were more likely to be excluded from the credit card market. This meant either those households went without vital credit altogether, or were pushed into the high cost credit market.

The extra costs involved here demonstrate a great irony: that poor people pay more for their essential services than those better off than them. Those extra costs often reduce the financial resilience of that consumer, and this can lead to harm.

We provide this information here in particular to highlight that when addressing consumer harm, as the FCA shown its intentions in doing with the Consumer Duty, there are particular groups who should be a high priority of focus.

Addressing consumer harm with the Consumer Duty

We know that markets do not always work well for consumers. Competition in financial services markets does not always work effectively in consumers' interests. We also know that sometimes firms can exploit consumers' behavioural biases, for example by not being fully transparent in the information they provide (this is known as information asymmetry between firms and consumers).

We feel that as it is, it has been very difficult to understand what harms and examples of consumer harm the Consumer Duty would provide a remedy for. In particular it has been difficult to understand what, over and above the rules on Treating Customers Fairly, situations the Consumer Duty could rectify (we will discuss this more in our response below).

We concur with colleagues at the Financial Services Consumer Panel where they say that as currently drafted, the Cross-cutting Rules and Four Outcomes that support the Consumer Principle are too similar to the existing Treating Customers Fairly standard and so risk diluting the impact of the new Duty. This may encourage some in the industry to think that they are already acting in the best interests of customers and therefore not seek to make any changes to comply with the new Duty.

LEARNING FROM LIVED EXPERIENCE

Fair By Design, along with partners Toynbee Hall, carried out a workshop session with people that have lived experience of poverty. When we asked these experts by

¹ <https://fairbydesign.com/wp-content/uploads/2020/11/The-poverty-premium-A-Customer-Perspective-Report.pdf> (p.61)

² <https://fairbydesign.com/wp-content/uploads/2021/02/The-Inequality-of-Poverty-Full-Report.pdf> (p.7)

experience what they think of in relation to potential consumer harm, they gave a long list of examples that the FCA should think about in relation to how regulatory rules can improve the lives of consumers in vulnerable circumstances.

During the session, we heard how financial products and services often worked like a “trap”, with experts in agreement that more needed to be done to resolve this. In particular, one expert noted that people often assume that if they are being offered a financial product or service it must be in their (the consumer’s) best interest. For many experts the asymmetry of information was a concern (“*they always have the small print*”). The financial services landscape was seen to be heavily weighted in favour of the shareholder – experts agreed their ideal world would be one where it was in favour of the consumer with more say in how their money is spent by firms as well as how they access money.

Some experts had experiences of loan pricing discrepancies, even in comparison with members of their own family, which they ascribed to the poverty premium. One expert noted that she and other members of her family who all had similar credit scores applied for similar loans and were offered wildly different interest rates (89.9% vs 39.9%), with wealthier members of the family paying less in the long term, and those who could least afford to pay being charged the most. Some experts felt the system was designed so you have to be in debt, with one expert describing financial services organisations like “predators”. Experts were particularly aware of the difference which owning a property, compared to renting, made to credit scores, which meant that those with more assets could access cheaper credit, regardless of need or willingness to repay.

The need for fast access to cash in an emergency left many consumers vulnerable to making deals they knew were not in their best interests. Experts shared stories of having appliances break down or other circumstances which mean they needed cash as soon as possible. For many this meant when searching for loans they would select those with quick turnaround times for approval which normally came with higher interest rates and more negative long term consequences. In these circumstances, the already skewed balance of knowledge and power between a lender and a debtor was skewed even more.

This level of real-life insight was extremely useful in understanding what harm means to real consumers. It was difficult to identify any such work – consulting with consumers – featured within the FCA’s own work. This left it difficult to properly situate how a Consumer Duty would be useful over and above existing rules. That said, it is very positive that the FCA has shown willingness to root out harm and if nothing else the Consumer Duty reinforces this point.

