



**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?**

A: Our members commented that the incidence of the harms is potentially perceived as overstated and might usefully be remedied by existing FCA controls.

A concern to one member is that the phrase “Consumer Duty” brings a suggestion that the provider can be held liable for any action that may be taken by the end user at any time.

It was commented that there cannot be a process that will protect everyone in every situation. It may be very easy for regulations to be introduced that will attempt to cover any scenario. The introduction of those regulations will bring so much compliance work to an organisation that the service to the retail customer no longer becomes profitable/viable thereby reducing consumer choice and defeating the original objective.

In addition, a consumer who was given appropriate advice at the time of the purchase may decide in the future that the product is no longer suitable/affordable and look to exit the product seeking damages on the basis that the provider owed the purchaser a duty of care.

If there is evidence of potential harm or malpractice or a deliberate lack of clarity then the FCA should have power however, to address those concerns with the relevant provider.

**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?**

A: Members feel that the paper/proposals have been well thought-out and the structure is valid. The proposed structure of the Consumer Duty is clear and offers guidance to an organisation on the views and objectives of the FCA when the organisation deals with a retail customer. In one member’s view, it is easier and better for all to have an indication of the spirit of the regulation with the ultimate sanction being held by the FCA for obvious or repeated breaches.

**Q3: Do you agree or have any comments about our intention to apply the Consumer Duty to firms’ dealings with retail clients as defined in the FCA Handbook? In the context of regulated activities, are there any other consumers to whom the Duty should relate?**

A: Our members commented that the inclusion of SMEs could “cloud” the application, but that it is generally reasonable to apply it to firms. A consideration may be how this will interact with Treating Customers Fairly. The consultation paper is perhaps somewhat vague of this, and may cause consumers difficulties when dealing with an organisation, thereby defeating the aims of Consumer Duty.

**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?**

A: One member commented that this could be perceived as poorly thought-out; if the firms without direct customer contact cannot influence change to products/communications/behaviours applied by the direct customer provider, why should they be penalised?

Another member raised a concern that the original provider of the service may be held liable for the actions of an intermediary in the past. If the intermediary is independent to the provider, then the provider should have a process to communicate direct with the end user to ensure suitability and that the product is clearly described and appropriate. Upon acceptance by the end user, then the relationship with the original provider ends unless there is a fundamental failure of processes at the time of supply.

**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?**

A: One member commented that the options could be perceived as flawed. The Consumer Principle seeks to apply an objective measure to a principle which is, by definition, subjective. This may lead to disputes and legal cases.

**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?**

A: Members felt that this may be too vague an objective to apply specific rules and regulation, but generally agreed.

**Q7: Do you agree with these early-stage indications of what the Cross-cutting Rules should require?**

A: Members felt that in principle, yes, but given the factors cited in Qs 3,4 & 5 the application of such "rules" is considered incompatible with successful implementation.

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

No comment

**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?**

No comment

**Q10: Do you have views on how we should treat existing Handbook material that relates to Principles 6 or 7, in the event that we introduce a Consumer Duty?52 CP21/13 Annex 1 Financial Conduct Authority A new Consumer Duty**

A: One member commented that this could be perceived as too much superfluous regulation.

**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?**

A: One member commented that there is a concern that the proposals are trying to cover every eventuality. With the introduction of more rules and regulations more opportunities arise for breaches/complaints causing providers to leave the market.

**Q12: Do you agree that what we have proposed amounts to a duty of care? If not, what further measures would be needed? Do you think it should be labelled as a duty of care, and might there be upsides or downsides in doing so?**

A: Our members agree that what is proposed is a Duty of Care – the problem is often “measurement” and “enforcement”.

**Q13: What are your views on our proposals for the Communications outcome?**

A: Our members feel that the market is the best medium for ensuring that firms' communications are clear communication; those firms that do not provide communication sufficient to allow consumers to make the choice they seek may lose business.

In addition, it is essential that communications to end users are written in plain English with straightforward signposts to rules/regulations etc. It would be sensible for the FCA to provide the template for the wording to avoid any issues or confusion.

**Q14: What impact do you think the proposals would have on consumer outcomes in this area?**

A: One member felt this to be minimal; those providers that adhere to the new enhanced regulation are probably already communicating in sufficiently superior way to win more business, while those who seek to gain business via misleading communication will continue to find a way to do so.

**Q15: What are your views on our proposals for the Products and Services outcome?**

A: Members felt that increased regulation could stifle or delay the development of new products and services leading to U.K. providers becoming less competitive than overseas competitors, who are not bound by such regulation. Providers risk being unfairly penalised for consumers buying a product/service which is wrong for their needs but right for another consumer.

**Q16: What impact do you think the proposals would have on consumer outcomes in this area?**

A: Our members felt this to be limited.

**Q17: What are your views on our proposals for the Customer Service outcome?**

A: Our members felt the proposals were generally positive – however consideration to after-sales service may need better regulation.

**Q18: What impact do you think the proposals would have on consumer outcomes in this area?**

A: As per our answer to question 17.

**Q19: What are your views on our proposals for the Price and Value outcome?**

A: One member felt this a poor recommendation; markets function sufficiently well to ensure that good providers thrive while those who are not, ultimately fail. Providers risk being bound by unrealistic expectations of returns/price/value which cannot be achieved if factors beyond their control (e.g. market inflation/deflation, interest rates) change the environment in which they're operating. The paper states that they're not seeking to intervene in the market via price caps, but warns that they may have to do so; without them doing so, any controls are "toothless" and too much regulatory intervention can only be harmful.

**Q20: What impact do you think the proposals would have on consumer outcomes in this area?**

A: As per our answer to question 19.

**Q21: Do you have views on the PROA that are specific to the proposals for a Consumer Duty? Open to abuse by negligent/dishonest consumers seeking to avoid obligations.**

No comment

**Q22: To what extent would a future decision to provide, or not provide, a PROA for breaches of the Consumer Duty have an influence on your answers to the other questions in this consultation?**

A: Our members commented that any redress or enforcement should be instigated and managed by regulatory bodies such as the FCA who can adequately appraise the merits of each case and determine its' likelihood of success.

**Q23: To what extent would your firm's existing culture, policies and processes enable it to meet the proposed requirements? What changes do you envisage needing to make, and do you have an early indication of the scale of costs involved?**

N/a

**Q24: [If you have indicated a likely need to make changes] Which elements of the Consumer Duty are most likely to necessitate changes in culture, policies or processes?**

N/a

**Q25: To what extent would the Consumer Duty bring benefits for consumers, individual firms, markets, or for the retail financial services industry as a whole?**

A: Our members feel this to be a sound idea in principle, but the barriers to design, implementation and regulation suggest the current regulatory regime/rules are sufficient.

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

A: Members commented there could be withdrawal from the market of U.K. providers – greater participation by web-based providers from overseas who can avoid the main penalties of Consumer Duty regulation; significantly more legal disputes relating to interpretation of the "objective" measures proposed.

**Q27: What are your views on the amount of time that would be needed to implement a Consumer Duty following finalisation of the rules? Are there any aspects that would require a longer lead-time?**

A: One member commented that it would never be “completely” implemented; there would be constant refining and updating of rules in response to challenges to interpretation, and providers avoiding regulation.