



The Money Charity Response – New Consumer Duty (February 2022)

The Money Charity is a Financial Wellbeing charity whose vision is to empower people across the UK to build the skills, knowledge, attitudes and behaviours to make the most of their money throughout their lives, helping them achieve their goals and live a happier, more positive life as a result.¹

We welcome the opportunity to respond to the New Consumer Duty.

In this response, we set out our Key Points, make some overall comments on the issue then answer the questions posed in the Consultation Paper.

¹ See box on back page.

Key Points

1. Overall, we agree with the proposals made in the consultation paper.
2. We support the FCA's decision to use Option 1 rather than Option 2 for the Consumer Principle. However, we think more work could be done with the wording of the principle to make it more accessible.
3. We do not believe that the introduction of the Consumer Duty negates the need for the FCA to have a "must have regard" towards financial inclusion. We would still look to see this introduced.
4. We would prefer to see a PROA attached to the Consumer Duty.
5. We agree with the proposed implementation deadline for 30 April 2023. Although we think that that deadline should not be extended any later than this.

Overall Comments

As a Financial Capability and Wellbeing charity, we still feel that the introduction of the Consumer Duty does not negate the need for a "must have regard" to financial inclusion for the FCA. While most UK residents have reasonable access to financial services, there exists a significant proportion who remain excluded from accessing these. For example:

- 1.2 million UK adults do not have a bank account (either a current account or an alternative e-money account). At the time this research was carried out, this equated to 2.3% of the UK adult population.
- 5.4 million UK adults rely on cash to a very great extent, and 1.2 million UK adults use cash exclusively.
- 1.5 million UK households do not have internet access. This includes 18% of households with members aged 65 and over.
- Low-income households in the UK pay a 'poverty premium' in buying their goods and services of £490 per year. The poverty premium is the extra amount people on low incomes pay from not being able to access the best deals.
- Around 7.8 million UK adults either choose not to access credit or do not have access to credit.²

The issues relating to financial inclusion set out here arise from a range of complex social factors. The FCA should be doing more to tackle these issues and the introduction of a

² The Money Charity, *The Money Statistics January 2022*, page 17.

“have regard” to financial inclusion for the FCA would allow it to do so. Ideally, this would mean that financial services regulation would have a positive and proactive duty towards financial inclusion. This could include a statutory duty to report to Parliament annually on:

- a) The state of financial inclusion in the UK.
- b) Measures that the FCA is taking, and plans to take, to promote financial inclusion.
- c) Recommended additional measures which could be taken by government and other public bodies to promote financial inclusion.

Answers to consultation questions

Question 1: Do you have any comments on the proposed scope of the Consumer Duty?

We agree with the proposal to align the scope of the Consumer Duty with the existing scope of the sectoral sourcebooks. We think that the scope is inclusive and agree that it should include both high net worth individuals and prospective customers of financial products.

Question 2: Do you have any comments on the proposed application of the Consumer Duty through the distribution chain and on the related draft rules and non-Handbook guidance?

It is clear that careful consideration has been taken to decide which firms throughout the distribution chain the duty should apply to. We think it is fair to apply these rules proportionately (taking into account the firm’s role in relation to the product or service), to make sure that firms are only liable for their own activities, to exclude firms operating outside the regulatory perimeter, and to exclude firms operating outside the UK. We agree with this approach to the duty through the distribution chain.

Question 3: Do you have any comments on the proposed application of the Consumer Duty to existing products and services, and on the related draft rules and non-Handbook guidance?

We agree that firms should have to review and update existing products or services, so that they comply with the Consumer Duty and can continue to be sold or renewed. We

also support the proposal that firms would need to comply with the Consumer Duty on a forward-looking basis for any customers with existing contracts.

Question 4: Are there any obstacles that would prevent firms from following our proposed approach to applying the Consumer Duty to existing products and services?

No comments.

Question 5: Do you have any comments on the proposed Consumer Principle and the related draft rules and non-Handbook guidance?

We agree with the FCA's decision to use Option 1 rather than Option 2 for the Consumer Principle: "A firm must act to deliver good outcomes for retail clients." We think that the use of "deliver good outcomes" makes it clearer that customers of financial products and services must be able to recognise that the product or service they receive has been beneficial towards them. To use Option 2, "act in the best interests of", would risk tolerating behaviour by firms that whilst may arguably be in the 'best interests' of a customer from the perspective of the firm, does not produce a tangible benefit for the customer.

That being said, we would like to see some small amendments made to Option 1. We think that more work needs to be done with the wording of the principle so that people working at all levels in any particular firm can easily understand what the principle is trying to achieve, and how this relates to their individual role within the firm. For example, it must be made clearer for an employee such as a receptionist, who might not necessarily have extensive knowledge or experience of financial products and services, how they are able to help to produce the best outcomes for customers within their role.

Question 6: Do you agree with our proposal to disapply Principles 6 & 7 where the Consumer Duty applies?