The Consumer Duty and positive consumer impacts

We support the anticipatory nature of the Duty being proposed by the FCA which will, as the FCA points out, create an “environment where consumer harms do not occur in the first place”. However, at the moment we are concerned that the Duty is mostly described in negative terms. For example, the prevention of harm. While of course we do advocate a

position by the FCA on preventing harm, we also want to hear more about its vision for the positive aspects of improving their situation.

Use of consumer data and the risk of harm

We believe the FCA needs to be more explicit and specific about use of data and uses of new technologies to avoid consumer harm. We know that our increasing reliance on technology in general, and more specifically firms' use of customer data, can exacerbate harms. Consumers are transacting in an increasingly digital, fast-moving environment which can provide them with greater choice, but can also increase complexity and risks. This has an impact on consumers' ability to make effective decisions, with the potential to be exploited. There is very little appreciation of this in the Consumer Duty work, as it's currently proposed. The FCA should remedy this in the next iteration of the Consumer Duty proposal.

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Q2: What are your views on the proposed structure of the Consumer Duty, with its high-level Principle, Cross-cutting Rules and the Four Outcomes?

In our view, the structure of the Consumer Duty is satisfactory. What remains to be seen is where the voice of the consumer is, that informs the Consumer Principle, cross-cutting rules, and four outcomes.

For example, the Consumer Principle, in the FCA's words, "should prompt firms to ask themselves questions such as 'Am I treating my customers as I would expect to be treated?' or 'Are my customers getting the outcomes from my products and services that I would expect?'" However, in our view, the Duty should do a lot more than 'firms asking themselves what they should be doing to put customers at the heart of their businesses'.

It is concerning that guidance to firms is to ask what *they* would expect, as they are by no means representative of consumers (especially low income and/or vulnerable consumers) in terms of (1) knowledge of financial services and (2) their expectations of the market.

In the absence of consulting consumers directly, there appears to be an unfair and unrealistic reliance on the resources of the third sector, which has been hard hit by the pandemic, to amplify the consumer voice and rectify the FCA's own understanding. This needs to be rectified.

Recommendation: the FCA must describe where and how the voice of the consumer fits within the structure of the Consumer Duty. We would be happy to advise the FCA in this regard.

LEARNING FROM LIVED EXPERIENCE

When we asked experts by experience what they thought of the concept of firms acting in their best interests, they told us about reservations they had about firms committing to this principle.

One expert told us:

“All these credit agencies, all of these banking corporations, they view you more as a target. And for me sometimes I feel like a victim, rather than just a customer. And the only thing I want is to be treated as a person who’s got fairly good business ethics. I’ve come to you with business and I want to be seen as somebody who can help your company, not somebody who you’re entitled to fleece because I either don’t know better or I don’t have enough.”

Many, similarly, wanted financial services firms to find the balance between being a service provider and being a money-making operation. We discussed what we felt was the reason for the lack of action in the consumer’s best interests. For some experts it came down to a conflict of interest within financial services firms who felt they weren’t just a service for the customer but were primarily there to make money for their shareholders. When asked what it would look like if firms were giving more priority to the customer’s best interests, one expert spoke about the idea of a cooperative or the original initiative behind the development of building societies - a project to give people the means to build a roof over their heads.

While the experts understood that firms have to evolve, they felt a point had been reached where they were not actually doing what they first set out to do. The role of ‘providing a service’ was taking second place next to ‘making profit for shareholders.’

In order for firms to be really interested in a consumers’ best interests they have to speak to those consumers, rather than asking themselves questions (as the FCA has suggested here). Bringing in the consumer voice, and starting product design from the consumer, is a key feature of Inclusive Design. Something we at Fair By Design strongly advocate for firms and regulators.³

Recommendation: firms need to bring in the consumer voice by engaging with consumers directly, including experts by experience of, for example, poverty and wider vulnerabilities. Firms need to be familiar with the principles of Inclusive Design.

Fair By Design, in partnership with the Money Advice Trust, has created two cutting edge guidebooks on Inclusive Design:

One for firms: [here](#).

