UK Finance

Response to FCA Call for Input: Review of FCA requirements following the introduction of the Consumer Duty

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Introduction

UK Finance is the collective voice for the banking and finance industry. Representing around 300 firms of all sizes, we act to enhance competitiveness, support customers and facilitate innovation. We welcome the opportunity to respond to the Financial Conduct Authority's ("**FCA**") Call for Input reviewing FCA requirements following the introduction of the Consumer Duty (the "**Call for Input**"). We see the Call for Input as the first step in a collaborative process between the industry and the FCA to rationalise the Handbook in light of the introduction of the Consumer Duty (the "**Duty**").

In principle, UK Finance members are supportive of a more streamlined Handbook and simplified, clearer, rules because, in the right circumstances, these foster greater competition, innovation and reduce the cost of doing business. At a high-level, we think there are broadly three areas that can be distinguished:

1. Areas of the Handbook that can move to a higher-level principles- or outcomes-based approach (supported by guidance where appropriate).
2. Areas where the Handbook can be streamlined i.e. removing contradictory or out-of-date material.
3. Areas where prescription is beneficial and can be designed to reflect further developments in the industry.

In the time available, and given the breadth of our membership, we have not yet arrived at a consensus view of all possible reforms under these three categories. However, our sector-specific workstreams have undertaken considerable work to identify where elements of the Duty might be duplicating existing rules and guidance, making suggestions for change. These specific suggestions are included in the Annexes to this response and are summarised in our answers to Questions 1-3 of the Call for Input. These are emerging areas (some of which may at first sight appear contradictory) that, following further discussion with the FCA, we would seek to refine into specific reform proposals.

When it comes to considering the correct approach to future regulation more broadly, and the use of more outcomes or principles-focused regulations in particular, there are several challenges and a range of additional factors to consider. We outline these in more depth in our responses to Questions 4-7.

Executive Summary

In the course of discussion with members, a number of key themes have emerged. We highlight below issues of particular significance, which the FCA should consider and address as it seeks to progress its work here. We would expect any review of the Handbook to be a holistic process that takes all of these factors into account.

- **FCA's regulatory toolbox**: UK Finance members are of the view that presenting rationalisation of the Handbook as a choice between prescription (rules) and outcomes is in fact a false dichotomy. The FCA has several tools at its disposal when looking to regulate and different combinations of these tools can be effective for different objectives. Furthermore, not all outcomes-based regulation is constructed in the same way. Objectives can be expressed at a high level (as in the Consumer Duty) or can be more detailed in nature (for example, in the Operational Resilience rules). The appropriate approach to any area of regulation, be that outcomes-based, prescriptive rules, high-level principles or more conduct/process-based approaches, will depend on the context and the policy objective the FCA is seeking to achieve.
- **Prescriptive rules vs principles-based regulation**: Members have concerns about the lack of standardisation and reduced legal and supervisory certainty that can arise as a result of removing prescriptive rules, in addition to the increased compliance burden that interpretation of more high-level rules can bring. In light of this, members are in favour of a hybrid approach, combining both principles-based regulation with further detail, where this is considered necessary. If there are automatic and severe sanctions that flow from breaching certain rules, a higher level of prescription is desirable so that firms know where they stand.
- **Proliferation of guidance and communications**: UK Finance members are very concerned that guidance and regulatory communications on the Consumer Duty are spread across a wide range of sources, including policy statements, "Dear CEO" letters, speeches, feedback statements and webinars, all of which the FCA expects firms to take into consideration, regardless of whether or not the communication relates to their sector. This creates difficulties for firms seeking to track and implement regulatory guidance and would become unmanageable were more areas of outcomes-focused regulation to be adopted. Members are in favour of formalising and simplifying this guidance into a single 'golden source' in a centralised location for guidance on a particular topic.
- **Financial Ombudsman Service ("FOS")**: As noted in previous UK Finance responses, members remain concerned that the FOS uses its 'fair and

reasonable' jurisdiction to require firms to act even where this is not required by FCA rules or guidance. Members consider this risk is significantly heightened the closer the FCA moves to outcomes or principles-based regulation, making the FOS a de facto policy maker and creating a parallel regulatory regime which is not subject to the same level of accountability or scrutiny as the rulemaking process under the Financial Services and Markets Act 2000 (FSMA). The FCA and the FOS must take action to mitigate this risk for firms.

- **Pacing and sequencing**: UK Finance members have questioned whether this is the appropriate time for a review of the Handbook, in light of both the time and resources committed to implementing and embedding the Consumer Duty (which has not yet had its post-implementation review) and other ongoing regulatory initiatives, such as the Smarter Regulatory Framework ("**SRF**") and reform of the Consumer Credit Act 1974 (the "**CCA**"). Considering this, the pacing and sequencing of any further changes should be carefully considered and must be subject to a full cost/benefit analysis. The FCA must give firms a reasonable timeframe for implementation, alongside keeping in mind the other ongoing regulatory initiatives.
- **Industry-wide consideration**: UK Finance members are keen to stress that any work to streamline the Handbook should keep in mind the impact across the financial services industry. By way of example, some sectors within the industry (such as personal banking) fall squarely within the Consumer Duty rules and so regularly encounter duplication between the Duty and other areas of the Handbook, Other sectors (such as wholesale banking) are only subject to the Duty to a limited extent, but might still be required to spend disproportionate compliance and management time considering whether changes for the benefit of other sectors nonetheless impact on their (limited) in scope activities. Any work to streamline and reduce duplication in the Handbook needs to take account of the impact for the industry as a whole.

UK Finance and its members would welcome further dialogue with the FCA as its thinking develops on the next stages of the Handbook review.

Separately, UK Finance has been working with Oliver Wyman LLP to identify an empirical understanding of the opportunities that the industry might explore to support macro-economic growth and competitiveness and intends to revert to the FCA separately to discuss our key findings and recommendations for productive change.

Response

Question 1: Could any of our retail conduct rules or guidance be usefully simplified or removed by relying on requirements under the Consumer Duty?

Please tell us:

a. Which rules or guidance (e.g. Handbook chapters, or non-Handbook guidance) you consider cover similar ground to the Duty requirements, or are otherwise overly detailed or prescriptive, or arguably redundant in light of other materials, and why

b. Your thinking on the likely benefits including, for example, any estimate on compliance cost savings

c. What the impact could be on consumers or consumer protection, or other relevant considerations

UK Finance has consistently advocated for a more streamlined Handbook containing rules and guidance that are simpler, clearer, more user-friendly and that support innovation. We see this as vital to ensuring that the UK financial services industry remains competitive. In the sectoral annexes attached to this response, our members have compiled examples of specific areas where rules or guidance are overly prescriptive, detailed or duplicative of the Consumer Duty rules and guidance. These are extremely detailed pieces of work and too lengthy to replicate in full, but it is helpful to summarise the key themes. In terms of chapters of the Handbook, a broad cross section of members would support the following:

- In the areas of retail banking and unsecured consumer credit, the prescriptive rules in the FCA's Banking Conduct of Business Sourcebook ("**BCOBS**") and Consumer Credit Sourcebook ("**CONC**"), respectively, are arguably unhelpful and insufficiently flexible to meet the needs of consumers or the Consumer Duty outcomes (see further Annexes 2 and 3).
- Members also support streamlining several areas of the Mortgage and Home Finance Conduct of Business Sourcebook ("**MCOB**") and Conduct of Business Sourcebook ("**COBS**") where these Sourcebooks overlap with the Duty. Please refer to Annexes 1 and 2 below for further details.
- Prescriptive requirements on customer communications (for example, those derived from the CCA; the summary box requirements and pre-sale

requirements under BCOBS 2.2A; distance marketing rules; obligations to send notices of sums in arrears even if forbearance has been agreed) often do not meet the objectives of the Duty or support consumer engagement and understanding. These are cases where the relevant prescription adds complexity without improving (and in some cases reducing) consumer protection or outcomes.

- There is also a broader failure across a range of rules and guidance in the complaints, retail banking, credit and finance sectors to acknowledge that customers now interact with firms in ways and through channels that were not envisaged at the time relevant requirements came into force (see examples from MCOB in Annex 1 from CONC in Annex 3). The definition of “durable medium” in MCOBS is a good example of this, as are elements of the distance marketing and e-commerce rules.

Proliferation of Guidance

Our members are also overwhelmingly of the view that, at present, FCA guidance and other communications are spread across a broad range of sources, all of which the FCA expects firms to take into account, whether they relate to their sector or not. For example, the FCA webpage on **Consumer Duty resources** includes a long list of publications that firms are expected to consider as part of their business as usual (BAU) compliance. These include (but are not limited to) policy statements, “Dear CEO” letters, webinars, thematic reviews, specific Consumer Duty letters and the results of surveys. These often restate rules in different forms, making it harder for firms to ascertain the true standard to which they will be held. This complexity raises compliance costs and increases uncertainty. Firms would also support the formalisation and simplification of guidance to create a single ‘golden source', in a centralised location, for guidance on a particular topic. This would reduce the compliance burden on firms and improve legal certainty about regulatory expectations in several areas. Some members have suggested the FCA should go further. In the retail banking space, for example, members have highlighted that conduct rules are spread across several sources including the FCA's Handbook, statutes and even rules set by other regulators. They have argued for collaboration between regulators, HM Treasury and industry to achieve a consolidated source and repository for all conduct of business rules within the FCA Handbook to help achieve a simplified framework.

There are also areas where it is unclear whether pre-existing guidance has been superseded – for example, there is Financial Services Authority guidance on Treating Customers Fairly (“**TCF**”) published in July 2006 that still appears on the FCA’s website but which does not make reference to the introduction of the Duty. The FCA

is clear (albeit in its guidance on the Duty rather than its rules) that Principles 6 and 7 (and any related guidance) do not apply where Principle 12 does. However, what is not clear is the extent to which historic TCF guidance may be used by the FCA to inform the interpretation and application of Principle 12 and/or the Consumer Duty rules, or to what extent firms can or cannot still rely on this guidance when considering their compliance with the Duty. This is confusing and unhelpful, as is retaining Principles 6 and 7 in their current form when they only apply to a small fraction of customers. The Principles should be a coherent set of high level rules that are accessible to, and have plain meaning for anyone reading them. It should not require sophisticated analysis of the definition of "retail customer" under the Duty for a firm to ascertain whether Principles 6 or 7 still apply to their business. In any event, retaining guidance on the application of Principles 6 and 7 where this is almost exclusively focused on the treatment of retail customers but now only applies to wholesale business is of no benefit to firms.

Targeted overhaul

In some areas, members support the need for an overhaul of rules or guidance, in particular the highly prescriptive rules and guidance set out in CONC that relate to the CCA regime. Application of these prescriptive rules does not meet the outcomes that the Duty is aiming to achieve, often requiring repetitive or unclear customer communications which risk disengaging consumers from reading the content or may even cause anxiety and distress, heightening their potential vulnerability. For further detail in relation to CONC, please refer to Annex 3. The CCA regime is mentioned as an area for potential reform in the Call for Input following the UK government's consultation on Reform of the Consumer Credit Act in 2022.

There is a trade-off here, however. In the mortgage sector, for example, some members wish to replace the European Standardised Information Sheet (ESIS), which they consider contains unhelpfully prescriptive content (see Annex 1). Others caution that reducing prescriptive content could result in inconsistency of content between lenders. Further, this document has been fully embedded into firms' systems and controls and the cost/benefit of making such a change might not be justifiable. There was also a view that any replacement should also be a prescriptive industry standard – but with wording that has been tested and proved to be more effective in promoting customer understanding (on the basis that members have reported that their research shows in some instances prescriptive wording gives rise to the lowest scores for customer understanding).

Cost/benefit analysis and pacing

While it is difficult to respond on the likely costs and benefits without an understanding of specific changes, many of our members agree that simplifying the Handbook would, in the long-term, enhance customer outcomes, allow firms to streamline compliance processes and reduce compliance costs, and allow for greater innovation. It is possible, however, that these benefits might not be felt for some time. In the interim, firms would be left once again committing further time, money and resources into implementing further regulatory change. The FCA must recognise that firms have recently committed significant time and resources to prepare for and embedding the Duty, and numerous other regulatory initiatives.

Further changes must therefore be subject to full cost/benefit analysis and give firms a reasonable timeframe for implementation, while keeping in mind broader regulatory initiatives such as the SRF and other legislative reforms (including reform of the CCA, which is regarded as a priority by some members). For example, reform of the CCA should be progressed at pace before a wholesale review of CONC, so that the two work effectively together and the correct balance can be struck between legislation and regulation. More generally, we would welcome more clarity from the FCA on its approach to cost/benefit analysis, particularly when balancing up front implementation costs against more long-term or diffuse payback periods (and mindful that a Cost Benefit Analysis Panel was established under the Financial Services and Markets Act 2023).

There are areas in which removing detailed rules or guidance in favour of high-level rules could increase ambiguity and uncertainty about what is considered compliant, and which firms are in scope. Any such cost/benefit analysis relating to future attempts to streamline the Handbook by relying on Consumer Duty rules should therefore consider specifically the impact on firms who might be incidentally impacted by these changes. This would include, for example, wholesale firms with only an indirect relationship with retail customers. This cohort of firms have spent a significant amount of compliance time and budget considering whether and how the Duty impacts their business, only to conclude that the impact is minimal. They are also subject to the full plethora of monitoring and reporting rules despite the fact that they may only conduct a very small amount of in-scope business. Changes with a more significant impact on direct-to-retail firms still must be considered by these firms. We encourage the FCA to commit to consider this more directly to ensure that future changes have a proportionate impact on this sector of the industry. As part of this, some members are of the view that the FCA should consider as an option the express disapplication of the Consumer Duty to wholesale businesses where there is no direct relationship with retail investors and where other obligations, such as the

TCF principle, apply. More generally, firms would like to understand more about how the FCA applies proportionality when developing new rules.

While members are broadly in favour of simplification, they would reiterate the need to have regard to pacing when doing so. In some respects, the full impact of the Duty is yet to be fully understood and cannot yet be fully evaluated. We therefore urge the FCA to consider any changes to other rules with reliance on the Duty carefully. It has required a cultural shift within firms, particularly around their approach to compliance, which remains a work in progress. Our preference would be for a considered, sensibly-paced review of each of the areas we have identified in turn, with a phased approach to implementation as appropriate.

Question 2: Is there a lack of clarity on how requirements under the Duty and other FCA rules interact?

Please tell us where this issue arises and your views on how it could be addressed. For example, would guidance on the interaction be helpful?

Some firms have suggested that existing rules should be clarified using more straightforward language and to include explicit cross-references to the Duty in product sourcebooks.

Prescription and layering

There are several areas of the Handbook where it is not clear how requirements under the Duty and other rules interact. One example, noted in Annex 2 below, is that it is ambiguous at present whether the prescriptive and repetitive information that must be given under the distance marketing requirements meets the requirements under the Duty. Some members have in fact indicated that their testing shows that the more prescriptive communication requirements do not meet the appropriate thresholds to establish consumer understanding, for example one member noted its internal consumer research showed 23 per cent of people felt "there is too much information to go through" in order to invest. Likewise, for firms providing unsecured consumer credit products, it is currently unclear how the requirements under the Duty interact with the prescriptive requirements for customer communications that apply throughout the credit product lifecycle (see further Annex 3). In these areas, where the Duty seeks to achieve the same outcomes as detailed rules, some firms would prefer permission to have the flexibility to remove some of the prescribed elements or deal with them in a different way that ensures good customer understanding, where they consider that prescriptive rules like those under the Packaged Retail Investment and Insurance Products ("**PRIIPS**") regime or in

CONC will not generate communications that meet the customer understanding outcome. This could perhaps be achieved in some areas by making prescriptive requirements evidential provisions or guidance rather than rules.

Duplication

In some areas, the Duty covers similar ground to existing rules with slight differences. This adds to the resource burden on firms. Examples include:

- Requirements in BCOBS and COBS that derive from the clear, fair and not misleading rule (BCOBS 2.2 and COBS 4.2) overlap with the Duty, in particular the customer understanding and customer support outcomes. The FCA should consider whether the Duty could replace these requirements or clarify their interaction.
- Good faith vs 'best interests': The FCA's definition of what it means to act in good faith for the purposes of the Duty largely overlaps with the requirement to act in the customer's best interests which is found in a number of sourcebooks, including COBS and MCOBS. Where the sourcebook in question is predominantly retail focused, for example COBS and CONC, there is a strong argument that retaining references to a 'best interests' rule is duplicative and adds little if anything to the broader obligation on firms to act in good faith under the Duty. Retaining both 'best interests' and good faith requirements can cause operational challenges for firms and adds complexity to their controls (including for firms that operate a second and third line of defence model). However, the position is more nuanced where the sourcebook in question applies more equally to retail customers and those who fall outside of that definition. Here members conducting wholesale business caution that some form of the best interests rule should be retained to ensure a measure of protection for customers outside of the scope of the Duty.
- Retention of Principles 6 and 7, the TCF outcomes and related guidance: see further our points on this above.
- The Product and Services Outcome under the Duty interacts with Product Governance and Distribution Chain ("**PROD**") rules. The Consumer Duty rules are clear that compliance with PROD by a firm conducting retail market business will satisfy the products and services outcome under the Duty[1]. Firms conducting retail market business that are also within the scope of PROD should not also be required to consider guidance relating to the products and services outcome, or find that this is being applied by the FCA

[1] PRIN 2A.3.24

as a ‘gloss’ over and above PROD. The rules are clear that PRIN 2A.2.3 does not apply if a firm is also subject to PROD – in this sense the two should be viewed as separate. Simply complying with PROD will not, of course, constitute compliance with the Duty as a whole – the other outcomes and, crucially, cross cutting rules must also be addressed.

While there is an argument that PROD and the products and services outcome are duplicative, such that the former could be removed, it is important to bear in mind that PROD applies to both retail and wholesale business. Not every firm that is ‘manufacturing’ or ‘distributing’ for the purposes of PROD will also be conducting retail market business and therefore be in scope of the Duty. The separate definitions of manufacturing and distribution here reflect PROD’s broader application, although firms have pointed out that this can cause confusion in practice.

Guidance

If prescriptive rules are removed or replaced with a more outcomes-focused approach, firms should not be penalised for continuing to follow these rules and be given time to develop, test and implement more customer-friendly communications, given that immediate updates may not be practical due to resourcing constraints (see further Annex 1). Members also note that even where more prescriptive requirements are presented as guidance, most firms will in practice treat this as if it were rules to minimise supervisory or enforcement risk. If the FCA wants firms to innovate and have the space to be flexible about the way they meet Consumer Duty outcomes, it needs to consider this when positioning its approach to guidance.

More broadly, we are advocating for more clarity around the FCA’s expectations of firms. As indicated above, our members are keen for the FCA to settle upon a single ‘golden source’ of guidance. This would make ingesting the FCA’s directions more manageable (from an operational perspective) than the current proliferation of guidance from a vast range of sources and sectors, all of which firms are expected to review and apply to their businesses. However, firms also need more clarity around the FCA’s expectations of them under the Duty. The currently proliferation of guidance often adds little that is actually new, but its restatement in a slightly different way often serves to obscure, not clarify the relevant standards.