We agree that it makes sense to disapply Principles 6 and 7 where the Consumer Duty applies, and agree with the guidance remaining, as failure to comply with the existing guidance on Principles 6 and 7 is likely to mean that the Consumer Duty has also been breached.

Question 7: Do you agree with our proposal to retain Handbook and non-Handbook material related to Principles 6 and 7 should remain relevant to firms considering their obligations under the Consumer Duty?

Whilst we support the proposal to disapply Principles 6 and 7 where possible, we also agree that it is sensible to retain the material related to Principles 6 and 7 for the time being. We understand that implementing the Consumer Duty should take priority over a

review of the Handbook, and that any amendments and simplification of the rules will be possible in the future.

Question 8: Do you have any comments on our proposed cross-cutting rules and the related draft rules and non-Handbook guidance?

No comments.

Question 9: Do you have any comments on our proposed requirements under the products and services outcome and the related draft rules and non-Handbook guidance?

We welcome the reference made in the consultation paper to rules that would require firms to identify customers in their target market who may potentially be vulnerable, and to introduce a monitoring process to ensure that these customers are not being disadvantaged. However, we think this process should be taken a step further. As we have already put forward to HM Treasury, we would like to see the introduction of a “must have regard” towards financial inclusion for the FCA. Please refer to the Overall Comments section for our suggestions on this.

Question 10: Do you have any comments on our proposed requirements under the price and value outcome and the related draft rules and non-Handbook guidance?

Please see our response to the Question 9 and the Overall Comments section – we would like to see the introduction of a “must have regard” towards financial inclusion for the FCA.

Question 11: Do you have any comments on our proposed requirements under the consumer understanding outcome and the related draft rules and non-Handbook guidance?

We’re happy with the proposed rules that would require firms to make communications easier to understand for customers.

Question 12: Do you have any comments on our proposed requirements under the consumer support outcome and the related draft rules and non-Handbook guidance?

We’re pleased to see proposed requirements for firms to provide better consumer support to their customers, especially those customers with characteristics of vulnerability. We think it is important that firms regularly review whether they are providing an appropriate standard of support that not only meets the needs of vulnerable customers, but also does not disadvantage them. As discussed in our response to Question 9, we think that vulnerable customers could be even better supported with the introduction of a “must have regard” towards financial inclusion for the FCA.

Question 13: Do you think the draft rules and related non-Handbook guidance do enough to ensure firms consider the diverse needs of consumers?

No comment.

Question 14: Do you have views on the desirability of the further potential changes outlined in paragraph 11.19?

No comment.

Question 15: Do you agree with our proposal not to attach a private right of action to any aspects of the Consumer Duty at this time?

We would prefer to see a Private Right of Action attached to the Consumer Duty, as we agree that a PROA would help to deter misconduct from firms. Whilst a PROA is unlikely to cause a flurry of legal action, we think it is important for consumers to have that higher level of protection where necessary. At the very least, we agree that the FCA should keep the possibility of a PROA under review, based on firm's embedding compliance with the Consumer Duty once it has been implemented.

Question 16: Do you have any comments on our proposed implementation timetable?

We would expect the implementation of the Consumer Duty to take about a year, and so agree with the proposed date of 30 April 2023 as a timeframe for firms to fully comply with the new rules. However, we also think that it is important that the Consumer Duty be implemented as soon as possible and without delay, therefore the timeframe shouldn't be extended any further than this date.

Question 17: Do you have any comments on our proposed approach to monitoring the Consumer Duty and the related draft rules and non-Handbook guidance?

No comments.

Question 18: Do you have any comments on our proposal to amend the individual conduct rules in COCON and the related draft rule and non-Handbook guidance?

We support the proposal to amend the rules in the Code of Conduct sourcebook to reflect the higher standard of the Consumer Duty. The new rule requiring all staff within firms to "act to deliver good outcomes for retail customers" where their firms' activities fall within scope of the Consumer Duty, to be applied proportionally where more senior staff have a greater responsibility to comply, ensures that there will be clear and senior-level accountability.

Question 19: Do you have any comments on our cost benefit analysis?

No comments.

Question 20: Do you have any other comments on the draft non-Handbook guidance?

No comments.

Question 21: Can you suggest any other examples you consider would be useful to include in the draft non-Handbook guidance?

No comments.

The Money Charity is the UK's Financial Wellbeing charity providing education, information, advice and guidance to all.

We believe that everyone achieves Financial Wellbeing by managing money well. We empower people across the UK to build the skills, knowledge, attitudes and behaviours to make the most of their money throughout their lives, helping them achieve their goals and live a happier, more positive life as a result.

We do this by developing and delivering products and services which provide education, information and advice on money matters for those in the workplace, in our communities and in education, as well as through influencing and supporting others to promote Financial Capability and Financial Wellbeing through consultancy, policy, research and media work.

We have a 'can-do' attitude, finding solutions to meet the needs of our clients, partners, funders and stakeholders.

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