One for regulators: [here](#).

³ <https://fairbydesign.com/inclusive-design/>

We agree with colleagues at New City Agenda that there is room for a further fifth outcome that the FCA should consider: relating to redress. Consumers are often put through a long and inefficient process to obtain rightful redress. As such this either:

- Dis-incentivises consumers acting in their own interest (on the grounds that the process is too cumbersome);
- incentivises only a particular type of time-rich consumer to seek redress; or
- doesn't act as a strong enough deterrent for firms to reduce harm.

Recommendation: the FCA should add an extra outcome:

5. Redress: When retail clients have suffered harm they receive redress promptly and efficiently.

To achieve this outcome we would expect the FCA to implement high-level rules and guidance requiring firms to:

- Assess whether harm has been caused to current and former customers.
- Conduct root cause analysis to understand the causes of harm to current and former customers.
- Where it finds customers who have suffered harm but who have not complained conduct a proactive redress exercise.

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Q4: Do you agree or have any comments about our intention to apply the Consumer Duty to all firms engaging in regulated activities across the retail distribution chain, including where they do not have a direct customer relationship with the 'end-user' of their product or service?

It makes sense for the Consumer Duty to be applied across all firms. All firms need to prepare their regulated activities around the needs of consumers (or "end-users"). Yes.

Not only must the specifics of the Consumer Duty, as it's currently proposed, need to be applied across all firms, but also all products and services must be inclusively designed. The actual design of products and services needs to be conducted around actual consumers. Inclusive Design principles are the best way of doing this. See recommendation above for more details.

In the age of an emerging FinTech market, and third party providers working with mainstream firms to deliver services to consumers, we need good service design principles more than ever. That's because there are more products and services on the market today where the designer of those products and services have not got a direct customer relationship with the end-user.

Recommendation: the FCA needs to recommend firms, and their third party providers, understand the principles of Inclusive Design in order to design services and products around real people’s lives rather than assumed consumer lives. Designing around assumed consumers excludes those consumers who designers do not typically think about; those whose lives are much unlike their own. That’s why we advocate working with experts by experience.

LEARNING FROM LIVED EXPERIENCE

Unfortunately there was a feeling across the experts by experience that firms do not listen to them.

One expert in our sessions told us:

“They actually don’t listen, they never put themselves in customer’s shoes, and it’s only for their benefit.”

Another expert told us what they thought would be the remedy to that:

“Now a lot of charities are using co-production methods, lived experts, and getting information from them, like we are here, and maybe a lot of companies need to get their own employees, or people from the community, or their service users, and bring them in, and let them sit in board meetings with them, more committees and get a true understanding of, right, this is my product... lived experts can’t speak for everyone, but at least get a group of people in and have some sort of understanding of how you’re selling your product and how it’s affecting people, and get your information from there, and then they can work in-house.”

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Q5: What are your views on the options proposed for the drafting of the Consumer Principle? Do you consider there are alternative formulations that would better reflect the strong proactive focus on consumer interests and consumer outcomes we want to achieve?

Experts in our sessions were asked to reflect on which they preferred, with experts overwhelmingly in favour of the first option. It was seen as putting more focus on achieving what the client needs were in both the short and long term, whereas option two was seen as something which could be interpreted a little more loosely.

For the experts the first option meant to them something more along the lines of working together with a client without harming them and that the first option seems fairer due to its focus on the end of the process and/or the relationship between firm and client. One expert felt that if the FCA went with the second option it could be used to justify not striving to give a client a loan and/or providing insufficient financial support by citing potential for future harms, whilst another brought up that it could also be used to see best interest as giving a client the loan they came in for with less of an eye on the potential for long term-impact.

Consultation with other consumer organisations led us to believe that overall, we feel there could be an appropriate combination of the two options, to bring out the best of both:

“A firm must act honestly, fairly and professionally, in accordance with the best interests of its customers, to deliver good outcomes.”