HNW clients

Some members have suggested that the scope of the Duty should be amended to allow for more flexibility for high-net-worth clients who have the appropriate understanding of risks and who want to access a broader range of products and services appropriate to their needs and objectives (see further detail included in

Annexes 1, 2 and 4). This is difficult today because the definition of a “retail client” includes all customers who are not professionals or eligible counterparties. The Duty’s requirements may be limiting the ability of firms to offer more tailored products. To address this, firms need clear confirmation from the FCA that they can apply the Duty in a manner proportionate to the sophistication of their consumers. A more sophisticated HNW customer may require less from a firm in order to meet the understanding outcome, for example. Arguably the Consumer Duty rules provide that flexibility, but firms require assurance from the regulator on this point. Some members also feel constrained from delivering good outcomes to certain of their HNW customers due to the prescriptive opt-up criteria for elective professional status.

Data protection

Finally, there is a continued lack of clarity as to how the Duty intersects with key data protection and information requirements. Firms remain uncertain as to the extent to which they are permitted to send ‘nudge communications’ to customers under the Consumer Understanding and Consumer Support limbs of the Duty without breaching privacy regulations that are enforced by the Information Commissioners Office (ICO). The guidance issued to date in this regard still leaves firms in a grey area, with a resultant chilling effect on firms’ nudge strategies for customers. While members are aware of the joint FCA/ICO letter on this topic, their feedback is that the letter does not provide the same level of assurance on the topic as would be provided by formalised rules or guidance. Members would welcome further engagement with the FCA, ICO and HM Treasury. See Annex 5 for further details on this point.

Question 3: Are there other areas in our rules or guidance, beyond those with an overlap with the Duty, where we should consider simplification or removal?

Please tell us:

a) Which rules or guidance (e.g. Handbook chapters, or non-Handbook guidance) we should review, and why

b) Your thinking on the likely benefits including, for example, any estimate on compliance cost savings

c) What the impact could be on consumer protection, or other relevant considerations

Guidance

As described above, our members consider that the FCA should review the proliferation of guidance and informal material and provide a consolidated source by topic so that firms are able to access a single 'golden source'. This approach is needed across the Handbook to address the current fragmented approach, including in areas that do not overlap with the Duty.

Common requirements

A number of our members have advocated for common requirements to be centralised across sourcebooks. Notwithstanding that firms do not want to have to look across multiple sourcebooks, some members see value in certain common requirements being described in a single location, rather than being repeated or embedded within sectoral sourcebooks. This may support a more succinct, trackable set of rules for common areas. Potential examples of areas include: distance marketing requirements; requirements on cancellation of agreements; appointed representative requirements; sales of optional products; misleading names; and general liability rules. See further detail in Annex 1.

DISP

Some members have suggested that the Dispute resolution: Complaints Sourcebook ("**DISP**") should be reviewed, in terms of both overall format, layout and content, for clarity. Please refer to Annex 7 for further details.

MCOB

Please refer to the Mortgages Annex (Annex 1) below for specific suggestions for improvements to MCOB beyond simply areas that overlap with the Duty.

BCOB

- Members support the FCA formalising the methodology for calculating Annual Equivalent Rate (AER) which currently resides in non-confirmed industry guidance – an anomaly given the FCA has responsibility for other key financial pricing methodologies, such as Annual Percentage Rate (APR). Please refer to Annex 2 for further details.
- Some members note that the value thresholds in the definition of "banking customer" in BCOB for micro-enterprises and charities are not aligned. This complicates firm processes unnecessarily. Members also identified that there is currently complexity as to how the turnover threshold for a micro-enterprise

should be applied in the context of different ownership structures. Please refer to Annex 6 for further information.

Compliance cost

In general, it is difficult for firms to estimate the likely benefits without understanding how rules would be changed. Some members do not expect there to be compliance cost savings (at least initially) as firms will be required to undertake compliance checks on any changes and may need to update systems and policies as a result of rule changes, although in general firms agree there are potential benefits to simplification and refinement in the longer term.

Some firms expect that a less prescriptive framework may result in greater compliance costs, as firms have to undertake more complex or holistic compliance checks than would be required for prescriptive rules.

Question 4: Do you agree that work towards simplifying our retail conduct rules can help us meet all our objectives, including the secondary objective?

Please explain why or why not

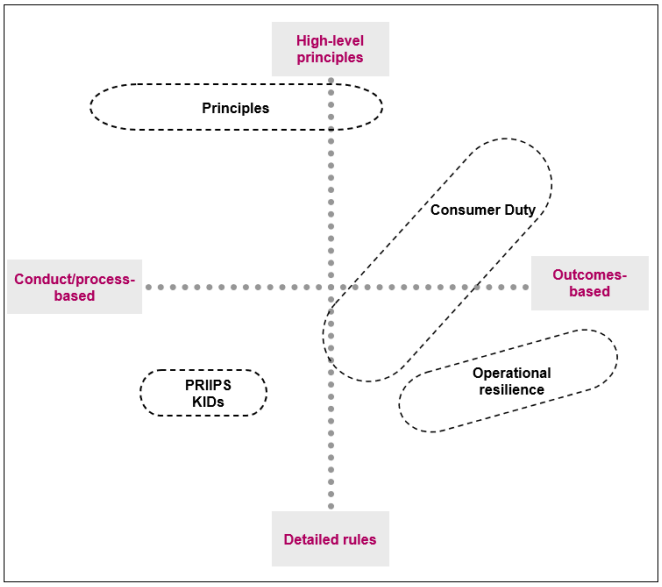
UK Finance agrees that, in principle, simplifying the FCA's retail conduct rules has the potential to help the FCA meet its objectives and enable innovation to deliver benefits for customers and UK plc. The argument that the simplification of the rulebook will support the delivery of the FCA's secondary competitiveness objective, in particular, is straightforward to make. Simpler rules can, in the right circumstances, foster greater competition and innovation. Simpler rules can also help reduce the cost of doing business making the UK a more attractive place to invest, thus aligning with the FCA's secondary objective on growth and competitiveness.

There are, however, two macro points need to be clarified at the outset to engage effectively on this point. To fully understand what simplification looks like in practice, we must first consider all the ways in which the FCA currently regulates (which go beyond a simple choice between prescription on the one hand and outcomes on the other). Further, we need to interrogate whether outcomes alone will automatically lead to simplification of the rule book, or whether the position is more nuanced.

The FCA's regulatory toolbox

It is incorrect to present simplification as a choice between prescription (rules) and outcomes. As detailed in the graphic below, the FCA has several tools at its disposal

when looking to regulate areas of financial services, with different combinations employed depending on the objective it is looking to achieve. As the graphic below illustrates, a number of factors operate to determine whether or not outcomes-based rules would in fact further the FCA's objectives in any particular area, all of which require careful consideration.



Principles articulate standards at a high level using broad concepts that can be applied flexibly to any given context. In contrast, detailed rules seek to prescribe requirements to be applied to more specific situations. Conduct/process-based standards seek to regulate how firms should conduct themselves and how they should manage the conduct of their business. Outcomes-based standards prescribe the outcome firms need to deliver, leaving them free to determine how they organise and conduct themselves to deliver it. Conduct/process-based standards may be drafted as high-level principles (e.g. the requirement that firms conduct themselves with due skill, care and diligence) or in a much more detailed or prescriptive way (e.g. specification of the precise wording of disclosures that must be made to customers in relation to specific types of product). Similarly, outcomes-based standards can be defined at a high level, like the Consumer Duty, or in greater detail, such as under the Operational Resilience rules. Even in an outcomes-based regime, prescription and complexity may exist in underlying rules or guidance required to articulate how firms should go about defining and measuring the required outcomes (again see the example of the Operational Resilience rules).

The choice of which approach to use will depend on both the context (including the risk of harm and general understanding in the market about the regulatory standard the FCA wants firms to achieve) and the policy objective it is looking to achieve. The Call for Input therefore posits what we consider to be a false dichotomy between

pure outcomes on the one hand and pure rules on the other. The reality is far more nuanced.

Recent policy initiatives illustrate this point. On 19 September 2024 the FCA announced that, until legislation to amend the PRIIPs Regulation comes into force, closed-ended investment funds admitted to trading on a UK regulated market/multilateral trading facility may choose not to follow the requirements of the PRIIPs Regulation and associated technical standards[2]. The FCA justified its offer of forbearance here on the ground that investors would still be protected by other relevant rules and regulations, including the Consumer Duty, Principle 7 and COBS 2.1.1R. Firms that choose not to provide a key information document (KID) were also encouraged to consider whether any additional product information is needed to support retail investors, in line with the requirement at PRIN 2.A.5.3R(1) to equip consumers with the information to make effective, timely and properly informed decisions. In an area where regulatory expectations are clearly articulated and generally well-understood by firms, prescriptive rules have, in effect, been disapplied in favour of reliance on a more outcomes-based regime (the Consumer Duty) and high-level principles (Principle 7).

Compare this with the FCA's recent proposals to bring payments firms within the scope of the Client Money and Assets (CASS) regime. Here the FCA stated that it had considered relying on just the Consumer Duty – in particular the obligation on firms to avoid causing foreseeable harm – to provide sufficient protection for consumers' money when held by payments and e-money firms, but rejected this for the following reasons:

"In this instance, however, we believe prescriptive rules are required because:

- *Weaknesses we have seen in some firms' understanding of their obligations suggests that additional prescription is needed for them to have more clarity on our expectations and fully operationalise the Consumer Duty in this market.*
- *Insufficient reporting and auditing requirements limiting our ability to supervise and enforce against poor practices effectively.*
- *The inability to change the legal status of funds and prevent other creditors from exercising a claim through the Consumer Duty.*
- *The risk of contagion should an EMI providing accounts to other Payments Firms fail.*

[2] https://www.fca.org.uk/news/statements/forbearance-relation-investment-trust-disclosure-requirements

- *The Consumer Duty will only cover a subset of Payment Firms' clients as it only applies to retail customers.[3]"*

The FCA's decision to retain prescriptive rules that focus on the process to be undertaken when holding client money was in part prompted by a perceived lack of understanding amongst firms about the regulator's expectations. In this case was regulation needed to clearly set out the regulator's expectations in a way that was not deemed necessary for disclosures made by investment trusts. These examples illustrate both the different combination of approaches available to the FCA and the importance of designing these to fit the objective the FCA wants the relevant regulation to achieve.

Simplifying the rulebook

Simplification of the rulebook, so that firms need to look across fewer sources to understand the regulatory requirements in a particular area, would be welcome (as a 'hygiene exercise'), particularly in areas of the rulebook that interact with the Consumer Duty. As a general proposition we would support the removal of standards that overlap with or are duplicative of each other and which, far from adding clarity for firms on what is required of them, generate confusion by using slightly different forms of words to address substantially the same policy objective. By way of example, members have pointed to the duplication of the "fair, clear and not misleading" rule in MCOB 3.2.1R, 3.2.4R and 3.2.5R. Firms within the scope of the Consumer Duty have also flagged the overlap arising as a consequence of the introduction of Principle 12 alongside retaining Principles 6 and 7. This is separate to identifying the areas which in practice will benefit from more or less prescription or where there is unnecessary complexity.

Outcomes-focused regulation alone, however, will not necessarily simplify the rulebook. There may be a considerable amount of judgement involved in applying outcomes-based regimes such as the Consumer Duty. As we have seen throughout Consumer Duty implementation, this type of approach to regulation requires a significant amount of management time to determine what compliance looks like in the context of individual firms. Firms are also reporting that the ongoing measurement, monitoring and assessment of an outcomes-based regime is more resource intensive. Reliance on high level rules can also lead to a proliferation of guidance which, over time, becomes an increasingly complex, disparate and impenetrable body of material (with greater potential for internal contradictions) as we have discussed above. Truly outcomes-focused regulation will only simplify the rulebook if it is the approach most suited to delivering the FCA's relevant policy goal.

[3] CP24/20: Changes to the safeguarding regime for payments and e-money firms (fca.org.uk), p.54

It also requires the FCA (and external bodies such as consumer groups) to recognise that firms may take different approaches to meeting outcomes-based standards in both supervision and enforcement, and afford them the latitude to do this (while being clear that supervision and enforcement action will be taken only in respect of the rules in force at the relevant time to avoid retrospective action).

Broader regulatory context

Simplification will only help the FCA pursue its objectives (particularly its competition objective) if the pacing of this is aligned with other, broader, areas of ongoing regulatory change, such as the roll out of the SRF and reforms to the CCA. It is important to minimise uncertainty for firms and ensure that the burden on implementing regulatory change is manageable. Firms have little appetite, or budget, for further large-scale regulatory changes unless these are likely to deliver significant immediate benefits. The SRF in particular is a multiyear project that will 'lift and shift' regulatory rules from the statute book and into the regulators' handbook. At the same time as this is being undertaken, HMT is considering which of these rules can be streamlined or removed because they are redundant, including some as a result of the introduction of the Consumer Duty. Members are also aware of sunset clauses in place for certain rules and guidance. Undertaking parallel streamlining activities by the FCA at the same time has the potential to confuse stakeholders and the sector about which process takes precedence, and lead to a greater resource burden on firms. A 'lift and shift' approach in some areas, with high-level rules in other areas, may also lead to inconsistency. The compliance burden for firms in monitoring and implementing parallel change will be a drag on the competitiveness of the sector. Embedding regulatory changes into a firm is time consuming and costly (even when the intended end goal is simplification). By way of example, any change to regulatory rules is likely to require an amendment to a firm's policies or procedures. Such change will require not only time spent by Compliance and management but also sign-off at the relevant governance level (sometimes at Board level). These actions take up time that might otherwise be used for other activities. Furthermore, piecemeal changes are more challenging for firms to deal with, particularly if they affect the same sections of the Handbook.

EU/UK alignment

Overall, we believe the UK regulatory framework should be developed in the best interests of UK plc and with the goal of promoting UK competitiveness. As explained extensively throughout this response, we are in favour of simplification of the UK regulatory framework, provided this is done thoughtfully and with consideration given to the full FCA toolbox. At the same time, some members note that divergence between UK and EU rules may result in compliance challenges for firms operating in

multiple jurisdictions who must comply with EU Directives and Regulations as well as the UK rules, thereby increasing compliance costs. Further, some members note that divergence might make it harder for UK rules to be assessed as equivalent by the EU in certain instances: for example, some members note that divergence in the UK's payments services rules could affect the likelihood of obtaining equivalence with the EU's PSD3 rules which may in turn impact access to the Single Euro Payments Area (SEPA). Equivalence is not about having matching regulatory frameworks; a key principle is that it is outcomes-based. These issues can therefore be mitigated but require careful calibration as between the FCA's streamlining work, the SRF and consideration of the FCA's competitiveness objective.

Question 5: In which circumstances do you think it is appropriate to rely on: a) high-level rules under the Consumer Duty b) more detailed rules c) a hybrid approach with both high-level and detailed rules?

As explained in response to Question 4, presenting this as a simple choice between detailed prescription and higher-level outcomes is a false dichotomy. In reality, both high-level and detailed rules, conduct-based standards and outcomes-based standards all have a role to play in streamlining the handbook depending on the regulatory objective the FCA is looking to achieve. UK Finance is, therefore, in favour of a hybrid approach, incorporating all of these approaches to standard setting as appropriate given the policy objective. The balance to be struck, and the overall decision about the combination of regulatory tools that will be appropriate in any particular case, will depend on the objectives the rules are looking to achieve and associated enforcement sanctions.

High-level, outcomes-based, rules have the clear benefit of being flexible. In the right circumstances and when implemented effectively, they can better foster competition and innovation in the market by reducing prescription and providing firms with greater latitude to decide how to implement regulatory standards. UK Finance has consistently advocated for an outcomes-based regulatory system and generally supports a reduction in the regulatory burdens on firms. We would encourage the FCA to streamline unnecessary and out of date rules where possible.

Purely outcomes-based regulation already exists and could provide a template. For example, operational resilience rules for firms (set through the Senior Management arrangements, systems and controls (SYSC) chapter of the Handbook) prescribe the outcomes firms must meet, the way they should define and measure those outcomes (e.g. by setting impact tolerances for critical services) and impose liability for not meeting those outcomes. This example provides a good illustration of the false

dichotomy described in Question 4. It shows that there may be cases where significant detail is required as to the objective measures that firms can point to in demonstrating how they meet an outcome. The FCA should bear this in mind when considering what outcomes-based regulation will mean in different contexts.

Notwithstanding our overall preference for a more streamlined rulebook, there are circumstances in which a move towards high-level rules without prescribing how these high-level outcomes should be achieved risks detrimental outcomes for both consumers and firms. High-level rules can result in both a lack of standardisation in approach across the industry or sector and reduced legal certainty. Removing prescriptive rules about how a high-level outcome should be achieved can leave firms less clear as to the regulatory standards they are required to meet. Consumers can suffer as a result of varying interpretations of more outcomes-based standards by firms. Firms can struggle with the compliance burden created by the need to interpret high-level rules and the time taken to secure buy-in to any particular approach across the organisation and external stakeholders. By way of example, one area of the Duty that has led to regulatory confusion for firms is the lack of a commonly and clearly understood definition of 'good consumer outcome' as required under the Consumer Duty. We recognise the FCA has given examples of good and bad practices within its "FG22/5 Final non-Handbook Guidance for firms on the Consumer Duty", but these examples are not sufficient in providing full clarity and the interpretation of what constitutes a 'good outcome' remains largely subjective. An 'outcomes focus' also increases the risk of regulatory intervention with the benefit of hindsight, fear of which may prompt firms to adopt a more conservative approach to compliance. Over time, this can narrow consumer choice and suppress growth.

As the Call for Input recognises, certain areas of the regulatory framework may simply be better suited to prescription rather than outcomes. Detailed rules can be better suited to upholding legal certainty. They may be needed to create a standardised regulatory environment for firms and/or consumers in certain circumstances, for example where there is a high risk of consumer harm, where customers may benefit from being able to directly compare the activities of firms and when transposing international standards (which the FCA often plays a central role in helping to develop). If there are automatic and severe sanctions that flow from breaching certain rules, a higher level of prescription is desirable so that firms know where they stand. This is a key issue to be resolved as part of the reform of the CCA, for example. The Call for Input also identifies product intervention rulemaking powers as an area where prescription is helpful. The FCA's rules include requirements based on historic enforcement actions that are difficult to dilute down to broad principles. Elsewhere, the FCA should retain detailed rules that are required to facilitate machine readable processes, such as in regulatory reporting.

We would urge the FCA to think carefully before concluding that reliance on high-level regulatory rules alone is appropriate in any particular area of the regulatory framework. Where this is considered appropriate, we would advocate a staged approach to adoption and suggest that such an approach is primarily most appropriate for areas in which there is a clear understanding of the agreed regulatory standard firms are required to meet across the sector. We have set out in Questions 1 to 3 above and the related annexes the key areas we believe that the FCA should consider when assessing a move towards high-level rules.

