

Financial Services Authority

CP12/35: The FCA's use of temporary product intervention rules

A Response by Credit Action

Background

Credit Action is a national financial capability charity (registered Charity in England & Wales No. 1106941) established in 1994.

Credit Action empowers people across the UK to build the skills, knowledge, attitudes and behaviours, to make the most of their money throughout their lives. It develops and delivers products and services which provide education, information and advice on money matters, in an appropriate way for young people and adults. Through its work Credit Action reaches over 500,000 UK citizens every year.

Introduction

As an organisation, Credit Action is committed to helping both young people and adults build their financial capability, and develop the skills necessary to manage their money effectively. In our view, a fair and well-functioning market is crucial to enabling consumers to make the best use of these skills, and to ensuring that they are able to make financial decisions in an informed and objective manner.

We believe that the power to make temporary product intervention rules could have a tremendously positive impact on the market and consumers if it is used effectively, by enabling the FCA to deal with products that create detriment in a more flexible and proactive manner than has been the case previously. We are very supportive of the FCA's intention to "intervene earlier and ... have a lower risk tolerance than the FSA, in order to ensure an appropriate degree of consumer protection" (paragraph 1.5), and view the capacity to make temporary product intervention rules as fundamental to this. We therefore welcome the opportunity to contribute to this consultation and comment on the proposed approach. In composing our response, we have focused on Questions 1, 4, 5, 6 and 7.

Before addressing the specific consultation questions however, we would make one broader point. We feel strongly that if the power to make temporary product intervention rules is to be genuinely impactful, and drive real benefits for consumers, the FCA must be able to use it within a very short time period if necessary. Currently, there is very little detail within the consultation document itself about the speed with which a temporary product intervention rule could be made and the sorts of timescales that might be involved, beyond a general discussion in the Statement of Policy of the procedure that will be followed in making a rule (Statement of Policy, paragraphs 32 – 35). However, we would stress that there may be cases in which emerging detriment is so serious that it demands an immediate response, and there needs to be scope for the FCA to act appropriately in these circumstances. While we of course realise the need for a formal process to be in place, in order to ensure transparency and consistency, we also feel it is important that these processes are geared so that rapid decisions can be made if necessary, and that this will be crucial to ensuring that the FCA's power to make temporary product intervention rules operates successfully.

Question 1: Do you agree with our analysis of some of the circumstances in which temporary product intervention rules might be necessary?

Overall, we do agree with the analysis of the circumstances in which temporary product intervention rules might be necessary, as outlined in paragraphs 2.9 and 2.10, and believe that the application of a temporary product intervention rule would be justified in each case. However, the examples used are very generalised, and in our view it would be helpful if more detail was ultimately supplied about the sorts of situations in which a temporary product intervention rule could be made by the FCA.

We recognise that the inclusion of such broad examples is a conscious decision, and that the consultation deliberately does not set out to compile an exhaustive list of factors that would lead to a temporary product intervention rule being implemented, as made clear in paragraph 2.11. Equally,

the draft Statement of Policy itself does not include much detail on this, beyond a high-level outline of the sort of competition and contextual issues that will be considered when making product intervention rules. We can appreciate why this approach has been taken, and that there may be a reluctance to be overly specific about the circumstances in which the FCA will use such powers, out of concern that this may constrain its scope for making rules in the future.

However, we question whether the descriptions of the circumstances in which rules could be made are in fact too vague, and if this could detract from the impact of the power in some respects. In particular, we believe that one potentially beneficial aspect of giving the FCA the capacity to make temporary product intervention rules is the deterrent effect this may have on firms who might otherwise be inclined to bring unsuitable or even exploitative products to market. We would argue, however, that if the prospect of a temporary product intervention rule is to effectively deter such behaviour, those firms will need to have a reasonable understanding of what the FCA will determine a “good product” and a “bad product” to be. Currently, we believe that the lack of detail in the consultation document, and more pertinently the draft Statement of Policy, makes it difficult for firms to make this judgement (this also has implications for innovation, which we will discuss in more detail in response to Question 6).

We realise that striking the right balance is not straightforward, but feel that more information about the sorts of situations in which the FCA would consider making a rule (particularly in the final Statement of Policy) would be beneficial. One way of providing this might be to include a set of illustrative scenarios of the sort used by the Office of Fair Trading in their guidance documents. In our opinion, these are very helpful in elaborating the rationale that underpins regulatory decision-making, and we would therefore encourage the FSA to at least consider how it might utilise such devices to enhance clarity around the circumstances in which temporary product intervention rules might be made.

Question 4: How should the FCA balance the need for clarity and awareness in the market against the likely need for urgent action when making temporary product intervention rules?

In instances where the FCA decides to implement a temporary product intervention rule, we believe that the need to protect consumers from detriment should take precedence over building awareness amongst firms about the change.