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Q6: Do you agree that these are the right areas of focus for Cross-cutting Rules which develop and amplify the Consumer Principle’s high-level expectations?

Fair By Design agrees overall that the three areas of focus within the cross-cutting rules are the right ones. What matters is how they are enforced and supervised. It is difficult to comment fully without better knowledge of how the FCA will supervise and enforce this duty.

Recommendation: The FCA needs to clearly explain how this duty will be supervised and enforced.

Recommendation: the FCA needs to put appropriate resource into enforcing and supervising the rules which amplify the Consumer Principle.

For an example of a principle we would strongly advocate see in the section “Outcomes we are seeking”, in the consultation paper:

“We want to bring about an environment where the consumer harms described above do not occur in the first place, because firms are consistently placing their customers’ interests at the heart of their businesses. We want firms to extend their focus beyond ensuring narrow compliance with specific rules, to also focus on delivering good outcomes for consumers. While firms must continue to comply with our rules, we are increasingly looking for senior management to think proactively about the intent behind our rules, and the impact of their actions on their customers.”

The section on cross-cutting rules states that the FCA will “propose to embed a concept of reasonableness in the Consumer Duty, applying to the interpretation of all of its elements, including the Consumer Principle.” For the most part this describes the relationship between firms and consumers, the products/services they offer, and consideration of the harms they may cause. There is also a specific part on “reasonable expectations of consumers”.

We agree with colleagues at New City Agenda that:

“the FCA should not reintroduce the concept of the “reasonable expectations” of consumers when setting the standards firms need to meet to comply with the Consumer Duty. We believe that this would be extremely damaging to the prospects of the Consumer Duty leading to a reduction in harm ... It will be impossible to measure what the “reasonable expectations” of consumers were in any particular case and raises other awkward questions like whether standards can be low if consumers have low expectations.

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Q8: To what extent would these proposals, in conjunction with our Vulnerability Guidance, enhance firms' focus on appropriate levels of care for vulnerable consumers?

We are glad that the FCA are considering how to join up thinking on a Consumer Duty and vulnerable consumers. It avoids duplication. It also tacitly accepts that thinking about consumers in general, and vulnerable consumers specifically, must be done together.

We agree with the following statement in principle, which shapes our answer to this question: "Different customers will have diverse needs, and their needs may change. The Consumer Duty would require firms to recognise and respond to the diverse needs of their customers and potential customers, especially where these are associated with vulnerability, or with protected characteristics."

We think the best way to recognise and respond to the diverse needs of customers is through adhering to Inclusive Design principles. See above.

We also agree with this in principle from the consultation: "So, firms may need to provide an additional level of care to vulnerable consumers to enable them to carry out their responsibilities, avoid harm and achieve outcomes that are as good as for other consumers". Inclusive design would better enable firms to do this.

What remains unsure is how the Consumer Duty enhances vulnerability guidance. If vulnerability guidance is adhered to by firms, and the FCA properly supervises and enforces what's in the vulnerability guidance, then there is perhaps little else a further Consumer Duty can do strictly speaking. It's for the FCA to explain in more detail what the enhancements are. This will help consumer organisations to know what it is they are supporting.

Recommendation: the FCA must explain in more detail how the Consumer Duty enhances vulnerability guidance.

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Q9: What are your views on whether Principles 6 or 7, and/ or the TCF Outcomes should be disapplied where the Consumer Duty applies? Do you foresee any practical difficulties with either retaining these, or with disapplying them?

We still think it is necessary for the FCA to explain exactly how the Consumer Duty enhances Treating Customers Fairly principles and how this new approach provides more ability for the FCA to ensure better outcomes for consumers than present. After all, TCF is supposed to ensure consumer outcomes are considered at every stage by firms.

For example, where the FCA says in the consultation paper: "It is likely in future that we would make use of the Consumer Duty, and its more developed rules, in preference to the existing Principles 6 and 7. And firms and consumers may find it simpler if the overlap with these existing Principles were removed by disapplying them where the Consumer Duty would apply. However, we consider there may be value in retaining them even where the Consumer Duty applies". We still need clarity on why this would be necessary.