Also as noted above, any further move towards high-level rules should be accompanied by the introduction of clear, accessible guidance for firms that sets clear expectations for the industry, as well as clear metrics against which firms can benchmark outcomes. This would give firms greater certainty that they are meeting the required standards within a high-level framework and decrease the need for increased supervisory engagement from the FCA while giving firms greater freedom to innovate in *how* they achieve the required outcomes.

There is, however, an important balance to be struck here. Although guidance can play a valuable role in setting the parameters within which firms operating in an outcomes-based regime must act, the FCA should nonetheless be wary of an overly extensive reliance on guidance in place of detailed rules. Any wholesale replacement of prescriptive rules with detailed guidance risks creating ‘prescription by the back door’, with firms in practice treating new guidance as if it were a set of rules. Additionally, the proliferation of and range of sources of guidance means it can be even harder for firms to monitor compliance than where prescriptive rules are in place (we explain this point in greater detail in our response to Questions 1 and 6). There is also a practical risk that a shift from prescriptive to high-level rules would not generate the desired changes within the industry. Some members caution that even if prescriptive rules are replaced by high-level outcomes-focused rules, in the short- to medium-term firms would likely continue to follow the former rules-based framework in some cases, to ensure continued compliance with regulatory standards and to avoid additional resource spend that would be required to adopt a new approach to regulatory compliance. This further points to the need for the FCA to carefully identify areas in which compliance is currently constrained by prescriptive regulation, where an outcomes focused approach would be of immediate practical benefit.

Finally, the needs of different types of firms will vary. Some firms benefit from the certainty of detailed rules as they provide greater assurance that a given standard is being met, freeing up compliance resource that might already be significantly constrained. This may include smaller or more specialist firms, but will not always be so. Feedback from members has highlighted that greater detail can also be viewed

as a benefit for some large firms as it helps ensure consistency across larger teams. In contrast, firms seeking to adopt an innovative approach to financial services offerings may be overly constrained by prescription, particularly where this has been designed for products or an environment that has been superseded by technological or societal developments. While we do not support a two-tier approach to regulation, the FCA does need to consider when detailed rules might offer a specific benefit to particular types of firms.

As an example, we have considered how lack of prescriptive rules might currently be constraining firms looking to comply with the consumer understanding outcome in the Consumer Duty. Firms to whom the consumer understanding outcome applies are required to take steps throughout the customer journey to support retail customer understanding, including to ensure their communications meet the information needs of retail customers and are likely to be understood by them. However, the consumer understanding outcome does not detail the objective standards firms should use to assess whether or not the consumer understanding outcome has been met, nor does it prescribe any threshold firms are required to meet in order to be certain they are meeting this outcome. While this could be seen to provide flexibility for firms, in practice members have found that this leaves considerable uncertainty as to whether the metric they have chosen to measure consumer understanding will be accepted by the FCA as evidencing compliance with the Duty.

Given the competing benefits of both a streamlined and rules-based approach, it is clear that a hybrid approach – where the Handbook is streamlined where appropriate, but retains adequate detail where required – is the optimal approach for the FCA to take.

Question 6: What do you see as the main costs and benefits of making changes to the FCA Handbook by simplifying or removing detailed expectations of firms?

We have already discussed some of the benefits and costs of simplifying or removing detailed expectations of firms in our responses to earlier questions.

We agree with some of the issues that the FCA has identified in its Call for Input. In particular, there is a risk that allowing firms to interpret high-level regulatory principles, rather than being prescriptive, could lead to firms making increasingly conservative business decisions which could impact their growth. Moreover, having only principles allows firms to interpret them in different ways which may not lead to the outcomes the FCA would expect. As we have mentioned, this can be mitigated by appropriately calibrated FCA guidance to supplement higher-level rules, provided

there is sufficient regulatory certainty and market understanding that the guidance required is not excessive (as explained further above).

We are not in favour of an approach to outcomes-focused regulation where the FCA sets it expectations through constant speeches and publications of 'good and poor' practice. For example, the FCA's multi-firm reviews on implementation of the Consumer Duty (for retail banking in December 2023 and the insurance sector in June 2024) contain observations that are broadly applicable, and all firms are encouraged to consider the findings. In the first year of the Consumer Duty's operation for open products, the FCA has published over 30 separate items that reference the Consumer Duty, including several sectoral multi-firm reviews and "Dear CEO" letters which it has encouraged all firms to read and assess their relevance and application to their particular sector. The picture is even more complex for guidance on the FCA's expectations around management of customer vulnerability, which is now split across formal FCA guidance and numerous refences within documents pertaining to the application of the Duty. The compliance burden and costs to firms of having to respond to detailed information requests from the FCA on the application of the Consumer Duty, and to monitor and comply with a proliferation of speeches, good-practice observations, webinars, market studies and other non-handbook guidance should not be underestimated. This compliance 'drag' undermines competitiveness and hampers certainty over the rules and expectations on firms. This is especially the case for smaller firms with proportionally smaller compliance teams. As outlined above, members would support the FCA consolidating guidance by topic into a single 'golden source'.

Features such as the Rule Review mechanism serve to mitigate some of these impacts, by enabling firms to proactively feed back on rules that are ineffective. Members consider this mechanism needs to be strengthened further and made more flexible, so firms are able to feed back on broader areas of concern rather than just specific rules. That said, members are also unclear as to how firms' ability to ask the FCA to review a rule/collection of rules fit with the wider streamlining work proposed. Greater clarification of how these mechanisms will be interact would be appreciated.

Also, many of these publications are not subject to the same scrutiny process as Handbook amendments. The FCA lacks important accountability here. A better template for publishing guidance to support a more outcomes-focused approach to regulation is, we submit, Financial Crime: A Guide for Firms. This is regularly updated to incorporate examples of good and poor practice identified from thematic reviews, supervision work and enforcement cases. However, all changes are subject to consultation and firms have time to consider these before they go live. The pace of updates to the guidance is also considerably more manageable for firms, who also have the advantage of navigating one consolidated source of guidance here.

In moving to high-level outcomes, there must also be recognition that guidance is just that – i.e. guidance and not prescriptive rules. Firms cannot innovate in how they meet those outcomes if the FCA continues to require strict adherence to existing guidance through supervision, which may not reflect market reality or technological developments.

Where an outcomes-focused approach to a particular area of regulation is deemed appropriate, the FCA should explore whether it can introduce clear metrics or tools that give all firms a clear benchmark of the level of compliance to which they should be aiming. This is particularly important for smaller firms who may not have sufficient resources and expertise in-house to interpret guidance where the intended outcomes are not clear.

Furthermore, firms will also need the FCA to provide a degree of latitude to enable them to test out a range of potential approaches to meeting any newly implemented high-level outcomes (as encouraged by Nikhil Rathi's challenge to firms to understand risks and act more proactively in his recent Mansion House speech[4]), without fear of rapid or heavy-handed supervisory or enforcement action. As an illustration, pressing ahead with initiatives such as the FCA's proposals to more frequently name firms under investigation alongside moving to high-level outcomes would create increased enforcement risks for firms and may discourage firms from considering innovative or novel solutions to achieving outcomes.

Finally, and as UK Finance has set out in previous consultations on the Consumer Duty, there is a perennial risk that the FOS uses its 'fair and reasonable' jurisdiction to require firms to act even where this is not mandated by FCA rules or guidance. This risk becomes considerably more pronounced the closer the FCA moves to an outcomes-based approach to regulation, because of the latitude afforded to firms in how they achieve the outcome in question and arguably the greater spread of guidance material against which the FOS can adjudicate. This risk is also heightened where firms are pushed to be more proactive, as per Nikhil Rathi's recent speech.[5] While we recognise the operational independence of the FOS from the FCA, we have previously highlighted instances of the FOS interpretating FCA rules in a different way to that which was originally intended as part of its fair, just and reasonable jurisdiction. This makes the FOS a de facto policy maker, creating a parallel regulatory regime which is not subject to the same level of accountability or scrutiny as the FSMA rulemaking process and which is much less predictable for firms. If the FCA does decide to simplify its rulebook, the FCA and FOS must take clear and necessary actions to mitigate this risk, including recognising that firms may take different approaches to meet with high-level outcomes and engaging in earlier

[4] Growth: mission possible | FCA

[5] Ibid

dialogue with firms to explain their expectations in areas where prescriptive rules are replaced. In this regard, we would refer to the FCA to the paper UK Finance previously published on the FOS.[6] The FCA may want to consider carrying out a broader review of the remit and role of the FOS as part of any streamlining work for enforcement-specific sourcebooks such as DISP.

Despite these challenges, we remain in favour of the FCA streamlining the Handbook *where it is appropriate to do so*. A simplified rulebook can allow greater innovation. Fewer cumbersome requirements on firms can offer them greater freedom to introduce new products and services to market, which would benefit consumers by increasing choice and improving competition. Moreover, a simplified rulebook can reduce the cost of regulation by affording firms greater flexibility to interpret rules. This is a reduction in absolute terms (due to the associated cost of meeting prescriptive requirements) and could also reduce the resource costs for firms by allowing them to decrease reliance on complex compliance systems.

Finally, members are of the view that appropriate pacing of reforms, including implementing reforms in a staged way, where appropriate, and setting out a manageable timeframe for reforms, would contribute to smoother and more effective implementation both for firms and the FCA.

Question 7: Where do you see high-level or detailed expectations having differing costs or benefits for different types or sizes of firm?

As set out above, in some areas high-level rules may help smaller firms with the critical innovation they need to gain market share and grow (such as firms seeking to compete by taking a more novel or innovative approach to provision of financial services). However, some firms of this size do benefit from more detailed rules in areas where regulatory certainty is necessary, particularly in the early stages of a firm's lifecycle. Likewise, larger firms also face costs and barriers to innovate where rules are unclear. The FCA should consider how best to ensure regulatory certainty for smaller firms as it undertakes its review and streamlines the rulebook, while supporting all firms to innovate and grow. As described above, avoiding a proliferation of good-practice observations and other non-handbook guidance helps to reduce the compliance burden for all firms. In some areas, overlaying a streamlined rulebook with metrics and KPIs against which firms can benchmark their approach would support innovation without imposing an unsustainable compliance burden.

[6] Review of statutory dispute-resolution processes in the banking and finance sector

Annexes

UK Finance

Annex 1: FCA CFI: Mortgage Members' Responses Q1-3

October | 2024

Contents

General Suggestions

- Members noted it would be beneficial if the FCA could reproduce the handbook in formats that allow users to easily copy and paste rules into Microsoft Office packages. This would enhance usability for compliance professionals and others who often need to reference and share specific rules.
- Across the FCA handbook, many rules could be rewritten using simpler language, making it more readable for both firms and consumers.
- Members noted areas where overlap currently exists within the broader body of FCA regulatory output: finalised guidance, thematic reviews, policy statements, statements on approach, and 'Dear CEO' letters.
- A member from a smaller organisation raised that in their view, when prescriptive rules are removed, firms should not be penalised for continuing to use them. The member specifically mentioned communication with customers, where statutory wording may not align with Consumer Duty standards. The member emphasised the need for reasonable time to adapt to more customer-friendly language, given that immediate updates may be challenging due to resourcing constraints.
- There is the need to find the appropriate balance for individual firms' preferences for principles-based vs prescriptive regulation.
- A common point raised by members was that the implementation of the Consumer Duty means that firms can now rely on monitoring of outcomes and respond in a data-led way. As such, they suggested FCA regulation could be simplified by adopting an outcomes-based, rather than rules-based approach. They expressed that a more flexible approach could allow them to apply individual outcomes-based assessments, resulting in greater consumer benefit.

Question 1: Could any of our retail conduct rules or guidance be usefully simplified or removed by relying on requirements under the Consumer Duty?

a) Which rules or guidance (e.g. Handbook chapters, or non-Handbook guidance) you consider cover similar ground to Duty requirements, or are otherwise overly detailed or prescriptive, or arguably redundant in light of other materials, and why?

Summary Table

Below is a summary of which rules and guidance members suggested should be retained, reviewed or removed. More detail on these can be found in the written section following this. Where there is an asterisk (*) marked in red, this denotes an area where there is a lack of consensus among members.

	Retain	Review	Remove
MCOB 1		• **MCOB 1.2.9CR(2)(b), MCOB 1.2.3AR and 1.2.7(R):** high net worth provisions.	
MCOB 2	• **MCOB 2.7A**: E-Commerce • **MCOB 2.8**: Record keeping • **MCOB 2.9**: Restriction on marketing or providing an optional product for which a fee is payable.	• **MCOB 2.3.1 & MCOB 2.3.4:** conflict with the interests of customers. • **MCOB 2.3:** inducements. • **MCOB 2.4:** High-Pressure Sales, specifically MCOB 2.4.3. • ***However**, some members suggested this should be removed altogether, given the overlap with the Consumer Duty requirement to avoid causing foreseeable harm. • **MCOB 2.5A: t**he customer's best interests. • ***However**, some members suggested this should be removed altogether, given the overlap with the Consumer Duty requirement to act in good faith. • **MCOB 2.3.4:** conflict with the interests of customers. • **MCOB 2.5A.1:** acting honestly, fairly and professionally in accordance with the best interests of customers.	• **MCOB 2A,** especially **MCOB 2A.1** (remuneration) • **MCOB 2.6:** exclusion of liability. Specifically: **MCOB 2.6A.-1:** protecting customer interests, and **MCOB 2.6A.8:** firms must pay due regard to interests of its customers.
MCOB 3	• **MCOB 3A.2.3G21/03/2016:** communications to customers with different addresses. • **MCOB 3A.3.2R21/03/2016:** name and contact point. • **MCOB 3A.3.5R21/03/2016RP:**	• **MCOB 3A.5 and MCOB 3A.4.1**: MCD financial promotions and the representative example. Some members suggested this should be simplified and the length reduced. One idea was to present only the final two rows of essential information as standard, allowing consumers to access the full breakdown if they choose.	• **MCOB 3A.2.1**: the fair, clear and not misleading rules & **MCOB 3A.3**: a) MCOB 3A.2.1R21/03/2016 b) MCOB 3A.2.4R21/03/2016 c) MCOB 3A.2.5R21/03/2016: approval of home purchase plan

	prohibition on cold calls.	▸ ***However,** other members argued the requirement for representative examples should be removed altogether. ▸ **MCOB 3A.1.11 and MCOB 3A.1.17:** financial promotions.	financial promotions. ▸ **MCOB 3B:** general information disclosure requirements. Most members suggested this be removed altogether due to duplication with other guidance
MCOB 4	▸ **MCOB 4.8A.10R:** for rate switches and other variations should be retained.	▸ **MCOB 4.8A:** specifically, **MCOB 4.8A.7B: s**implifying execution-only sales "personalisation" and advice triggers. ▸ **MCOB 4.8A.5R:** simplifying this would enable more flexible communication and increase customer choice**.** ▸ ***However**, some argued it should be retained, as it doesn't prohibit firms from offering execution-only sales, but rather prevent firms from steering customers towards this when it isn't in their interest. ▸ **MCOB 4.8A.14 (5):** positive election to proceed on Execution Only basis. A member suggested how the wording could be simplified. ▸ MCOB 4 Initial Disclosures: **MCOB 4.4A.7, MCOB 4.4A.9, MCOB 4.4A.12,** and **MCOB 4.4A.18:** wording should be simplified.	▸ **MCOB 4.8A.17R(1):** the prescription levels for execution-only business. ▸ **MCOB 4.8A.4:** the customer's best interest principle is not prescriptive and is now covered by the Consumer Duty requirement to act in good faith.
MCOB 5		▸ **PRIN 2A and MCOB 5A:** review duplication between these, particularly between **PRIN 2A.5 vs MCOB 5A.3.** ▸ **MCOB 5A:** ESIS timing rules for execution-only sales. ▸ **MCOB 5 and MCOB 9:** rules around the KFI, ESIS and Offer documents,	

		particularly in the annexes **of MCOB 5, 5A, 6, 6A and MCOB 9.** ▸ **MCOB 5A.5, 5A.5.5, 5.6 and 9.4:** content and illustrative content of the ESIS and KFI should be simplified to improve consumer understanding. ▸ ***However**, some members, while supportive of reviewing the ESIS, expressed caution with reducing the prescriptive content. The members that were supportive of reviewing the ESIS y have suggested that the replacement should be a prescriptive industry standard led by the FCA. Other members pointed out that regulatory changes in this area would be costly and take time. ▸ APRC calculation requirements, specifically **APRC assumptions.** ▸ ***However,** members noted that the cost-benefit of this change may not be high enough. ▸ **APRC 2**: review and give flexibility to use different calculations and more tangible figures. ▸ **MCOB 5.8:** Financial Information Statement (FIS), especially **MCOB 5.8.7 and MCOB 5.8.4 (2).** Review to increase flexibility to add additional information if required.	
MCOB 6		▸ **MCOB 6 and 6A**: combining and aligning these into one source of information requirements in terms of mortgage offers.	

		▸ **MCOB 6A.3:** MCD Binding offer and reflection period. ▸ **MCOB: 6.4 and MCOB 9.5:** content of offer letters. ▸ ***However,** some members expressed similar concerns to MCOB 5 i.e., they are cautious of changing prescriptive rules that are now embedded and suggested changes would need to be justified based on the cost-benefit.	
MCOB 7		▸ **MCOB 7B.1.4:** prevents firms from including information about the main mortgage when illustrating a further advance. Members would like this to be reviewed so that there's the option to include additional information. ▸ Members expressed concern that MCOB 7 may be falling behind the industry in terms of progression, innovation, and digital customer journeys.	▸ **MCOB 7.6.28:** specifically, the requirement to tell the customer about "known future changes" to the rate and payment. ▸ ***However,** some members felt this should be retained.
MCOB 10		▸ **MCOB 10 and 10A**: review due to overlap with Consumer Duty.	
MCOB 11		▸ **MCOB 11 and 11A:** should be combined and updated to reflect technological advances. ▸ **MCOB 11.5.1:** treating customers fairly. This should be disapplied or amended to include a reference to Principle 12. ▸ **MCOB 11.7:** Transitional Arrangements & **MCOB 11.6.2/11.6.3**. Review to give greater clarity regarding when affordability assessments are necessary.	

		▸ **MCOB 11.6.20:** a member suggested this be reviewed due to overlap with Consumer Duty.	
MCOB 13		▸ **MCOB 13.3:** overlaps with Consumer Duty regarding vulnerable customers. ▸ **MCOB 13.4:** specifies timelines and information requirements for customers in arrears on regulated mortgage contracts. Align the language and simplify to distinguish between detailed rules and outcome-based requirements.	
MCOB Sched-ules		▸ **MCOB Schedule 1:** reviewed against wider record keeping requirements to ensure there is no contradiction. ▸ **MCOB Schedule 5:** members questioned its relevance.	▸ **MCOB Schedules 2, 3 and 4.**
DISP		▸ **DISP:** Durable Medium. Review the definition of 'durable medium' and digitise communication. ▸ **Reflection periods**: members suggested exploring alternative methods, particularly interactive channels, to help customers better review offers and understand their decisions.	
TC		▸ **Training & Competence Sourcebook TC 2.1.5A**: creditor/ intermediary knowledge and competence requirements. This duplicates existing FCA SMCR and T&C regimes.	