In our view, if an issue is identified which is serious enough to warrant the introduction of a temporary product intervention rule in the first place, we would expect action to be taken straight away. While we recognise that there may be some benefits to building awareness amongst firms before a temporary intervention is implemented, in order to reduce the risk of detrimental products remaining on the market simply because a firm is unaware of the new rule, we feel that it is ultimately the responsibility of firms themselves to stay abreast of regulatory changes. Therefore, once the decision to introduce a temporary product intervention rule has been made, we believe that action should always be taken as early as possible in order to minimise the risk to consumers.

In addition, we would also hope that any action that the FCA does take to raise awareness amongst firms is matched by similar efforts to raise awareness within the consumer community, which can play a crucial role in disseminating messages directly to consumers themselves. Consumer knowledge is itself an important form of regulation, and if consumers know that they should avoid certain products or have a right to seek redress, this can have a significant and constructive impact on the market. Therefore, we feel it is important to point out that engagement with the consumer community can be just as valuable as engagement with firms in ensuring that the implementation of a temporary product intervention rule is effective.

Question 5: How can the FCA best protect consumers who hold products which might be affected by temporary product intervention rules?

There is a recognition in the consultation that when making decisions on whether or not to make a temporary product intervention rule, the FCA will at times be required to weigh the needs of certain consumers against others, and that where it does so “it will attempt to identify possible negative implications of the rule for those existing consumers, and balance these against its duty to protect consumers in general” (paragraph 3.11).

This is a highly important point in our view, and illustrates that the sorts of judgements the FCA will be required to make when issuing a temporary product intervention rule will not always be clear cut. For instance, while consumers in general might be disadvantaged by “bundling” of the sort described in the Market Analysis section (paragraph 7), for certain groups this might in fact be advantageous – packaged bank accounts are one example, with certain disability groups favouring such products as they provide disabled users with access to travel insurance, which it might otherwise be difficult for them to purchase.

We therefore appreciate the complexity of some of the decisions that the FCA may have to make. In our opinion, the key to addressing these sorts of issues effectively will be for the FCA to maintain an on-going dialogue with the consumer community, in order to build up an understanding of the concerns and sensitivities that various consumer bodies might have about financial products and the way their users engage with the market. Should a problem arise, we would hope that having this kind of knowledge base in place will enable the FCA to quickly identify the sorts of issues that it will need to consider when weighing the needs of various groups of consumers, and coming to an ultimate decision on whether or not to introduce a temporary product intervention rule.

Question 6: Do you agree with our analysis of how temporary product intervention rules might impact upon innovation and market entry?

In our view, the FCA’s power to make temporary product intervention rules could potentially have some effect on market innovation, even if this is just to a limited degree – indeed, to an extent this may be unavoidable when making a change of this nature to the regulatory landscape. However, if

the shift is managed appropriately we would hope that any disruption to firms and the market would be minimised.

In introducing the new power, one clear risk to innovation is that responsible providers may be discouraged from making the investment necessary to bring a product to market in a sufficiently thorough and well tested manner, for fear that it may be banned or their routes to market somehow restricted, as recognised in paragraph 3.21 of the consultation. Furthermore, we are also concerned that the existence of the new power could actually encourage reckless firms, which are aware that they might lose out if they heavily invest in a product that is subsequently restricted, to actively minimise the amount they spend on development and instead focus on simply expanding the quantity of products they have available for market, so that should one poor quality product be banned another can be swiftly brought forward.

In order to mitigate these risks, we believe it will be of crucial importance for firms to have sufficient guidance concerning the sorts of products that the FCA will deem acceptable. As discussed in our response to Question 1, we feel that there is only a very limited amount of information about this in the consultation and draft Statement of Policy, which may make it difficult for firms to make the necessary judgements. We would therefore re-iterate our call for further clarity on such issues, potentially using the illustrative scenario model employed by the Office of Fair Trading.

Question 7: What issues should we consider in relation to how this Statement of Policy affects equality and diversity?

With respect to equality and diversity, our main point would be to welcome the recognition in paragraph 3.26 of the consultation that the introduction of a temporary product intervention rule could prospectively have an impact on vulnerable consumers, and that this needs to be given due consideration during the decision-making process. As outlined in our response to Question 5, we are sensitive to the fact that in making rules the FCA may be required to weigh the interests of one group of consumers against another, and believe that on-going dialogue with consumer bodies will be vital to ensuring that potentially difficult decisions can be made in a fair-handed and timely manner.

Contact

For further information on any of the points made in this response, please contact John Davies at Credit Action, either by email at [johndavies@creditaction.org.uk](mailto: johndavies@creditaction.org.uk) or by telephone on 0207 380 3390.