Recommendation: the FCA needs to explain exactly how the Consumer Duty enhances Treating Customers Fairly principles and how this new approach provides more ability for the FCA to ensure better outcomes for consumers than present.

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Q11: What are your views on the extent to which these proposals, as a whole, would advance the FCA’s consumer protection and competition objectives?

We think that price protections enhance consumer protection. It’s good that the protections offered in the Consumer Duty does not preclude the use of price protections in future. What really matters is not the setting of good principles (which are sound in this Duty), but the enforcement of them. So we can really only answer this question when the details regarding supervision and enforcement are explained.

We feel that compliance with the Consumer Duty should be a board level responsibility, backed with strong personal accountability.

Recommendation: compliance with the Consumer Duty should be a board level responsibility, backed with strong personal accountability.

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Q15: What are your views on our proposals for the Products and Services outcome? Q16: What impact do you think the proposals would have on consumer outcomes in this area?

In the summary of the Products and Services section, the FCA says:

“We want all products and services that are sold to consumers to be fit for purpose. We want them to be designed to meet consumers’ needs, and targeted at the consumers whose needs they are designed to meet. This is an essential requirement for products and services to be able to represent fair value for consumers.”

We agree with this. We feel that the best way in which to achieve this is through adherence to Inclusive Design principles.

We are concerned about the part in the consultation paper entitled “What this would mean for consumers”:

“This element of the Consumer Duty would enable consumers to shop around and buy financial products and services with greater confidence that they will:

- be useful to them, and fit for purpose in meeting their needs
- work in a way they would reasonably expect in the circumstances, without unpleasant surprises”.

While we appreciate the sentiment that consumers in general shouldn’t be left with unpleasant surprises, we feel at the moment this places too much emphasis on consumers to know products inside and out. There needs to be less on what consumers should discern for themselves here, and more on what things should be in place to stop firms exploiting the power/information imbalance between them and their customers.

While we have appreciated the insight, we have seen in this consultation paper on the meaning of consumer harm, this doesn't appear to be matched with rules to help avoid problem situations for consumers. There are several passages recognising the problems that consumers face (exploitation of their biases, for example) but little on what can be done about it from a regulatory perspective. Let alone how much resource will be granted for supervision and enforcement activity.

Recommendation: the FCA needs to be more explicit about what additional protections the Consumer Duty provides to avoid consumer harm across the financial services market.

Good value, the poverty premium, and financial exclusion

Current proposals addressing the good value of products do not directly address problems related to affordability. By only considering whether what a firm charges for a product is "reasonable" because it provides "good value" doesn't go far enough to tackle the problems for people (a) who can't access the products they need because they can't afford the price of what's available (financial exclusion and the poverty premium) or (b) have to pay high charges if they don't have any alternative.

We believe that the Duty should move firms to consider how products can help those consumers struggling with affordability issues. For example, there is room for another cross-cutting rule, obliging firms to commit to looking out for signs of financial distress (for example, through observing problems in managing/repaying credit).

Recommendation: the Duty should expect firms to consider the affordability issues of consumers.

We think that all interventions which the FCA implements should contain measures to address financial inclusion. We know that financial inclusion remains a significant challenge for the UK, a nation that prides itself on being a global leader in financial services. It should be noted that:

- Just under 1 million people do not have a bank account.
- 13.2 million working age adults (40%) do not have home contents insurance.⁴
- In 2016, almost 19 million UK adults had outstanding debt on an High Cost Credit product and 6.7 million people took out 11.8 million High Cost Credit products.⁵
- High Cost Short Term Credit includes payday loans and short-term instalment loans. These products are often accessed by those who struggle to access mainstream products. There were 1.46 million HCSTC loans made in the second quarter of 2018, an increase of 11% on the first quarter of that year (FCA, 2019a).⁶ From March 2018 to March 2020 there was a 15% reduction in the number of free cash access points across