PROD		▸ **PROD:** members suggested that elements of PROD could be merged with the Consumer Duty.	
CONC		▸ Members suggested some CONC provisions cover similar grounds to Consumer Duty requirements. ▸ **CONC 7.3:** dealing fairly with customers in arrears or default. This overlaps with the Consumer Duty, specifically Principle 6 and PRIN 2A.6. ▸ **CONC 3:** members suggested this overlaps with PRIN2A.5.	
CBTL			▸ **CBTL:** most members suggested withdrawing this completely, questioning whether this is needed alongside regular BTL. ▸ ***However,** one member suggested consolidating CBTL requirements into a single FCA handbook, such as merging the CBTL guidelines in PERG with those in the MCD Order.

Detailed Explanation

MCOB 1

- **MCOB 1.2.9CR(2)(b):** A member suggested this should be reviewed, as the specificity around how long a high net worth (HNW) statement remains valid into the future is onerous; particularly for the person signing it given the uncertainty surrounding future changes and the likely misalignment between the validity period and the length of the mortgage.
- **MCOB 1.2.3AR and 1.2.7(R):** A member suggested these provisions should be reviewed as the "all or nothing" aspects of these rules may not necessarily enhance the borrower experience or provide a higher level of protection. MCOB 1.2.3R(2)(b) requires that, when applying the HNW provisions, consideration must be given to "all those tailored provisions, including MCOB 1.2.7 R." However, in principle, the only tailored provisions that seem genuinely material are those in **MCOB 4.7A, MCOB 4.8A,** and **MCOB 11.6**, which allow for a tailored HNW process in the mortgage contract's formation and assessment. The other provisions, which largely relate to minor tailoring for information disclosure, seem less significant and potentially prone to flaws.

MCOB 2

Sections to be removed:

- **MCOB 2A,** especially **MCOB 2A.1** (remuneration), could be removed entirely, due to overlap with PRIN and SYSC.
- **MCOB 2.6** (exclusion of liability): Specifically, **MCOB 2.6A.-1** (protecting customer interests) and **MCOB 2.6A.8**, could be removed. The rules state firms must pay due regard to interests of customers, which is duplicated by the FCA's overarching Principle for Business, Consumer Rights Act 2015, and PRIN 2A.2.1 (Act in Good Faith), and PRIN 2A.2.8 (Avoid Causing Foreseeable Harm).

Sections to be reviewed:

- **MCOB 2.3.1 & MCOB 2.3.4** (conflict with the interests of customers):
  - The purpose of MCOB 2.3 is to ensure, in accordance with Principles 1, 6 and 8, that a firm does not conduct business under arrangements that might give rise to a conflict with its duty to customers or to unfair treatment of them.
  - Members suggested that handbook guidance referring to Principles 6 and 7 is unnecessary. This should be disapplied or amended (for example, to refer additionally to Principle 12 and explain how it is applicable) to minimise conflicting requirements.

- **MCOB 2.3** (inducements) are already covered by the Consumer Duty PRIN rules. The rationale is provided below:
  a) **Conflicts addressed through broader principles:**
  PRIN 2A.4 (Price and Value): requires firms to assess whether their pricing and distribution models, including commissions or incentives paid within the distribution chain, result in unfair customer outcomes.
  b) **PRIN 2A.2.1 (Act in Good Faith)**: stipulates that firms conduct business with honesty, fairness, and transparency when interacting with retail customers. This requires firms to scrutinise any incentives or inducements that could undermine these core principles.
  c) **PRIN 2A.2.8 (Avoid Causing Foreseeable Harm):** obliges firms to analyse their practices, including the use of incentives, to determine if they could lead to foreseeable customer detriment. For example, if an inducement incentivises mis-selling or unsuitable product recommendations.
  d) **Staff Incentives (PRIN 2A.8.2):** cautions firms against designing reward structures in a way that could incentivise behaviours that contradict PRIN 2A's overarching goal of good customer outcomes.
- **MCOB 2.4 (High-Pressure Sales):**
  - The high-pressure rule may overlap with PRIN 2A.2.8, as both sections focus on protecting customers from aggressive sales practices that could result in poor outcomes: "...ensuring all aspects of the design, terms, marketing, sale of and support for its products avoid causing foreseeable harm".
  - However, members suggested this could be removed completely, given the overlap with the Consumer Duty requirement to avoid causing foreseeable harm.
- **MCOB 2.4.3:**
  - a firm must pay due regard to the needs of its clients. This is replicated in Consumer Duty Principle 7 (communications with clients), which requires that a firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading.
  - Members suggested that handbook guidance which specifically relates to how firms should comply with Principles 6 or 7 is unnecessary. This should be disapplied or amended (for example, to refer additionally to Principle 12 and explain how it is applicable) to minimise conflicting requirements.
- **MCOB 2.5A:** the customer's best interests. This overlaps with Consumer Duty:
  a) **Acting in Good Faith (PRIN 2A.2.1R):** the Sourcebook defines this as a conduct characterised by "honesty, fair and open dealing" and acting in line with "reasonable expectations of retail customers". This mirrors MCOB 2.5A's requirements for honesty and fairness. Some members suggested this should be reviewed, while others suggested it be removed altogether.

b) **Avoiding Foreseeable Harm (PRIN 2A.2.8):** reinforces the principle in MCOB 2.5A of acting in the customer's best interests, as causing harm would clearly contradict this principle.
c) **Enable and support retail customers (PRIN 2A.2.14):** aligns with MCOB 2.5A's focus on customer best interests, as helping customers achieve their financial goals is a key aspect of acting in their best interest.

c) Sections that remain relevant and should be retained:

- **MCOB 2.7A**: E-Commerce.
- **MCOB 2.8**: Record keeping.
- **MCOB 2.9**: Restriction on marketing or providing an optional product for which a fee is payable.

MCOB 3

MCOB 3A: Financial promotions and communication with customers. Members expressed that as MCOB 3A overlaps with Consumer Duty, this should be simplified. While some elements could be removed entirely, there are elements that remain relevant and should be retained. Members suggested that only product specifics should be included in MCOB 3A. Some examples are provided below, and members proposed that the whole section be reviewed and simplified.

a) Sections to be removed:

- **MCOB 3A.2.1**: The fair, clear and not misleading rules & **MCOB 3A.3:**
    a) MCOB 3A.2.1R21/03/2016
    b) MCOB 3A.2.4R21/03/2016
    c) MCOB 3A.2.5R21/03/2016 (approval of home purchase plan financial promotions)
    - Members suggested these should be removed as general requirements for financial promotions are potentially unnecessary against PRIN2A expectations. Firms are more likely to rely on Consumer Duty cross-cutting rules and principles (in terms of communications and financial promotions). It would, therefore, feel appropriate only to retain product specific requirements within MCOB. For example, where the product or communication type requires specific information to provide clarity and consistency to customers, as covered in wider sub-sections of MCOB 3A.
- **MCOB 3B: General information disclosure requirements.**
    - Some members suggested this should be removed altogether on the basis that it duplicates PRIN2A, particularly consumer understanding and support.
    - Other members agreed that MCOB 3B is redundant, citing that existing MCOB initial disclosure rules (MCOB 4.4A) provide equivalent information to consumers. Members pointed out that additional MCD (Mortgage Credit Directive) general information requirements create duplication and

potential confusion, and this has already been identified as part of the HM Treasury's Smarter Regulatory Initiative (SMI).
- Some members disagreed with this, highlighting that not all the requirements in MCOB 3B are covered in MCOB 4.4A. Instead, they consider that it would be useful to acknowledge that the information doesn't have to be in a single place/document. This would allow for elements of the requirements to be provided in, for instance, an Initial Disclosure Document (IDD) and the ESIS.

b) Rules which remain appropriate and helpful despite the Consumer Duty:

- **MCOB 3A.2.3G21/03/2016:** Communications to customers with different addresses.
- **MCOB 3A.3.2R21/03/2016:** Name and contact point.
- **MCOB 3A.3.5R21/03/2016RP:** Prohibition on cold calls.

c) Rules that could be reviewed

- **MCOB 3A.1.11 and MCOB 3A.1.17:**
  - These state that financial promotions (even exempt ones) may be subject to general rules, including Principle 7 (Communications with clients), SYSC 3-10 (Systems and controls), MCOB 3A.2.4 R (Fair, clear, and not misleading communications), and for relevant activities, Principle 6 (Customers' interests).
  - Members suggested that Handbook guidance on Principles 6 and 7 is unnecessary and should either be disapplied or amended (for example., to include Principle 12 and clarify its applicability) to avoid conflicting requirements.
- **MCOB 3A.4.1 and MCOB 3A.5:** Financial promotions and the representative example:
  - Members suggested that the inclusion of the 'representative example' in financial promotions, particularly under MCOB 3A.4.1 and MCOB 3A.5 should be reviewed. This is because it is seen to offer little value to customers and may cause confusion.
  - The representative example, required in mortgage promotions when an interest rate or cost of credit is mentioned, is based on the expected product selection of 51 per cent of customers. However, since it is not personalised, it often has little relevance to the individual customer, reducing its usefulness in decision-making.
  - Members highlighted that financial promotions, as they currently stand, are lengthy, complex, and include legal or financial jargon, which can overwhelm consumers, resulting in disengagement. This makes it harder

for customers to understand the products they are considering or the implications of their choices.

- Reducing information overload, by streamlining the content of financial promotions, could make it easier for consumers to engage with and understand the details of products, so improving their trust and confidence in financial decisions.
- Members suggested simplifying the presentation of key information by reducing the requirement for long, detailed disclosures. One idea was to present only the final two rows of essential information as standard, allowing consumers to access the full breakdown if they choose.
- Another suggestion was to remove the requirement for representative examples altogether, as their lack of personalisation makes them less relevant to the individual consumer. A simpler approach to providing meaningful and digestible information could better serve customers, ultimately leading to better Consumer Duty outcomes.

MCOB 2 and 3: References to Principles 6 and 7

- As mentioned above, members expressed support for the suggestions previously provided by UK Finance to the FCA regarding tensions within the handbook, specifically the points raised in the 'UK Finance response to CP21/36 from the FCA 15 February 2022', 'Annex 1 Inconsistencies and tensions within the Handbook' (pages 42 to 46). This suggested that Handbook guidance on Principles 6 and 7 is unnecessary. When looking at guidance supporting Principle 12 (Consumer Duty), there are overlaps with other existing principles. In particular, Principle 6 (Customers' interests), Principle 7 (Communication with clients) and Principle 8 (Conflicts of interests). Removing or reducing the layering in rules caused by this overlap in Principles could aid adherence and make navigation of the rules more straightforward.
- The following Handbook chapters may need to be disapplied or amended (for example, to refer additionally to Principle 12 and explain how it is applicable) to minimise conflicting requirements:
    a) MCOB 2.3.4: conflict with the interests of customers
    b) MCOB 2.5A.1: acting honestly, fairly and professionally in accordance with the best interests of customers
    c) MCOB 3A.2.1: communicating in a way that is fair, clear and not misleading
    d) MCOB 11.5.1: treating customers fairly
- And, as explained above under 'MCOB 2' and MCOB 3' subheadings:
    e) MCOB 2.3.1 (because it sets out the purpose of Principles 1, 6, and 8).
    f) MCOB 2.4.3 (because it sets out how firms should comply with Principle 7).

g) MCOB 3A.1.11 (because it sets out the purpose of Principle 7).

h) 3A.1.17 (because it sets out how firms should comply with Principles 6 and 7).

MCOB 4

- Members noted that overall, MCOB 4 is relevant and should be kept given the customer benefits of consistency and the protections offered. Members expressed concern that removing or over-simplifying this section could result in too much flexibility or subjectivity, potentially creating an interpretational risk. Several members did note that MCOB 4.8A is possibly an exception to the above and should be reviewed, though views on this differed.
- MCOB 4 Initial Disclosures: **MCOB 4.4A.7, MCOB 4.4A.9, MCOB 4.4A.12,** and **MCOB 4.4A.18:** members noted there is an opportunity to simplify significantly the wording of the Initial Disclosure rules. Many of the MCD rules from 2016 are wordy, complex, and duplicate existing rules and disclosures. For example: method of providing, timing rules, and additional distance marketing rules. These include complex MCD definitions, for example: Mortgage Arranger, MCD, and Mortgage Intermediary.
- **MCOB 4.8A**:
  - Members noted that Consumer Duty simplifies execution-only sales by stating that firms must ensure these transactions do not result in poor outcomes.
  - They suggested that for simple transactions, such as rate changes, customers should be able to proceed with execution-only online transactions without requiring advice.
- **MCOB 4.8A.4:** a suggestion to remove this was proposed, due to the customer's best interest principle not being prescriptive and it being covered by the Consumer Duty requirement to act in good faith.
- **MCOB 4.8A.7B:** simplifying execution-only sales "personalisation" and advice triggers.
  - Members highlighted the conflict between this and the Consumer Duty's consumer understanding outcome. Barring mortgage firms without advice permissions from providing any personalised information to customers contradicts the aim of clear consumer understanding.
  - it was suggested these advice triggers may be too prescriptive, as many customers have actively chosen to stay with their current lender, particularly in an increasingly digital environment.
  - Members expressed this could be restrictive from an EO sale standpoint by preventing agents from discussing personalised payments with the customer. This means that advice boundaries can be triggered too early when the customer is simply 'shopping around', thereby hindering clear consumer understanding. Examples include:

d) Providing customers with an indication of the monthly costs of a regulated mortgage contract if the indication is personalised to the customer in any way. For example, by detailing the monthly cost, the amount that the customer wishes to borrow or the term over which the customer wishes to borrow it.

e) Calling a customer to inform them that they need to submit a mortgage application within a specific timeframe to avoid a new (higher) interest rate. This applies if the call is regarding a specific mortgage product the firm knows or reasonably believes the customer is interested in, and the call explains the rate or product that will apply if the application is submitted after the deadline.

- Members maintained that the customer would continue to be protected via existing disclosures and warnings (for example, positive election to proceed on a non-advised basis). The Consumer Duty PRIN2A rules also provide added protections.
- Comments were received that the requirements regarding EO sales are onerous and create barriers for customers contrary to the Consumer Duty outcomes and cross-cutting rules, except for MCOB 4.8A.10R for rate switches and other variations. In particular, the interactive/ non-interactive dialogue requirements should be removed as these provisions present unnecessary barriers to meeting the information needs of customers and the 'tailoring' provisions of the consumer understanding outcome, especially where a vulnerable customer is involved.

- **MCOB 4.8A.5R:**
  - Members suggested that simplifying MCOB 4.8A.5R could enable more flexible communication (particularly for product transfers) without additional borrowing. While the rule serves a purpose, it may limit consumer choice in some cases. A more nuanced approach, allowing firms to explain the benefits of EO sales, could benefit both consumers and lenders, while existing PRIN rules and disclosures would continue to provide necessary protections.
  - Other members noted that this doesn't limit customer choice, so doesn't need to be simplified. The guidance in MCOB 4.8A.6 is clear that firms are not prohibited from offering EO, more that they should not steer customers towards it. The risk is that EO sales are cheaper than advised, therefore firms may push customers down this route for their own advantage, therefore any rule changes should be mindful of this.
- **MCOB 4.8A.17R(1):** the prescription levels for execution-only business.
  - A member suggested this should be removed as it feels disproportionate given the conduct standards in MCOB 4.7A and MCOB 4.8A. These establish clear guidelines on who must receive advice and who is permitted to transact without it. While monitoring remains important, the member suggested that the focus should be on the appropriateness of

individual deals rather than on maintaining compliance with an aggregate threshold.

- **MCOB 4.8A.14 (5) "Positive election to proceed on EO basis".** One member suggested simplifying the wording to:
  - '(5) Once the customer has been provided with the information in (4), in any case where there is spoken or other interactive dialogue between the firm and the customer at any point during the sale, the customer must confirm, either in writing or orally (with the oral confirmation audio or video recorded), that they understand they are proceeding on an execution-only basis and accept responsibility for this decision.'
  - The member suggested the rationale for this was to:
    a) Remove repetition: the customer has already been informed about the EO basis in section (4) so "positive election" isn't needed again.
    b) Simplify the language: phrases like "consequences of losing the protections" have been replaced with more straightforward language such as "understand they are proceeding on an execution-only basis".
    c) Balance the tone: the phrase "accept responsibility for this decision" encourages customer responsibility.