⁴ <https://www.birmingham.ac.uk/research/chasm/financial-inclusion/2020/index.aspx>

⁵ Financial Conduct Authority (2019a). 'Consumer credit — high-cost short-term credit lending data'. Available at: <https://www.fca.org.uk/data/consumer-credit-high-cost-short-term-credit-lending-data-jan-2019>

⁶ Financial Conduct Authority (2019a). 'Consumer credit — high-cost short-term credit lending data'. Available at: <https://www.fca.org.uk/data/consumer-credit-high-cost-short-term-credit-lending-data-jan-2019>

the UK. The largest contributor to this decline was from free to use ATMs which fell by approximately 19% over this period.⁷

Recommendation: The FCA should have an objective on financial inclusion, ensuring that all of its interventions also address the needs of people who are financially excluded

We strongly feel that to deliver the substantial benefits the Consumer Duty offers, there needs to be real change in the approaches of both firms (in terms of culture, processes and behaviours) and regulators (in terms of supervision and enforcement). Doing business and being regulated needs to look and feel different in the future if we want positive outcomes.

We are glad that the FCA is looking at what it calls sludge practices:

“We define sludge practices as ‘an excessive friction that hinders consumers from making decisions in their interests, by taking advantage of their behavioural biases’.”

It’s good to root out predatory behaviour like this. But there are consumers who will struggle to make decisions in their interest because of the inherent asymmetry of information between firms and consumers. As such, we need stronger rules, not information for consumers to battle firms by themselves.

As the FCA recognises: “There are different reasons why consumers might end up buying poor value products. Consumers can find it difficult to assess value in both the product’s price and its benefits.” Also: “There are different reasons why consumers might end up buying poor value products. Consumers can find it difficult to assess value in both the product’s price and its benefits.”

We totally agree with the principles of these statements. That’s why we need stronger rules to ensure that information asymmetry is balanced. The FCA will need to have its own measure of whether a product is fair value. It will need to describe very clearly to firms what fair value means in terms of a cross-range of consumers.

For example in insurance markets, the FCA should give examples of what good value means for insuring home contents. This should be the best measure against what good value means in this market. It shouldn’t be for the insurance provider to determine what it thinks good value means (which would clearly be open to exploitation). Neither should the consumer alone be responsible for determining that because clearly they are in a disadvantageous position to tell what good value actually means.

Recommendation: the FCA needs to set its own measure of what good value looks like across different parts of the financial services market for different consumers. This cannot be left to industry, nor consumers, alone.

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⁷ <http://www.bristol.ac.uk/media-library/sites/geography/pfrc/Where%20to%20withdraw%20-%20mapping%20access%20to%20cash%20across%20the%20UK.pdf>

Q19: What are your views on our proposals for the Price and Value outcome? & Q20: What impact do you think the proposals would have on consumer outcomes in this area?

The proposals here suggest that we need to create an environment where consumers can make good choices on products. But this cannot be guaranteed for the reasons we gave at the end of the previous answer. The FCA needs stronger protections to ensure the information asymmetry is balanced.

Otherwise, it's difficult to understand 1) how creating this environment alone will help consumers for the reasons established above about asymmetry of information, and 2) how the Consumer Duty will enhance existing principles in TCF.

Recommendation: the FCA needs to be clearer on what additional protections will be needed to address the information asymmetry between firms and consumers. We would consider price protections to be at the forefront of options to ensure low income consumers do not end up paying a poverty premium for their essential financial services, like consumer credit or insurance.

LEARNING FROM LIVED EXPERIENCE

In our session with experts by experience, they were particularly enthusiastic about the subject of price and value.

One expert told us:

"Fair value to me is when I'm given a good product at a good price, without me having to haggle, you're actually giving me a genuine price, where the financial agency that has given me this product has chosen to give it to me at an equal or better value than another company."