MCOB 5

- Members expressed views that simplifying and improving clarity of communications would improve customer engagement, understanding and outcomes.
- Members suggested that **MCOB 5 and 5A** could be combined and aligned to prevent duplication and contradiction.
- One member expressed a concern surrounding **MCOB 5A, ESIS timing rules for execution-only sales**. Where customers decide to stay with their existing lender to take a new deal (product transfer), the vast majority prefer a frictionless digital process with their existing lender. In a digital age, where many customers perform their own due diligence, the detailed ESIS timing requirements in MCOB 5A may be excessive for well-informed customers who have actively chosen to stay with their current lender.
- Members suggested that duplicative requirements between PRIN 2A and MCOB 5A, particularly around consumer understanding (PRIN 2A.5 vs MCOB 5A.3) should be reviewed and removed.
- Some members argued that the KFI and ESIS don't serve their intended purpose, as customers don't use these to compare mortgage deals, and instead pay more attention to comparing interest rates.

a) Prescription vs flexibility:

- **MCOB 5 and MCOB 9:** members pointed out that rules around the KFI, ESIS and offer documents, particularly in the annexes of **MCOB 5, 5A, 6, 6A and MCOB 9**, include heavily prescriptive content. This would benefit from a review given the Consumer Duty expectations on customer understanding and clarity/ tailoring of communications. Members recommended that a better balance should be struck between disclosure and clarity.
- **MCOB 5A.5, 5.6 and 9.4:** members argued these are overly prescriptive regarding what information must be provided to the customer, regarding **the content and illustrative content of the ESIS and KFI.** Firms are restricted in the information that can be provided outside the ESIS and KFI requirements even if this would be clearer and aid consumer understanding. There is little room for firms to go over and beyond the MCOB requirement, with **MCOB 5.A.5.5** requiring that the ESIS must contain only the material prescribed . It is not clear if Consumer Duty is intended to override such prescriptive requirements. We recommend that the handbook makes clear that compliance with such existing disclosure rules takes precedence Consumer Duty.
- Other members expressed views that they would like more flexibility regarding disclosure documentations. Pre-MCD, MCOB 6.6 allowed firms to provide an offer document in place of an illustration, if customer information needs were met. A similar approach could work if the rules were simplified. Simplified disclosures could still include key information, with the option for full advice available to those who need it.
- However, some members noted that reducing the prescriptive content could result in inconsistency of content across lenders.
- Similarly, while some members expressed support for replacing the ESIS, they maintained that the replacement should be a prescriptive industry standard.
- Another member expressed a view that, while the ESIS should be reviewed, any review should be done cautiously, as production of the documents are embedded into firms' systems and the cost-benefit might not be justifiable. Balancing the need for greater flexibility with these sections to help support customer understanding, whilst balancing the need to maintain clarity and consistency might be challenging. Firms should be permitted to do what is best for them and their customers, iteratively and on an informed basis, using test and learn approaches to changes, communications and understanding assessments.

b) APRC and APRC 2:

- **APRC**: members noted that the APRC calculation requirements should be reviewed, specifically the APRC assumptions.
- There isn't member consensus on this point. One member expressed a view that changes to APRC assumptions would deliver little for borrowers and place a significant change requirement on lenders.
- **APRC 2:** members questioned whether APRC 2 improves customer understanding and achieves its intended purpose, suggesting the risk warnings could be worded better. In their view, most customers don't fully understand what this figure is showing.
- Members argued that the Benchmark rate used for APRC 2 is based on a fixed calculation. However, interest rates have somewhat decreased since the introduction of this rule. As the Benchmark rate has fallen, the APRC 2 is only marginally different from the actual APRC for some mortgages. This limits the APRC's ability to quantify the risk or help customers understand the consequences of rising rates.
- Members instead suggested that more flexibility be offered in the rules and encourage firms to use of different calculations and more tangible figures. For example, showing the impact of a 1 per cent rate increase on a customer's monthly payments, which was previously included in the KFI rules (MCOB 5.6.59 R (h)). Members believe this would resonate more with customers than an overall percentage cost based on external reference rates.

c) MCOB 5.8: Financial Information Statement (FIS)

- Some members expressed views that they would like the flexibility to add additional information to the Financial Information Statement (FIS) so that it more closely matches the KFI/ESIS. Home Purchase providers are required to give customers a FIS under MCOB 5.8.
- The content of the FIS (**MCOB 5.8.7**) is much lighter than that of the KFI/ESIS. For example, MCOB 5.8 only requires fees added to the agreement to be included, not those paid-up front/ on redemption. There is no requirement to include how the customer can make a complaint. And there is no requirement to notify customers of procuration fees paid to intermediaries. However, under **MCOB 5.8.4 (2)**, the FIS must 'contain only the material prescribed or permitted in this section'.
- Members also suggested that the lack of uniformity between FIS and ESIS and KFI makes it more difficult for potential applicants to undertake a like-for-like comparison. For example: FIS requires the APR rather than the APRC, whereas most mortgages will be MCD regulated and quote the APRC.

MCOB 6

There is no member consensus on whether MCOB 6 should be reviewed. Some members reference specific aspects for review, while others are cautious of changes since some of these prescriptive elements of the handbook are now embedded in firms' systems.

- Members expressed views that, overall, they think MCOB 6 and 6A provide necessary clarity and prescription to communications that are critical to the mortgage customer journey and supporting customer understanding. They did suggest that MCOB 6 could be reviewed to provide greater flexibility and additional interpretational clarity. This could be achieved by combining and aligning MCOB 6 and 6A to have one source of information requirements in terms of Mortgage Offers.
- **MCOB 6A.3:** MCD binding offer and reflection period. Members suggested that its purpose should be questioned and reviewed, given the validity period of a binding offer (typically 6 months) and the ability of a consumer to waive the seven-day reflection period should they wish to. Members noted that the reflection period can be confusing for both colleagues to explain and customers to understand.
- **MCOB: 6.4 and MCOB 9.5**: content of offer letters, which includes modifications that can be made to the illustration. Members suggested that this should be reviewed, as its prescriptive nature may conflict with Consumer Duty and it's not clear if Consumer Duty is intended to override such prescriptive requirements.
- One member also suggested alongside the CFI, a much more detailed review of MCOB 6, under the SRI, is needed to ensure that balanced changes are progressed that support customer understanding and industry consistency.
- However, members expressed concerns with reviewing MCOB 6 and 6A, citing the same concerns associated with reviewing MCOB 5A. They suggested that while they should be reviewed, any changes would need to be justifiable based on the cost-benefit, as well as the trade-offs between balancing consistency and flexibility. Members requested caution in changing prescriptive elements of the handbook, given these are fully embedded into firms' systems and the cost-benefit may not be justifiable.

MCOB 7

A member suggested that MCOB 7, 7A and 7B, should be reviewed due to conflicting with Consumer Duty. However, any changes need to be justifiable based on the cost-benefit, and balance consistency with flexibility. Whereas another member suggested that, while MCOB 7.6 could be reviewed (see below), overall, they find MCOB 7, 7A and 7B useful.

a) Sections that could be reviewed:

- **MCOB 7B.1.4:** Prevents firms from including information about the main mortgage when illustrating a further advance. Including a section on the main loan in this documentation would allow firms to disclose the impact on the overall mortgage payment, which would better highlight the impact to the customer of increasing the balance on their mortgage.

b) Sections that could be removed:

- **MCOB 7.6.28:** Specifically, the requirement to tell the customer about "known future changes" to the rate and payment, for example, at the end of an incentive rate. One member suggested this aspect be removed because providing information about potential future changes that may not materialise could lead to customer confusion or unnecessary concern. The member suggested it is more beneficial to give accurate information closer to the time before the change takes effect and noted that MCOB 7.6.28 conflicts with the following:
    a) **PRIN 2A.5.3R(1)(c)** mandates that communications equip retail customers to make decisions that are effective, timely, and properly informed. Providing speculative information about potential future changes may not contribute to this goal and could instead lead to confusion.
    b) **PRIN 2A.5.3R(1)** requires firms to support retail customer understanding so that communications meet the information needs of retail customers. By focusing on current and confirmed changes, firms can better meet this requirement by providing clear, relevant, and actionable information.
    c) **MCOB 7.6.21** rules already require lenders to notify customers in advance of actual rate changes. This provides timely, accurate information when it's most relevant. Typically, lenders send multiple reminders about material changes, especially transitions to standard variable rates. This ensures customers receive repeated notifications closer to when changes occur.
- However, some members disagreed with this view, noting that the purpose is to give the customer an indication of what the impact of the changes would be when the rate changes, in the same way that the ESIS would.
- Another member noted that a review of MCOB 7 looking at contract variations and information requirements may be too complex for the CFI. However, they expressed concern that the MCOB 7 may potentially be falling behind the industry in terms of progression, innovation, and digital customer journeys.

MCOB 10

- A member suggested that MCOB 10 and 10A should be reviewed as they conflict with Consumer Duty. However, any changes would need to be justifiable based on the cost-benefit, and balance consistency with flexibility. In particular, some members highlighted APRC 2 as an area for review, as explained in the MCOB 5 section.

MCOB 11

- Members suggested that MCOB 11 and 11A should be reviewed and simplified to reflect digital developments in the sector, economy, and technology. As income assessments and data-checking methods have evolved, the rules on responsible lending need updating to avoid unnecessary limitations. Members also recommended combining MCOB 11 and 11A to reduce confusion.
- **MCOB 11.5.1:** a member suggested this is redundant because it refers to Principles 6 and 7. They proposed that this rule be disapplied or amended to include a reference to Principle 12 and explain its applicability.
- **MCOB 11.6.20**: a member suggested that this be reviewed as it overlaps with Consumer Duty. Both require written policies to be approved by the governing body, and Consumer Duty outcome monitoring mandates that the governing body reviews and approves the firm's assessment of customer outcomes at least annually.
- **MCOB 11.7: Transitional Arrangements & MCOB 11.6.2/11.6.3**
  - Members highlighted that MCOB 11 does not always meet the expectations for supporting customers in exceptional or vulnerable circumstances, such as those facing financial control or financial abuse. They called for greater flexibility and clarity in these cases.
  - Additionally, members expressed that MCOB 11, along with the finalised guidance from PS24/2 on affordability, should be reviewed and simplified. The current rules, particularly those across different chapters of MCOB 11 and section 2.19 of FG24/2, can be confusing and impractical. Members noted that greater clarity regarding when affordability assessments are necessary, especially when there is a material impact, would be beneficial.
  - Members noted that the FCA had initially suggested that standalone product switches were exempt from affordability checks under the MMR rules, but this in no longer the case. This is particularly relevant in scenarios such as product switches during rising interest rates and cost-of-living increases (where the difference in rate may be material but still be lower than the reversion rate) or allowing the lender to provide the borrower with the stability of a fixed rate, even though this may be higher than the prevailing reversion rate.

- Streamlining the rules and adopting a principles-based approach to affordability, aligned with Consumer Duty outcomes, would improve customer outcomes and reduce barriers in cases where payment shock is unavoidable yet appropriate. There are existing rules in MCOB 11 that allow similar concessions in certain scenarios. For example, the current requirement for stressed affordability when removing an ex-partner (potentially from an abusive relationship) may be problematic, especially if the customer has demonstrated the ability to pay their mortgage independently for some years. Members expressed that allowing firms to make principles-based decisions in specific extenuating circumstances would lead to better outcomes for customers.

MCOB 13

- **MCOB 13.3:** members suggested that MCOB 13.3 should be reviewed due to its significant overlap with Consumer Duty, particularly concerning vulnerable customers and those in payment difficulties. While PS24/2 has improved support for customers facing financial challenges, the evidentiary and affordability requirements in MCOB 13 can hinder firms from acting in the best interests of customers.
- Greater flexibility in these areas could enhance consumer welfare. It was noted that PS24/2 highlights potential inconsistencies in FCA rules, which could benefit from simplification and better alignment with Consumer Duty outcomes. For instance, although the FCA allows some flexibility by not always requiring an income and expenditure assessment, firms must still ensure that arrangements are suitable and consider customers' overall indebtedness and priority debts. This can be challenging to implement effectively without such assessments.
- **MCOB 13.4:** members pointed out that MCOB 13.4 specifies timelines and information requirements for customers in arrears on regulated mortgage contracts. They suggested aligning the language and simplifying these provisions to clearly differentiate between outcome-based requirements and detailed rules regarding information and timing.

MCOB Schedules

- A member suggested that MCOB Schedule 1 should be reviewed. While, this remains necessary and useful, this should be reviewed against wider record keeping requirements to ensure there is no contradiction between this and other requirements.
- However, Schedules 2, 3 and 4 are empty, holding no information, so should be removed entirely:
- The member also questioned whether MCOB Schedule 5 is still relevant.

Durable Medium and Reflection Periods

- Members suggested reviewing the definition of "durable medium" to incorporate technological advances and align it with environmental considerations, such as promoting paperless options. Additionally, concerns were raised about DISP's assumptions that correspondence will be provided in paper form, despite many consumers preferring email communication. For example, the requirements for messages to be in writing or for the Financial Ombudsman Service leaflet to be enclosed.
- Members also noted that reflection periods often confuse customers, particularly with variations, as they tend to prioritise outcomes and speed. Customers may not realise they waive their reflection rights by accepting offers early. They argued that reflection periods provide minimal value and proposed exploring alternative methods, particularly interactive channels, to help customers better review offers and understand their decisions.

Training & Competence Sourcebook TC 2.1.5A

- Members noted that TC 2.1.5A (regarding creditor/intermediary knowledge and competence requirements) duplicates existing FCA Senior Managers and Certification Regime (SMCR) and Training and Competence (T&C) regimes, which already provide equivalent protections. They argued that the specific MCD requirements add regulatory burden without offering clear additional benefits to firms or consumers.

TCF: Treating Customers Fairly

- Some members suggested Principle 6 of TCF outcomes overlaps with Consumer Duty so should be reviewed or removed entirely (as TCF principles are already covered by the Consumer Duty and retaining both could lead to unnecessary duplication).
- However, one member highlighted that Principles 6 and 7 do not apply where Principle 12 applies. The TCF outcomes (underpinning Principle 6) are still relevant where Principle 12 does not apply, and the application of Principle 12 is limited to retail customers, so therefore doesn't overlap with Consumer Duty.

PROD

- Members suggested that elements of PROD could be merged with the Consumer Duty, given their overlapping requirements. PROD mandates that firms design products to meet the needs of their target market and distribute them accordingly, similar to wording found in The Responsibilities of Providers and Distributors for the Fair Treatment of Customers (RPPD) and The

Conduct of Business Sourcebook (COBS). The Products and Services outcome under Consumer Duty is noted to be almost identical to PROD rules, with the guidance indicating that compliance with the former likely satisfies the latter. Therefore, streamlining these processes, particularly around product approvals, assurance, and monitoring, would simplify compliance.

CONC

- Members suggested there was overlap between CONC provisions and Consumer Duty requirements. For example:
  - **CONC 7.3**: addresses dealing fairly with customers in arrears or default. Members suggested that this overlaps with the Consumer Duty, specifically **Principle 6** and **PRIN 2A.6**, which also focus on Treating Customers Fairly and consumer support. Aligning the language between CONC and Consumer Duty requirements, as well as simplifying the rules, could be beneficial. This would help clarify the distinction between outcomes-based expectations and where more detailed rules must be followed to ensure a baseline standard of treatment for customers.
  - **CONC 3**: members suggested this covers similar grounds to Consumer Duty requirements, for example: **PRIN 2A.5.**

b) Your thinking on the likely benefits including, for example, any estimate on compliance cost savings

- Most members suggested that amendments in the areas suggested above would simplify the regulatory handbook, increasing future consumer benefit.
- However, they expressed views that it is difficult to respond to this question in relation to potential cost savings whilst there is no understanding or clarification of the approach to be taken in response to this call for input.

Short-term impacts

- **Short-term compliance costs**: most members noted they don't foresee compliance cost savings for firms in the short-term. Many of these changes would require funding to update firms' systems and policies.
- Some members expressed views that they would expect any changes would initially increase compliance and business costs as opposed to savings, as with any change or transition. They pointed out that if demonstrating compliance becomes more challenging, firms may need to invest more time interpreting the rules, potentially leading to increased effort and expense.

- Members also raised concerns that if Handbook compliance uncertainty increased, this could create financial risk through consumer challenge and FOS decisions.

Long-term impacts

While most members agreed that there wouldn't be short-term savings, a small number of members stressed that there could potentially be long-term savings, which shouldn't be overlooked.

- **Reduced duplication and complexity**: Simplifying overlapping rules (like MCOB and Consumer Duty) would allow firms to streamline compliance processes, reducing internal audits and monitoring. . Members suggested this is particularly important given that as Consumer Duty becomes embedded, firms expect to see more examples emerging of current misalignment between the Duty principles and existing regulation.
- **Automation and technology-driven compliance**: Simplified, principle-based rules are easier to automate, allowing firms to invest in tech solutions that reduce reliance on manual oversight, saving on personnel costs.
- **Less frequent updates and interpretations**: High-level principles are more flexible and future-proof, reducing the need for frequent updates to policies and procedures, which saves on staff retraining and in-house system and process changes.
- **Streamlined training:** Training can focus more on achieving good outcomes, rather than detailed rules, leading to lower training costs and fewer retraining cycles as rules change.
- **Lower external compliance costs:** Simplified rules reduce the need for external consultants or legal reviews, allowing firms to handle compliance in-house.
- **Fewer regulatory breaches and penalties**: Clearer, streamlined rules reduce the risk of inadvertent breaches, saving firms from fines and costly remedial actions.
- **Increased innovation**: By focusing on outcomes and striking the right balance with specific rules where necessary (for example, particular information for customers or prohibitions on certain actions), there is potential to create an environment conducive to innovation.
- **Enhanced customer outcomes and competitive advantage through tailored interactions:** This shift away from merely complying with restrictive or overly prescriptive rules allows firms to differentiate themselves by delivering better outcomes for customers through more tailored and appropriate interactions. This benefits not only individual firms but also customers and the overall competitiveness of UK institutions. Examples include specialist teams, more advanced case management systems, new

customer engagement channels, and AI-supported customer service and quality assurance systems.

c) What the impact could be on consumers or consumer protection, or other relevant considerations

- Members expressed that, on balance, the proposals outlined would have a beneficial impact on consumers with no deterioration in consumer protection.
- However, one member did note that if uncertainty increased under a less prescriptive framework, customers' ability to compare products between firms may decrease.
- Members noted that in the responses provided to Question 1a (rules and guidance that overlap with Consumer Duty), they considered whether the customer benefit and protection derived from the regulations outweighs the costs of simplifying or removing those expectations. They considered whether the former outweighs the latter when advocating areas for review or removal.
- One member noted there is a degree of proportionality that could be applied to assessment of which regulations are altered or removed and whether flexibility is increased or not. They favour retaining more prescriptive requirements and detail where the customer journey is complex, or the customer protection afforded by that requirement is justified.
- However, members are cautious that if rules are written with no flexibility, then every customer will be given the same options, regardless of their circumstances.

Question 2: Could any of our retail conduct rules or guidance be usefully simplified or removed by relying on requirements under the Consumer Duty?

Clarification

- Members noted that the interaction between the Consumer Duty and existing rules could be clarified using more straightforward language and explicit cross-referencing in product specific sourcebooks. They suggested making these easier to find would allow new entrants to better comply.
- Some members noted it would be particularly helpful if the FCA could distinguish between outcome-based requirements and specific processes that must be followed. This could help reduce the layering and potential conflicts between existing rules and Consumer Duty. Clarifying the distinction between outcome-based and quantitative rules would reduce ambiguity and conflicts,

establishing a clear baseline standard while allowing institutions the flexibility to improve outcomes for customers.

- However, some members felt that the larger issue is conflicting policy, rather than a lack of clarity on how they interact.
- Members requested greater clarity on which portfolios published material published by the FCA should apply to. Often material in one area, that is not directly relevant to a firm, is expected to be considered in forming a view in other areas because there is read across. This is particularly hard for smaller firms who do not know to look in some areas or are not resourced to do so.
- Members have expressed a need for further guidance to help firms navigate the balance between principle-based regulation, such as the Consumer Duty, and specific sector rules such as MCOB. This guidance could enable firms to act in customers' best interests, particularly for existing customers in certain situations, even when full compliance with MCOB is not possible. For instance, MCOB 11.7 (transitional arrangements) could be simplified by adopting a more principle-based framework.
- Currently, firms must not only focus on outcomes-based assessments but also demonstrate compliance with detailed rules, which adds complexity. While maintaining some detailed requirements is beneficial, firms need clarity on prioritisation, especially when adhering to detailed rules may conflict with achieving Consumer Duty outcomes. It remains unclear, for example, whether firms should submit notices under SUPP and DEPP. The FCA could clarify that firms should comply with detailed rules where possible but may adapt them to meet Consumer Duty obligations.
- A member suggested introducing a feedback mechanism for institutions to report overlaps, rule conflicts, or unnecessary complexity to the regulator would help address these issues in the handbook.
- Members suggested the FCA should update how it issues guidance and other interpretative material. If guidance was moved to sit outside the rules, it could be better tailored to sectors and allow Consumer Duty considerations to be brought into guidance issued.

Increased FCA Support

- One member noted that over the last 18-months they have seen instances where, when directly challenged, the FCA do not respond supportively. For example:
    a) MCOB 10: APRC calculation changes when the fixed rates were temporarily higher than SVR.
    b) Currently with PS24/2, regarding including quarterly arrears interest in the regular statements, despite the industry unanimously challenging the value add of this via UK Finance.

- Members expressed views that the FCA could work to better respond to industry views, particularly around viability of changes and the benefit for customers.
- The regulator could be clearer on what it intends to achieve from its guidance and regulations, lessening the need for prescribed calculations or elements and allowing for more outcome focussed interpretation. For example: the PS24/02 rules regarding arrears interest on statements.
- However, members noted that this would need to be balanced to avoid being so broad that it introduces interpretational risk, while still clearly defining what constitutes sufficient compliance.

Question 3: Are there other areas in our rules or guidance, beyond those with an overlap with the Duty, where we should consider simplification or removal?

Please tell us:

a) Which rules or guidance (e.g. Handbook chapters, or non-Handbook guidance) we should review, and why

Consumer Buy to Let (CBTL)

- Members suggested that interaction between MCOB and the MCD should also be reviewed, particularly concerning Consumer Buy to Lets (CBTLs).
- Members requested that this should be reviewed, with the possibility of removing it entirely, as the benefits appear minimal compared to its complexity. The additional regulatory requirements in this area may be limiting both firm participation and the availability of advice, ultimately reducing customer choice.
- A member highlighted that the existing MCD decision tree is overly prescriptive and could be simplified, with firms, instead. being required to fulfil their obligations under the Consumer Duty's products and services pillar. The creation of a subset of lending for MCD agreements was driven by EU requirements, adding unnecessary complexity, such as applying certain rules to bridging finance arrangements that would be better addressed differently. Similarly, EU policy brought certain unsecured lending (Art 3(1)(b) agreements) under MCOB, though they remain within the perimeter of the Consumer Credit Act (CCA).
- Members questioned whether both Regulated BTL and CBTL are necessary, given the limited value and protection they seem to offer consumers.

Moreover, the distinction between these has introduced reporting complexities, leading to confusion within the industry about how to determine whether a loan qualifies as CBTL. As a result, firms are using different criteria to decide whether consumers will benefit from the FCA protections linked to these types of mortgages. Members expressed concern that these inconsistencies could lead to foreseeable harm for customers who are not deemed eligible for a CBTL mortgage, especially if the regulatory intent under the MCD order was to classify them as such. Greater clarity around eligibility criteria is essential to ensure that customers receive consistent treatment from all lenders.

- One member suggested consolidating CBTL requirements into a single FCA handbook, such as merging the CBTL guidelines in PERG with those in the MCD Order.
- However, another member warned that combining these rules into MCOB could introduce unintended consequences and additional requirements for lenders. The member questioned the need for the distinction altogether and recommended withdrawing the rules completely.
- Members also acknowledged that these changes may fall under the jurisdiction of HM Treasury, recognising that the FCA may have limited ability to address these issues.

Mortgage Charter

- Members pointed to instances where the Mortgage Charter conflicts with MCOB rules. There are three scenarios under the Mortgage Charter where **MCOB 7.6.28** requirements cannot be met due to the complexity of customer situations. Insights from UK Finance-facilitated industry forums reveal that providers have taken varied approaches in addressing these scenarios, highlighting the challenges the industry faces in delivering the Charter. While some firms have restricted access to the Charter to ensure full technical compliance, others have chosen to provide Charter support in these three scenarios, resulting in non-compliance with MCOB.
- However, this approach aligns with the Consumer Duty, as it prioritises acting in the best interests of customers. By doing so, many customers have been able to access Charter support that they would have otherwise been excluded from it. A more flexible application of the rules, considering different customer situations and channels, would be highly beneficial. Currently, the rigidity of MCOB rules means that providing the best outcomes for customers can lead to non-compliance.

Centralising common requirements across sourcebooks

- One member suggested there's an opportunity for rules to be streamlined and placed into, for example, a GEN Handbook (rather than split out into separate sourcebooks). They gave a demonstrative, not exhaustive, list of examples:
  - **Distance marketing:** the Handbook contains prescriptive requirements for information to be included in distance agreements and prescriptive requirements for dealing with cancellation of agreements. These rules are repeated and embedded within each different sectoral Handbook. Inserting into a GEN Handbook would allow for a more succinct, trackable set of rules, incorporating any specific guidance which is helpful more broadly, for example: MCOB 1.3.5 – 1.3.6 and MCOB 2.7.
  - **MCOB 2.9:** A member pointed out that the requirements on the sale of optional products appears in MCOBS 2.9, BCOBS 2A.1.1 and CONC 2.2.6 – 2.2.8. This duplication could be removed.
  - **MCOB 2.5, MCOB 2.6 & CONC 2.2.3-2.2.4:** A member suggested that misleading names (CONC 2.2.3-2.2.4), firms utilising other firms (MCOB 2.5) and general liability rules (MCOB 2.6) could all be moved into a GEN Handbook.

Legacy EU regulation

- Members suggested there's an opportunity to review rules derived from EU regulation, such as MCOB 2A.2, which addresses tying practices. Since the UK typically does not impose restrictions on tying, it would be preferable to establish a consistent UK policy on these practices or remove such prescriptive regulations, leaving distribution and product design arrangements to be handled under the Consumer Duty.
- CBTL (mentioned above) was also raised an example of this.
- Members suggested that a more logical, UK-driven regulatory regime could reduce complexity in these areas, much of which could be achieved through amendments to the Handbook.

FCA Handbook: related provisions symbol

- Members expressed it would be helpful if this could also link to related finalised guidance, feedback statements and policy statements, in addition to related FCA handbook provisions (for example, rules/guidance/ evidential).

b) Your thinking on the likely benefits including, for example, any estimate on compliance cost savings

- Members don't foresee compliance cost savings for firms, especially in the short-term. Many of these changes would require funding to align/change/update firms' systems. processes and policies, although there

would be potential consumer benefits to the proposed simplification and refinements.

- Some members noted they expect that any changes would initially bring about compliance and business cost increases as opposed to savings.
- Concerns were raised that compliance overheads may be greater in a less prescriptive framework.
- Members expressed similar concerns as in Queston 1.b (expected benefits), noting that it is difficult to respond to this question when there is no understanding yet of the approach to be taken in response to this call for input.
- Members also raised concerns surrounding the wording of the FCA's CFI questions, suggesting these should place greater emphasis on the potential risks or downsides of regulatory changes. Related to this, members expressed views that there's a potential risk of FOS rejecting or disagreeing with these changes.

c) What the impact could be on consumer protection, or other relevant considerations

- Members expressed that, on balance, they believe that the proposals outlined would have a beneficial impact on consumers with no deterioration of consumer protection
- However, members note that a degree of proportionately should be factored into any changes progressed, with due consideration given to the potential risks to consumer protection in simplifying or removing elements of the handbook.
- Members were keen to retain the sections of the handbook that cover specific aspects of products, customer journeys, transactions, or information requirements that afford a degree of safety and consistency to customers.

UK Finance

Annex 1A: MCD Requirements: Mortgage Members' Responses

October | 2024

Contents

Regulations to be reviewed

MCOB 1.2.9C: high net worth mortgage customers

- A member expressed concerns that the criteria outlined in **MCOB 1.2.9C** may be impractical. They highlighted that for new customers, obtaining a statement of high net worth (HNW) can be frustrating, especially when the bank is already relying on income or assets the bank is relying on a salary or assets which exceed the HNW criteria under **MCOB 11.6**.
- For example, if a client has an income of one million pounds, used for affordability assessments and supported by documentation, it may seem unnecessary to request further confirmation that they earn over £300,000 net. This approach negatively impacts the customer experience.

MCOB 2A.3: Foreign currency loan requirements

- Members suggested that the requirements for foreign currency loans need to be reviewed. They noted that the post-IP changes to MCOB create confusion, as the prescribed wording in the ESIS pertains to non-sterling loans, while the definition of a foreign currency loan is broader. Members observed that firms complying with MCD requirements may find themselves in conflict with MCOB, and vice versa. This issue is evident when reviewing **Article 23 (6)** of the MCD alongside **MCOB 5A Annex 1** and **MCOB 5A Annex 2**.
- One member suggested that the requirements in **MCOB 2A.3.6** are onerous on firms, particularly for the UK market where foreign currency mortgages are rare, especially post-Brexit. Members noted that existing MCOB rules on affordability and disclosure already provide sufficient consumer protection. Eliminating specific MCD requirements could reduce complexity for lenders, without compromising consumer outcomes.
- Members also expressed concerns with the MCD requirement for the ESIS to include wording about changes in exchange rates and the potential impact on a customer's income. This provision was designed to help customers understand how fluctuations in their income could make the loan unaffordable. While this requirement may be appropriate for foreign currency loans, members suggested that it is unnecessary for firms dealing solely in sterling-based loans. Members argued that it is illogical to include a 'stress mortgage payment' in the ESIS, as this implies that the mortgage payment itself could change due to exchange rate movements, when in fact it is the borrower's income that may fluctuate.

- As an example, if a mortgage is denominated in sterling but the borrower's income is in dollars, the firm is still required to classify this as a foreign currency loan and must display in the ESIS that the mortgage payment could change by as much as 20 percent due to currency fluctuations. Members noted that this is misleading, as the mortgage payment remains in sterling regardless of exchange rate movements, even if the borrower's income changes due to fluctuations.
- A member proposed that foreign currency loans should be defined simply as loans not incepted in sterling.

MCOB 4A: Adequate explanation in execution-only sales

- Members suggested that ensuring that customers receive clear, concise information about their mortgage options can be achieved through existing MCOB rules without the need for additional explanations, for example via the 'advice and execution only rule'.
- **MCOB 4A.3 record of recommendation:** members expressed that that MCOB 4A.3 is redundant, as MCOB 4 already mandates that firms keep records of advised sales.
- **MCOB 4A disclosure of alternative finance options at initial disclosure:** members noted that argued that MCOB already ensures customers are informed about alternative financing options, making further disclosure requirements unnecessary.

MCOB 5: ESIS

- Members expressed that the ESIS is excessively long and complex. They proposed alternatives, including reverting to a KFI and MCOB 5 in full, or introducing a summary box similar to those used for savings accounts, with prescribed headings and content.
- Members questioned whether the inclusion of APRC in the ESIS is useful to consumers and whether they understood it. Some members view is that the interest rate, amount of payments due, and total cost of credit are the key aspects of a loan that a customer would use for comparison and improve understanding.
- However, some members raised concerns about the embedded nature of current disclosure practices within lender systems, noting the potential cost and time involved in modifying or replacing these regulations.

- Additionally, it was noted that changing back to KFI may result in higher costs for lenders, depending on whether the FCA allows firms to optionally drop certain aspects of the ESIS, such as APRC 2.
- **APRC 2 calculations (MCOB 5 and MCOB 10A):**
  - Members highlighted that while the UK already had APRC disclosure requirements, the introduction of additional MCD APRC calculations, particularly for variable rates, has added unnecessary complexity for lenders and created potential confusion for consumers.
  - They noted that the existing MCOB APRC rules are likely sufficient to ensure transparency on costs, and the MCOB affordability rules already provide robust consumer protection by requiring lenders to assess borrowers' capacity to handle interest rate increases. Additionally, clear and transparent communication about potential interest rate risks and their impact on repayments can be ensured through other means.
  - Some members argued that APRC 2 complicates the process, leading to increased costs for lenders. For example, changes to lender sourcing systems are required when a reversionary rate is lower than a fixed rate, adding to operational complexity.
  - Members suggested that the previous KFI method, which estimated payments based on a one percent rate increase, was more user-friendly. They also questioned the relevance of certain features of APRC 2, such as the consideration period and the 20-year high, and whether these elements offer any meaningful benefit to consumers.
- **MCOB 5.6: Content of ESIS illustration and offer documents**
  - Members noted that some of the required calculations within the ESIS give added layers of complexity when it comes to system development, testing and defect resolution. Namely:

    (a) Members suggested replacing this with static text indicating that if the valuation is not met, the application may need reassessment.

    (b) **Illustrative repayment table/ ESIS amortisation tables:** members noted that the illustrative repayment table (amortisation table) is of limited utility, as few loans will amortise exactly as shown. Members pointed out that, considering there is already a schedule of payments within the ESIS, this duplicates information.

Current FCA rules only require this for certain types of mortgage type, for example: deferred interest mortgages or where a loan is fixed for a term.

It was suggested that these requirements should either apply to all loans or be removed altogether. Some members suggested it may be simpler to return to the pre MCD MCOB 5 requirements, see **MCOB 5.6.127**.

MCOB 7

- **MCOB 7A.1 application and general and MCOB 7B.1 information to be provided for further advances**: a member suggested these be reviewed with the view to removing these entirely, due to duplication with other existing MCOB rules.
- **MCOB 7A.4 foreign currency loans and significant exchange rate movement disclosure:** members recommended that MCOB 7A.4.1, which relates to EEA states and was not updated post-IP day, should either be removed or amended to reflect current circumstances.

MCOB 10A.3.1 R5: APRC Assumptions

- Members expressed concern over the MCD APRC rule that requires the initial fixed rate to be used for APRC calculations if it is higher than the reversion rate.
- This rule incorrectly assumes that the loan is fixed for the whole mortgage term in circumstances where the fixed rate is higher than the reversion rate. If a customer compares two mortgages with a lender, it could mislead them into thinking a particular mortgage is better value from an APRC perspective. This can lead to consumer confusion, for example when comparing fee and fee-saver options.
- Members proposed that this rule should be replaced with the former **MCOB 10.3.10(4) rule**, which assumes the initial standard variable rate will apply where the variation in the interest rate cannot be ascertained at the time of agreement:
  - *"Where a secured lending contract provides for the possibility of any variation in the rate of interest (other than a variation referred to in MCOB 10.3.10 R(3)) which it is to be assumed, under MCOB 10.3.3 R(1)(e), will take place, but does not enable the amount of that variation to be ascertained at the date of the making of the agreement, it must be assumed that the varied rate will be the same as the initial standard variable rate."*

MCOB 11

- **MCOB 11.6.2** the assessment of affordability: one member requested that MCOB 11.6.3 (2) can be widened to include new loans rather than just a "variation of an existing regulated mortgage contract or home purchase plan provided the conditions in (2) are satisfied."
- **MCOB 11A** creditworthiness assessment documentation requirements: a member argued that existing MCOB responsible lending rules adequately cover affordability assessments, and the Data Protection Act (DPA) already addresses issues of fair processing and privacy. As a result, they proposed that MCOB 11A should be reviewed, with the view to potentially removing it, due to duplication with existing regulation.

MCOB 14.1: Unsecured lending

- MCOB 14 should be removed and all loans which fall outside the definition of a regulated mortgage contract (RMC) should not have MCOB protections. These should instead fall under CONC with the CONC HNW/ business exemptions applying.
- Members suggested that MCOB 14 on **MCD article 3(1)(b)** credit agreements, and related provisions like **article 4(4B)** of the RAO should be removed, since this was introduced in response to the MCD.
- **MCOB 14.1 (Article 3(1)(b) lending):** members argued that extending MCOB to certain unsecured lending could be unnecessary and restrictive for borrowers, as it could cause lenders to cease offering this type of credit. Members recommended that this lending be moved to the CONC sourcebook, which would provide more appropriate regulation.

Review of CONC

- Members suggested removing the concept of a 'residential renovation agreement' which was adopted from **Article 2(2a) of Directive 2008/48/EC** and is recognised in the Mortgage Credit Directive Order 2015 and CONC.
- Additionally, members advocated the removal of **CONC 60H(b)(ii)**, which prohibits the use of the CONC HNW exemption if the loan is intended for residential property renovation. They argued that this restriction increases complexity for lenders.

Consumer Buy to Let: The Mortgage Credit Directive Order 2015

- At the time of MCD implementation, the Consumer Buy to Let (CBTL) framework was introduced. As such, members suggested this framework is now unnecessary given that the UK is no longer subject to the MCD.
- Some members noted that their firm applies the same standards of disclosure and support to both BTL and residential mortgage customers (albeit with some clarifying content as to the status of the loan) but are unsure if this approach is consistent across the industry. It was pointed out that since many lenders already treat BTL customers similarly to CBTL customers, CBTL rules add little to the regulatory protections for this group of borrowers. For example, firms already treat BTL customers on the same basis as retail customers from a complaints standpoint.
- Members recommended that HMT consider repealing or streamlining the Mortgage Credit Directive Order 2015, as it duplicates existing MCOB rules and creates difficulties in determining whether a CBTL contract applies in certain cases. They proposed removing the CBTL framework entirely, including its implementation into PERG, so that rental properties would either be classified as RMCs or Investment Property Loans (IPLs).

Regulations to be removed

MCOB 1.2.18

- Members suggested that references to MCD bridging loans (**MCOB 1.2.18**) be removed from MCOB and a reversion to purely a RMC which has a term of 12 months or less. This change would simplify **MCOB 1.2.17**.

MCOB 2A.1 Mortgage Credit Directive

- **MCOB 2A.1 Remuneration:** MCD regulated mortgage contracts. Members suggested this is a redundant rule as MCOB already requires any commission to be fair and reasonable.
- **MCOB 2A.4 Early repayment:** members argued that MCOB 2A.4 concerning early repayment is unnecessary, as MCOB already includes rules about early repayment charges (ERCs).

- **MCOB 2A.5 Variable rate credits**: Members proposed removing MCOB 2A.5 on variable rate credits, as rates tied to external factors are already disclosed in contractual documents.
- **MCOB 2A.6 Information free of charge:** Members suggested that MCOB 2A.6, which mandates the provision of information free of charge, is redundant since MCOB already contains rules on fair and transparent fees and charges.
- References to MCD-regulated mortgage contracts should be removed or limited to the period between March 2016 and the date of any regulatory change, to simplify matters. It was suggested a reversion to regulated mortgage contracts could be simpler.

MCOB 2A.2: Tying practices restrictions

- A member expressed that that existing FCA rules on product bundling already offer sufficient protections, making the specific MCD tying restrictions unnecessary and overly complex.

MCOB 3B: General information disclosure requirements

- A member noted that current MCOB initial disclosure rules provide equivalent information to consumers, making additional MCD disclosure requirements duplicative and potentially confusing.

Opportunities for simplification

Wording and definitions

- **MCOB 4 Initial Disclosure: MCOB 4.4A.7 MCOB 4.4A.9, MCOB 4.4A.12, and MCOB 4.4A.18:**
  - Members identified an opportunity to significantly simplify the wording of the initial disclosure rules. They noted that many of the MCD rules introduced in 2016 are overly wordy, complex, and often duplicate existing rules and disclosures. Examples include rules on the method of providing disclosures, timing rules, and additional distance marketing rules. Furthermore, certain MCD definitions, such as 'mortgage arranger' and 'MCD mortgage intermediary,' were identified as unnecessarily complicated.