Honesty from firms came up on the matter of pricing:

"It's about being given the best price, and most importantly, which I think a lot of financial authorities have great difficulty with, is being honest, you know. And, it's one of the morals that most people kind of live by, they will buy from you if you're honest. If you can't make it any cheaper, at least you were honest. But when you find out that somebody has given you a better price, and then they can say oh okay then we can do that, that's kind of morally wrong, it's like they think 'yeah, we saw her coming'... and it's like just trying to get as much they can without any thought for how much it impacts them, it's like playing on your emotions"

And loyalty was a feature:

"You can be loyal to companies for absolutely years, and then they get new customers, and they entice their new customers with all these fancy little deals, but they don't give that to their loyal customers. So there's no balance there. Hang on, I've got this customer, we've had her for 20 years, let's give her a nice little deal, no no no, let's just lure more people in and get money off of them."

It's very clear that there is an honesty and trust issue that financial services need to reckon with. The experts in the room told us they need to see more detail on why this Consumer Duty will help address this problem.

Providing more information to consumers so that they can make the right decisions is not enough. Not least because consumers on the whole feel like they are aware of what their best interest is; they also accept the difficulties of ensuring for that best interest against what they perceive as the primary interests of firm (to make money from them).

We think the FCA needs to be clearer in the information it is providing firms on what represents fair value for consumers. We agree with a point made by the Money and Pensions Services (MaPS) that there is an opportunity here to make it clear that consumers should not be penalised by higher costs applied to compensate for factors that derive from firms' own processes.

We agree with the example MaPS gives for this: higher costs is "particularly pertinent in the case of consumers with long-term health conditions, who in many cases might fall into the category of 'vulnerable consumers [who] may be more susceptible to receiving poor value', and may be penalised by a higher price charged for the additional time taken to negotiate on issues that are directly related to the cause of their vulnerability. This is therefore a market in which 'firms would need to take extra care where consumers...are likely to be vulnerable.'"

For reasons earlier stated, consumers themselves will not always be in the position to determine fair value in the case of higher costs deriving from a firms' own processes. This is why the FCA must take leadership and be clear with firms on why charging these higher costs would be contrary to the spirit of the Consumer Duty.

Recommendation: the FCA needs to be clearer in the information it is providing firms on what represents fair value for consumers.

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Q21: Do you have views on the PROA that are specific to the proposals for a Consumer Duty?

We think there is merit in the strongest possible protections for consumers. This would include a PROA. If firms are not causing harm then they've nothing to worry about from this. We agree with insight from the Financial Services Consumer Panel⁸ that introducing a PROA will not result in a mass of legal activity that firms or the regulator would need to worry about.

⁸ See for example p.11 of this report which shows little evidence that the PROA has been exercised often where there are existing PROAs (for example in unfair trading): https://www.fs-cp.org.uk/sites/default/files/fscp_report_final_version_23_july_20.pdf

In principle, we are in favour of empowering consumers in the strongest possible terms which includes enhancing their own rights, and therefore that would not preclude support for a PROA. We also believe that a PROA would have a positive influence on the culture of firms, encouraging them to place consumer interests at the heart of their activities.

Recommendation: There should be a Private Right of Action established at the same time as a Consumer Duty.

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Q26: What unintended consequences might arise from the introduction of a Consumer Duty?

We are aware that there is the chance the introduction of the Consumer Duty, if implemented wrongly, could result in financial exclusion. This would be in cases where firm behaviour changes such that access to financial services becomes harder for consumers who firms now consider pose more of a risk (including litigious risk).

Therefore, we think this Duty would be enhanced with further scope for the FCA. We support an objective on financial inclusion to ensure that for any rules set by the FCA, there is also a duty on the regulator to ensure those rules do not result in financial exclusion.

See our previous recommendation here on an objective on financial inclusion.

At the moment such an objective does not exist. Therefore, the FCA can argue it has no power to ensure that it's rules or guidance do not result in changes by a firm that ends up creating more financial exclusion. This needs to change.

ENDS