- **Consistency and simplification in use of terms**:
  - Members noted that MCOB uses multiple definitions for similar concepts, such as 'regulated mortgage contract,' 'MCD regulated mortgage contract,' and 'article 3(1)(b) credit agreements.' Terms like 'customer' and 'consumer,' as well as 'MCD mortgage lender,' 'MCD credit intermediary,' and 'mortgage lender,' are often used interchangeably, creating unnecessary complexity. Enhancing consistency would improve clarity and reduce this complexity.

Streamlining content

- **Streamlining the pre-and-post 2016 disclosure regimes into one document:** members noted that the introduction of the MCD resulted in two distinct disclosure regimes within MCOB: one for contracts agreed before 21 March 2016, and another for contracts entered into after that date (except for MCD-exempt contracts, where the older regime still applies). This situation can be confusing, especially for those unfamiliar with MCOB. Members suggested streamlining these regimes into a single, unified approach. While some suggested keeping the existing MCD-compliant rules and repealing the older ones, they acknowledged that the approach HMT may wish to take remains uncertain.
- Members proposed that a unified handbook with a singular approach for all mortgage contracts be considered. Currently, there are separate sections for MCD-regulated mortgages, for example **MCOB 5A** and non-MCD mortgages (MCOB 5).
- **Creditor/intermediary knowledge and competence requirements (T&C Sourcebook 2.1.5A):** members noted that the existing FCA Senior Managers and Certification Regime (SMCR) and the Training & Competence (T&C) regimes provide adequate protection. They suggested that the specific MCD knowledge and competence requirements add regulatory burden without offering any significant additional benefits.

UK Finance

Annex 2: A Personal Banking response to the review of FCA requirements in light of Consumer Duty

October | 2024

For Noting

- Direct member response to UK Finance CFI request has been limited to date.
- Member responses to UK Finance CFI – some with no specific handbook references – have been summarised in this document.

General Suggestions:

- Members noted that many rules and guidance could benefit from being rewritten using simpler language and presented in a clearer manner. This would make the rules more accessible and easier to understand for the intended readers / executers. It would also be beneficial if the FCA could reproduce the Handbook in formats that allow users to easily copy and paste rules into Microsoft Office packages. This would greatly enhance usability for compliance professionals and others who often need to reference and share specific rules.
- Members raised some non-specific points around BCOBs chapters 2-5. They noted;
- Several rules within this chapter relate to the same clear fair and not misleading rule in Consumer Duty and cut across the customer understanding and support outcomes. Consideration should be given as to whether the general content relating to this rule could be removed from BCOBs, with reference to the Consumer Duty rules and leaving the BCOBs handbook to focus on the specific requirements needed which aren't currently covered in the CD rules e.g. Summary box for savings.
- The distance marketing and Ecommerce rules should be reviewed and brought up to date for today's digital environment. The distance marketing requirements in Annex 1R are very prescriptive, firms should have more flexibility to provide the right information at the right time to aid customer understanding and provide good outcomes.
- One member raised a general comment in relation to the Duty's scope and high net worth client classification – suggesting an amendment to the scope would allow more flexibility for high net worth clients who have the appropriate understanding of the risks (aligned to the conditions in the UK-Swiss Agreement) and who can therefore better access services appropriate to their needs and objectives. This is difficult today because of the 'retail client' definition. The duty requirements may be limiting the ability of firms to offer something more tailored.
- One member raised a comment in relation to the slimming down of mandatory pre-sale disclosures in COBS such as the Key Features Document, Key Features Illustration and Key Investor Information Document. They suggested

that the significant volume of information they need to provide to consumers gives rise to an "information overload" which can lead to poorer consumer outcomes, as such going against the nature of the Duty.

- Whilst the call for input is focused on FCA Handbook rationalisation there is one area where we believe BCOBS should be enhanced. The Annual Equivalent Rate (AER) allows customers to compare rates across a range of cash savings products. Currently, the methodology for calculating AER resides in non-confirmed industry guidance which we believe to be an anomaly given the FCA has responsibility for other key financial pricing methodologies, such as APR for unsecured credit.
- We would encourage the FCA to formally adopt the methodology and guidance contained in the existing industry guidance as soon as is practicable and would be happy to work with the regulator to support a smooth transition.

Question 1: Could any of our retail conduct rules or guidance be usefully simplified or removed by relying on requirements under the Consumer Duty?

a) Which rules or guidance (e.g. Handbook chapters, or non-Handbook guidance) you consider cover similar ground to Duty requirements, or are otherwise overly detailed or prescriptive, or arguably redundant in light of other materials, and why?

Below is a summary of which rules and guidance members suggested should be amended, clarified or deleted.

BCOBS 2.2A: Summary Box requirements

Amend: Members noted that this is extremely prescriptive. The template is suitable for long communications (letters, emails, websites) but not short form communications (text messages, digital nudges etc). As customer engagement becomes increasingly more digital it's almost impossible to incorporate a Summary Box and the addition of the Summary Box makes communications longer. Customer research and feedback suggest this mandatory information is confusing. Flexibility with the rule, considering how best to meet the consumer understanding requirements under the Duty in a range of circumstances, channels and for different customer cohorts, would be beneficial.

BCOBS 4.1

Amend: Members noted this section would benefit from simplification and alignment with Consumer Duty consumer understanding high level principles. Simplification of the requirements and reliance on high level rules would allow for future proofing (e.g. further digital and technological advances) and ensure firms can take a tailored approach depending on the channel / journey as well as the customer cohort.

Amend: A member noted that Pre-sale information for savings accounts was too prescriptive – some customers choose to visit shared banking Hubs as an alternative to branches or digital channels. Some providers allow customers to take out a savings account in a Hub, but members are required to provide pre-sale information in a durable medium. In the scenario where a customer does not have access to their emails on a handheld device customers cannot progress with opening the account in the Hub. Flex in this rule would support retail customers to pursue their financial objectives.

BCOBS 5.1.1-5.1.2

Delete: Members noted that these are general in nature, relating to treating customers fairly, and the Duty could be relied on.

COBS 2.3 (and other related)

Amend: COBS 2.3 and 2.3A – members noted these detailed rules are designed to prevent conflict of interest. Members questioned if there should be a single set of rules to cover inducements for all firms which evolves from the Duty? Noting all related matters, such as non-monetary benefits, appear in other parts of the Handbook (e.g. 6.1A.5A). Grouping all of these matters together may be a more efficient way to deal with the rules in this area.

COBS 4.2

Delete: Members noted that this is broadly phrased (“fair, clear and not misleading communications”) and as such it would be adequately covered under the Duty.

COBS 6.1 and 6.1ZA

Amend: One member noted COBS 6.1 and 6.1ZA (information about the firm and compensation information) – these prescriptive disclosures could be removed or simplified in favour of the Consumer Understanding outcome.

ICOBS 5.2

Delete: One member noted that ICOBS 5.2 could be replaced by the Duty, as the Duty is designed in such a way to prevent firms from selling products to consumers which are unsuitable and do not represent fair value – which appears to be the intent of the demands and needs statement. They noted that removing this would aid in reducing the compliance cost for firms, whilst appropriate consumer protections would be maintained.

b) Your thinking on the likely benefits including, for example, any estimate on compliance cost savings

No member responses.

c) What impact could be on consumers or consumer protection, or other relevant considerations

No member responses.

Question 2: Is there are a lack of clarity on how requirements under the Duty and other FCA rules interact? Please tell us where this issue arises and your views on how it could be addressed. For example, would guidance on the interaction be helpful?

One member noted the tension between existing Data Protection obligations and the need to keep customers informed of the best product available to them. For example, if members know a Saver may benefit from switching to a product with a higher rate but they have opted out of marketing, guidance on how to frame communications to meet both Consumer Duty and Privacy requirements would be beneficial.

Question 3: Are there other areas in our rules and guidance, beyond those with an overlap with the Duty, where we should consider simplification or removal? *Please tell us*:

No member responses.

UK Finance

Annex 3: Unsecured Consumer Credit

October | 2024

Question 1: Could any of our retail conduct rules or guidance be usefully simplified or removed by relying on requirements under the Consumer Duty? Please tell us:

a) which rules or guidance (e.g. Handbook chapters, or non-Handbook guidance) you consider cover similar ground to Duty requirements, or are otherwise overly detailed or prescriptive, or arguably redundant in light of other materials, and why

b) your thinking on the likely benefits including, for example, any estimate on compliance cost savings

c) what the impact could be on consumers or consumer protection, or other relevant considerations.

Response

As an overall comment, there is a need for a complete overhaul of the rules and guidance set out in the FCA's Consumer Credit Sourcebook ("**CONC**"), much of which was carried over from the Consumer Credit Act 1974 ("**CCA**") regime and the existing Office of Fair Trading ("**OFT**") guidance. The CCA regime was, and is, not in general an outcomes-based regime. When activities were transitioned into the Financial Services and Markets Act 2000 regulatory perimeter, there should have been a rigorous re-examination of the existing requirements to make the changes required to reflect the move to an outcomes-based regime and to meet the needs of an innovative retail credit sector. The introduction of the Consumer Duty and the FCA's willingness to engage in this Call for Input provides a good opportunity for this to be done.

As an over-arching point, at present, guidance and more informal FCA communication on its expectations is spread across multiple areas. Firms need to take into consideration not only the FCA sourcebook, but also a wealth of other information including "Dear CEO" letters, finalised guidance, policy statements, speeches made by FCA officials, industry agreement documents and occasional papers. These are not well sign-posted nor is there a single "golden source" which sets out the universe of guidance which firms should be considering in ensuring that their business models meet the regulatory requirements which, necessarily, continue to evolve to meet the changing needs of consumers and the market. This means that existing firms place significant reliance on "corporate memory" while new market participants are at a distinct disadvantage. For example, where commentary regarding the FCA's expectations is given in a speech (which will necessarily have a limited audience) simply publishing the speech on the FCA website is inadequate if, in the FCA's view, all firms should be acting on its contents. Such guidance should be properly formalised. By way of a further example, in July 2006 the Financial Services Authority published "Treating customers fairly – towards fair outcomes for consumers" which led to the introduction of the six consumer outcomes. These still appear on the FCA

website[1] but, while the page specifically refers to the February 2021 FG21/1 Guidance for firms on the fair treatment of vulnerable customers ("**FG21/1**"), it makes no reference to Consumer Duty. It is therefore unclear what the status of that guidance is – is it still current (but redundant on the basis that it achieves nothing beyond the new requirements), or has it effectively been withdrawn? This Call for Input provides a real opportunity for the FCA to address this challenge and adopt a holistic approach, where all relevant information is in one place and is regularly updated to ensure that all firms are working to a consistent stated regulatory position.

The Consumer Duty, with its supporting cross-cutting rules and consumer outcomes (the "**Consumer Duty Regime**"), provides a comprehensive framework against which firms will be judged. Loose guidance and rules which leave significant latitude for firms to formulate their own approach are, arguably, redundant and could be dispensed with on the basis that the relevant standards are achieved by appropriate implementation of the Consumer Duty Regime.

Currently, firms cannot rely on an outcomes-based assessment but must also demonstrate compliance with the detailed rules, and layering more guidance on those areas adds complexity. Where more prescribed rules are retained or, indeed, new ones put in place to replace existing guidance, the FCA should be clear with firms and confirm whether:

i. compliance with those prescribed rules is sufficient for, and does not breach, the Consumer Duty Regime. Such an approach would align with the position that has been adopted for financial instruments and structured deposits (PROD 3) and insurance (PROD 4). This approach could see a significant shortening of the CONC sourcebook while providing firms with clear requirements where that is needed. We note at various points in this response areas where the FCA could provide regulatory comfort that the prescriptive requirements meet (and/or do not breach) the Consumer Duty Regime;

and in addition, or in the alternative,

ii. the FCA could provide regulatory comfort by confirming, in line with an outcomes-based approach, that firms should comply with detailed rules to the extent that they are able to, but can adapt them where necessary to enable Consumer Duty Regime compliance.

Furthermore, although members do not support the application of automatic sanctions in any way and have called for the removal of these as part of CCA reform, where severe sanctions flow from breaching certain rules, firms would like assurance that a high(er) level of prescription delivers good customer outcomes.

We are specifically requested to identify rules or guidance which cover similar ground to the Consumer Duty Regime, are otherwise overly detailed or prescriptive, or are arguably redundant in light of other materials, and to set out our reasoning for those conclusions. It is impractical in the time available to provide such a comprehensive analysis of CONC, so we have set out below examples of where issues have been

[1] https://www.fca.org.uk/firms/fair-treatment-customers

identified. Please note that these are only examples and do not constitute a full review of the whole of CONC in this regard.

CONC 1 – Application and purpose and guidance on financial difficulties

Much of CONC 1 is explanatory in nature and therefore redundant. Firms do not need to be reminded that they need to comply with the Principles for Businesses ("**PRIN**") – this is self-evident. Nor is this the appropriate place to provide guidance on the application of the rules to appointed representatives. Such guidance is fundamental to all firms who appoint appointed representatives, backed by the rules and enhanced expectations in this respect introduced by the FCA in December 2022. To reiterate our earlier comment, it would be preferable for all rules and guidance relating to a specific topic to be available in one place.

The position on territorial scope set out in CONC 1.2.5R should be clarified not just at the level of the sourcebook but more fundamentally. The FCA should make clear whether, in its view, anyone based outside the UK lending to a customer whose habitual residence is in the UK, is undertaking the regulated activity set out at article 60B of the Regulated Activities Order.[2]

The guidance on financial difficulties at CONC 1.3 should be incorporated into the new rules in CONC 5 and 6 since this is the more sensible place for them to appear.

As a more general point, CONC has not been properly updated to reflect the Consumer Duty Regime. The majority of the sourcebook still refers to PRIN 6 and there are only two references to the Consumer Duty, both appearing in CONC 8.3 (which only applies to firms providing debt counselling, debt adjusting and credit information services (noting that there will be a single change to CONC 1.1.4G in November)).

CONC 2 – General Principles for credit-related activities

In our view, the majority of CONC 2 could be dispensed with. By way of example:

a) CONC 2.2.2G refers to PRIN 6 – given that all regulated credit activities are subject to the Consumer Duty Regime, this section is redundant.

b) CONC 2.2.3R and its associated guidance are adequately covered by the rules in PRIN 2A.5.3R to PRIN 2A.5.8R.

c) The rules in CONC 2.3 on credit card cheques were introduced to address a specific concern at the relevant time. Given the move to digital payments, credit card cheques are no longer common and, in any event, the matters covered by the rules are adequately covered by the Consumer Duty Regime, in particular, the cross-cutting obligations to act in good faith and avoid foreseeable harm

[2] Financial Services and Markets Act 2000 (Regulated Activities) Order 2001/544

and the consumer outcome on consumer understanding. Arguably it would be better if the requirement in CONC 2.3.4 (i.e. that a firm should take reasonable steps to satisfy itself of the regulatory status of any credit broker it deals with) is better placed in CONC 2.5 (Conduct of business: credit broking).

d) CONC 2.7.6 requires firms to provide all the contractual terms and conditions, and the information referred to in the distance marketing disclosure rules (CONC 2.7.2 R to CONC 2.7.5 R) in a durable medium. CCA reform presents an opportunity to consider how best to communicate with customers in a digital environment which will require consideration and revision of concepts such as durable medium across regulation.

e) Similarly to the rules on credit card cheques, the prohibition of unsolicited credit-tokens as set out in CONC 2.9 relates to historic issues which pre-date the requirement for full affordability and credit-worthiness assessments to be carried out and to a time before chip and pin and more modern credit-tokens became the norm. It therefore appears that these rules are redundant.

f) As a general point, the elements of CONC that were carried across from the OFT's Debt Management Guidance are duplicative of the Consumer Duty Regime.

g) The mental capacity guidance set out at CONC 2.10 is helpful however it is of more general application; mental capacity is not an issue that is relevant only to the retail credit sector. The guidance on sustainability of borrowing should sit with the requirements around responsible lending and thought should be given as to how they effectively interface with other FCA guidance, in particular FG21/1.

CONC 3 – Financial promotions and communications with customers

a) CONC 3.5.5 and 3.5.7 should be amended to give firms more flexibility regarding the disclosure of pricing in financial promotions (e.g. in cases where the rate is guaranteed). This would allow firms the necessary latitude to ensure customers understand that, while the rate is guaranteed, it is also the representative APR insofar as it is the rate they can use to compare the product with others.

b) Members have flagged that the requirements around the APR should be reviewed, and consumer understanding tested as part of CCA reform. This extends to the use of a representative APR and the representative example:

    i. By way of example, the representative APR and example requirements within CONC are counterintuitive to the retail customer outstanding outcome under the Consumer Duty Regime on the basis that the representative example is potentially difficult for many customers to understand making its use as a comparison tool limited.

c) More generally, it remains an open question whether:

   i. certain general requirements of CONC 3 are duplicative of PRIN 2A.5 (retail customer outcome on consumer understanding), for example the clear, fair and not misleading rule (CONC 3.3.1), and as such could be simplified; and

   ii. the prescriptive rules in CONC 3, while ensuring consistency across firms and similar products, provide an effective means of enabling consumers to properly compare offers.

Further review and testing by the FCA would be required to confirm this; in particular to consider the types of tools and disclosures that are in practice useful for informing consumers effective decision making.

CONC 4 – Pre-contractual requirements

a) FCA review is required to ascertain whether the rules relating to quotations are redundant. Although we do not have a complete view of the industry, it is our understanding that in practice it is very unusual for lenders to provide or, indeed be requested to provide, the type of quotations these rules are designed to cover.

b) The rules and guidance relating to pre-contractual disclosure and adequate explanations require a radical overhaul to make them work in the context of the modern retail credit sector and the Consumer Duty Regime. As set out in subsection (e) below and discussed in more detail in the response to question 3 below, many of the requirements date back to the historic practices of a paper-based CCA regime which focussed on compliance with prescriptive statutory requirements rather than outcomes. The requirement to provide pre-contractual information (which is essentially a short-form copy of the agreement) is unnecessary when the actual agreement is provided, in reality, at the same time. The original purpose for the provision of the pre contractual information and adequate explanations needs to be reviewed and considered whether such requirements are still necessary and if so whether they could be delivered through flexible content /format and at a more useful point in time in the customer journey. It is worth noting that, in its recent consultation on the draft legislation to bring “buy now pay later” lending within the regulatory perimeter, HM Treasury acknowledged that application of *“certain information in the CCA …could lead to poor consumer outcomes”* and also acknowledged that “some of the features of the CCA which are not suitable for BNPL may also not be achieving the best possible consumer outcomes for other credit products”. In our view, this applies more generally to many retail credit products and therefore lenders should have the flexibility to be able to design their documents and customer journeys to meet their customers’ needs.

c) Where there are prescriptive information requirements (throughout the sourcebooks and specifically in CONC 4), members would welcome greater

flexibility around the mandatory content and formats of communications, for example, by having some prescribed elements but also giving firms the flexibility to tailor the information and delivery to their customers. In particular, there are some prescribed elements which would only apply in a small minority of cases – for example, the requirement to set out legal proceedings, charging orders and associated costs which may be a consequence of failure to make payments (CONC 4.2.5 (2)(d)). Echoing this, for a digital journey, it may be beneficial to rely on insights on how customer wish to interact with pre-contractual information. Allowing customers and firms to make this process 'bespoke' to their customer's needs and preferences is more in keeping with an outcomes-based regime than having a complex customer journey that meets prescriptive requirements rather than considering what is right for the customer.

d) The FCA should consider whether there are alternate ways to strike the right balance between, on the one hand, enabling customers to compare and contrast and adequately understand their options, versus giving firms more flexibility on how information can be delivered in a way that is optimal for consumer understanding in the modern retail credit sector.

e) Further, there is significant overlap of requirements set out in pre contract information, adequate explanations and the credit agreement which ultimately leads to information overload for consumers. In our view, the current requirements are not consistent with the Consumer Duty Regime and, in particular, the consumer outcome on customer understanding. We would again urge that, insofar as any requirements relate to agreements which are impacted by the detailed requirements of the CCA and its subsidiary legislation, a holistic review is undertaken. This review should include: what needs pre contractual information addresses (especially since in many cases it is provided, for all practical purposes, at the same time as the full credit agreement); how the current requirements do (or do not) achieve those objectives; whether the objectives would be better met by allowing firms the flexibility to determine what information is required and how it is best delivered to achieve maximum customer engagement; and how best to manage synchronising the introduction of any new regimes with legislative change.

f) It is noted that, with respect to CONC 4.2.1, adequate explanations are not required for overdrafts (with the exception of those not repayable on demand or within three months). On demand overdrafts are often used in place of fixed term agreements, requiring increased monitoring and intervention to bring the agreement to an end at the desired time. While CCA reform is needed to fully realise benefits, aligning fixed term overdrafts to the lighter touch regime could progress opportunities to automate journeys (thus enhancing customer experience) and reduce compliance costs.

CONC 5 – Responsible lending

We note CONC 5 contains detailed rules and guidance. It is an open question whether it would be useful for the FCA to confirm that compliance with these rules is sufficient for, and does not breach, the Consumer Duty Regime. One member has noted that this is an area where firms may need more certainty, in light of the number of FOS complaints made in the context of the adequacy of creditworthiness assessments.

CONC 5C – Overdraft pricing

Much of CONC 5C is highly prescriptive. As with CONC 5, it is an open question whether it would be useful for the FCA to confirm that compliance with these rules is sufficient for, and does not breach, the Consumer Duty Regime, or where it may promote better consumer outcomes for the FCA to confirm that firms can determine their own approaches on point.

CONC 5D – Overdraft repeat use

A key concern regarding the repeat use of overdrafts is that it might potentially indicate that a customer is in financial difficulties. The guidance in CONC 5D.2.3G makes it clear, however, that it is for individual firms to determine what constitutes “repeat use”. Further, it is not clear why, in the context of the Consumer Duty Regime, overdrafts should be treated differently from other common and readily available forms of revolving credit, such as credit cards. It is also another example of where guidance on the treatment of potentially vulnerable customers is fragmented. That said, one member noted that the flexibility in CONC 5D allowed firms to devise their own outcomes-based approaches, which they found helpful for delivering good consumer outcomes.

CONC 6 – Post contractual requirements

a) The business practice requirements in CONC 6.7.2-3 and CONC 6.7.3A-3B have now arguably been superseded by the Consumer Duty Regime – for example, firms are aware that they must take appropriate action where there are signs of actual or possible financial difficulties.

b) The rules on credit card and retail revolving credit requirements (CONC 6.7.4-6.7.13), interest rate variations (CONC 6.7.14-6.7.14), credit cards and retail involving credit: persistent debt (CONC 6.7.27-6.7.40) are supported by guidance, some of which overlaps with elements of the Consumer Duty (including the cross-cutting obligation to avoid foreseeable harm). Two members noted that they found this guidance useful as an indication of FCA expectations in this area, one of whom further noting that they would be in favour of the FCA confirming that compliance with these provisions meets the requirements of, and does not breach, the Consumer Duty Regime. Another member noted that the outcome of the evaluation of the persistent debt intervention was expected in Q1 2025 and suggested

that the outcome of that review should be implemented before these provisions were considered in any further detail under this Call for Input.

c) The rules in CONC 6.3 (Overdraft information), CONC 6.5 (Assignment) and CONC 6.7.24-6.7.26A (Continuous payments authority: post agreement obligations) are highly prescriptive. It would be useful for the FCA to confirm whether compliance with these rules would equate to compliance with, and not breach, the Consumer Duty Regime with respect to these areas, or whether firms have latitude to diverge from these requirements where they consider they can deliver better consumer outcomes another way.

CONC 7 – Arrears, default and recovery (including repossession)

a) CONC 7 contains multiple provisions carried across from the OFT's Debt Collection Guidance on dealing with vulnerable customers (e.g. CONC 7.2.2, CONC 7.10 (Treatment of customers with mental capacity limitations)). It is unclear how these provisions relate to FG21/1, and whether these provisions are, in light of FG21/1 and the Consumer Duty Regime, redundant.

b) Much of CONC 7 leaves significant latitude to firms in how to address arrears, default and recovery. In light of the Consumer Duty Regime, it is unclear what sections such as CONC 7.2 (Clear effective and appropriate arrears policies), CONC 7.3 (Treatment of customers in default or arrears (including repossessions): lenders, owners and debt collectors), CONC 7.4 (Information on status of debts), CONC 7.5 (Pursuing and recovering repayments), CONC 7.7 (Application of interest and charges), CONC 7.9 (Contact with customers) add over and above the Consumer Duty Regime. Particularly, some provisions are clearly redundant given the Consumer Duty Regime. For example: (i) CONC 7.7.3 requires that: "A firm must not cause a customer to believe that the customer is legally liable to pay the costs of recovery where no such obligation exists", where to do so would clearly be contrary to PRIN 2A.5; and (ii) CONC 7.9.2 prohibits firms from making communications which may induce customers to contact the firm misunderstanding the reason for making contact, where to do so would clearly be contrary to the cross-cutting requirement to act in good faith**.**

c) Members noted that the continuous payment authority ("CPA") rules in CONC 7.6 are extensive and, due to information requirements within them where a customer changes/amends a CPA, lead to potentially onerous scripting which is difficult to train and can be 'cold' when read back to the customer giving a further example of where strict compliance with the requirements can lead to poor consumer engagement. The ability for firms to determine what information is key to the customer may be more effective in delivering clear and meaningful information to customers: e.g. any further information around CPA rights could be communicated via SMS/email.

d) CONC 7.11 (Disclosures relating to "authority" or "status") and CONC 7.12 (Lenders' responsibilities in relation to debt) are prescriptive and arguably,

with the implementation of the Consumer Duty Regime, redundant. One member noted it would be useful for the FCA to provide regulatory comfort that compliance with these provisions meets, and does not breach, the requirements of the Consumer Duty Regime.

CONC 8 – Debt advice

a) Much of CONC 8 has now been superseded by the Consumer Duty Regime. We consider that much of CONC 8.2 (Conduct standards: debt advice), CONC 8.6 (Changes to contractual payments) and CONC 8.8 (Debt management plans)) could likely be deleted without any impact on consumer outcomes.

b) CONC 8.3.1/8.3.4 and CONC 8.4 are highly prescriptive. One member noted it would be useful for the FCA to provide regulatory comfort that compliance with these provisions meets, and does not breach, the requirements of the Consumer Duty Regime.

CONC 11 – Cancellation

a) One member noted it would be useful for the FCA to provide regulatory comfort that compliance with CONC 11 meets, and does not breach, the requirements of the Consumer Duty Regime.

b) One member noted further that CONC 11 is an area where a review was required to ensure harmonisation and that this should be completed as part of the wider CCA reform.

Question 2: Is there a lack of clarity on how requirements under the Duty and other FCA rules interact? Please tell us where this issue arises and your views on how it could be addressed. For example, would guidance on the interaction be helpful?

Response

1. As set out above, the Consumer Duty Regime provides a comprehensive framework. Being outcomes-led, it is very much down to individual firms to put in place the arrangements, documentation and governance frameworks that are appropriate to their businesses in order to meet the requirements. The current regulatory and statutory requirements relating to regulated credit, on the other hand, spring from statutory arrangements which, in many cases, date back over thirty years, and are based on compliance with detailed and prescribed requirements, rather than being outcomes based. This has been built upon over the years with the implementation of the Consumer Credit Act 2006 and the Consumer Credit Directive, to name two significant milestones.

One factor which has remained constant through those changes is the requirement on firms to comply with detailed statutory requirements surrounding pre-contractual engagement, the form, content and execution of agreements and post-contract formalities. In some cases, failure to comply can lead to penal outcomes for lenders which bear little relation to the customer detriment arising as a result of the breach if, indeed, any detriment has occurred. For this reason, it is artificial to carry out any detailed review of the existing regulated credit regime without taking into account changes which could (and arguably should) be made to the underlying statutes to ensure that they are consistent with outcomes-based regulation.

2. There are areas where the existing rules and statutory requirements simply lack the flexibility to provide good consumer outcomes. By way of example:

   (a) Lenders are required to send notices of sums in arrears ("**NOSIA**") where certain triggers are met. This is irrespective of whether the borrower has simply stopped paying or has reached a short-term forbearance agreement with the lender to assist during a period where the borrower is unable to make full payments or any payments at all. Receipt of a NOSIA can be distressing to borrowers who are suddenly concerned that the lender has reneged on the forbearance agreement, unless the lender accompanies the NOSIA with a further explanation stating that it can be safely ignored while the forbearance plan is in place. The statutory requirement to provide a NOSIA, even where an arrangement is in place, is not consistent with the outcome on consumer understanding in PRIN 2A.5.

   (b) The requirement to provide pre-contractual information may be counter-productive in the context of distance contracts that are concluded online. Evidence suggests that the greater the volume of information provided to consumers, the less likely they are to engage with it. The requirements of CONC 4.2.5R and section 55 CCA require information to be provided in the prescribed manner before a regulated agreement is made but, in reality, that is often a very short period (sometimes within minutes) before the customer is then presented with the credit agreement to sign. In those circumstances, there appears to be little value in presenting the consumer with the prescribed information and, in fact, it may serve to reduce the consumer's engagement with the credit agreement. It would therefore be sensible to give firms the flexibility to design materials and processes which properly and effectively address the information needs of their customers. However, such flexibility may need to be balanced with that the need for more prescription in the event that automatic sanctions continue to be applied (please see comments above in the fifth paragraph of the response to question 1).

3. As already mentioned in the response to question 1, guidance relating to the same or similar matters is scattered which makes it difficult for firms, especially new firms, to be confident that they are applying all relevant FCA guidance. For

example, every retail sector in the UK financial services sector will be dealing with vulnerable customers but guidance includes:

a. FG21/1

b. specific CONC provisions (which are not in a single place but spread through the sourcebook);

c. the FCA's video "Treating vulnerable customers fairly",

d. the FCA's May 2021 webinar on vulnerable customers,

e. the OFT's 2012 Debt management (and credit repair services) guidance,

f. the OFT's 2011 Mental capacity – guide for creditors, Good Practice Awareness Guidelines for Consumers with Mental Health Problems and Debt – Money Advice Liaison Group ("MALG"); and

g. the Ministry of Justice's Mental Capacity Act Code of Practice

to name a few.

Dealing effectively with vulnerable customers is a key focus of the Consumer Duty Regime and it should therefore be straightforward for firms to be able to identify which rules and guidance should be factored into their arrangements. The FCA should also address the inconsistency between the guidance referred to in the context of credit and that for other retail sectors.

Question 3: Are there other areas in our rules or guidance, beyond those with an overlap with the Duty, where we should consider simplification or removal? Please tell us:

a) which rules or guidance (e.g. Handbook chapters, or non-Handbook guidance) we should review, and why

b) your thinking on the likely benefits including, for example, any estimate on compliance cost savings

c) what the impact could be on consumers or consumer protection, or other relevant considerations

Response

1. As set out above, CONC and the retained CCA legislation require a significant review to ensure that it remains fit for purposes and enables firms to meet the requirements of the Consumer Duty Regime.

2. In addition, work should be carried out to ensure that guidance is consolidated by topic and then kept up to date so that firms are able to rely on a single “golden source”. The current fragmented approach is unhelpful and, at worst, risks firms missing important regulatory commentary. The FCA would also be able to benefit from the certainty and clarity the “golden source” approach would bring.

UK Finance

Annex 4: Wholesale Banking response to the review of FCA requirements in light of Consumer Duty

October | 2024

Question 1: Could any of our retail conduct rules or guidance be usefully simplified or removed by relying on requirements under the Consumer Duty?

Please tell us:

a) Which rules or guidance (e.g. Handbook chapters, or non-Handbook guidance) you consider cover similar ground to Duty requirements, or are otherwise overly detailed or prescriptive, or arguably redundant in light of other materials, and why

b) Your thinking on the likely benefits including, for example, any estimate on compliance cost savings

c) What the impact could be on consumers or consumer protection, or other relevant considerations

Whilst UK Finance members welcome the FCA's intention to simplify retail conduct rules, and support this aim in principle, we do not believe simplification would be best achieved through reliance on the Consumer Duty for wholesale activity, where there are already existing high standards in the FCA's rulebook. Taking this approach could have several potential disadvantages for wholesale firms impacted by those rules (most often indirectly):

- Firstly, such changes could create or increase ambiguity and uncertainty about what is considered compliant. This ambiguity partly results from an overlap between the Consumer Duty and existing rules, but also from the fact that there remains no commonly and clearly understood definition of "good consumer outcome" as required under the Consumer Duty. We recognise that the FCA has helpfully given examples of 'good' and 'bad' practices within its 'FG22/5 Final non-Handbook Guidance for firms on the Consumer Duty', but these examples are not sufficient to provide full clarity and the interpretation of what constitutes a "good outcome" remains largely subjective.

- Secondly, any rule changes require careful impact assessment and scrutiny to identify any material changes (including unintended ones); and any significant

changes may also require wholesale firms to modify existing processes, procedures and governance models even where they do not have any direct retail client relationships. This would bring additional costs (financial and other, such as management time) for wholesale firms.

- Thirdly, many existing rules apply to both retail and wholesale firms, including in circumstances where the wholesale firm may not have any Consumer Duty obligations. Replacing rules with high level outcomes-based rules such as the Consumer Duty geared toward consumer-related outcomes is not appropriate or proportionate for wholesale firms, in particular where the wholesale firm is not in scope of the Consumer Duty. Given that UK Finance's members have already committed significant time and resources to Consumer Duty implementation, often with uncertainty about the application to wholesale firms, the cost benefit analysis for further change so soon after implementation of the new regime remains questionable.

On a separate point, the alignment of the basic scope of the Consumer Duty in relation to investment business to the 'retail client' category, covering high net worth individuals, is arguably too wide. These individuals will often be seeking higher investment returns through more sophisticated investments and have a greater capacity for loss than other retail clients. Due to the demanding and prescriptive opt-up criteria for elective professional client status in connection with MiFID business, it is often difficult or impossible to classify these high net worth individuals as professional clients. This treatment seems at odds with the direction of policy, as shown in the recent UK / Switzerland agreement on mutual recognition in financial services, which indicates that the UK government is comfortable with Swiss firms providing MiFID-equivalent investment services to UK high net worth clients (subject to certain conditions).

In looking at areas of potential complexity, duplication and confusion, as requested in this CfI, we would encourage the FCA to consider, as part of their post-implementation review of the Consumer Duty, the express disapplication of the Consumer Duty to wholesale businesses where there is no direct relationship with retail investors and where other obligations, such as the Treating Customers Fairly principle, apply. Whilst we acknowledge that the FCA has not asked for comments on the Consumer Duty itself for this CfI, we do not think it is possible to comment on the regulatory landscape that the Consumer Duty has introduced without commenting on its design and scope.

In any event, any proposal to amend or remove existing retail conduct rules should be undertaken on the basis of a positive cost-benefit analysis, taking into account the indirect impact on wholesale firms (i.e. assessing the additional costs that wholesale

firms would need to incur in order to assess and comply with the revised regime). Before the FCA proposes any new requirements, it would be helpful if it considered the extent to which the intended goals of the requirements could be addressed through existing regulation. If the FCA determines that further regulation is required, it would be helpful if it considered the interaction with existing regulation. See examples of area of ambiguity on interaction with other rules in Question 2 below.

Question 2: Is there a lack of clarity on how requirements under the Duty and other FCA rules interact? Please tell us where this issue arises and your views on how it could be addressed. For example, would guidance on the interaction be helpful?

As a general comment, assessing how the Consumer Duty applies in practice to their business models, particularly in situations where they are only part of the distribution chain and do not have a relationship with underlying "retail clients", has been a significant exercise for wholesale firms. Notwithstanding these challenges, for present compliance purposes wholesale firms have adopted Consumer Duty compliance models proportionate to their, typically, indirect nexus to consumers following complex and time-consuming analysis.

Any additional FCA guidance could lead to further operational, legal and regulatory challenges and require further impact assessment and implementation which would be disproportionate to any clarity that such guidance may import at such a late stage of the application of the Consumer Duty.

Notwithstanding the above comment, UK Finance members, would like to highlight to the FCA a number of areas of ambiguity which the industry has had to tackle as part of Consumer Duty implementation projects:

Many of the requirements under the new Consumer Duty that apply (often indirectly) to wholesale firms interact with MiFID II-derived rules. It can be unclear whether compliance with the MiFID II rule is sufficient to achieve the Consumer Duty standard or whether something different or extra is required.

For example, as noted in the CfI, the ‘Product and Services Outcome’ under the Consumer Duty contains similar requirements to the Product Governance and Distribution Chain (PROD) rules, which require firms that manufacture or distribute financial instruments to ensure products are designed for appropriate target markets and distributed effectively. In certain scenarios, firms may comply with the PROD

rules, and the Duty's rules under the products and services outcome do not apply. This is because the FCA has disapplied the Consumer Duty requirements relating to the products and services outcome and the price and value outcome, to allow insurance/investments firms to comply only with PROD 3/4. This was based on the understanding that compliance with PROD 3/4 would satisfy the relevant Consumer Duty requirements. Nonetheless, the extent to which PRIN2A.3.11 sets a different standard for collaboration between co-manufacturers of a product as compared to PROD 3 requirements, which a firm may choose also to comply with, is unclear. Whilst, as noted above, additional guidance may be unhelpful at this late stage, to the extent it is necessary for the FCA to produce additional guidance, members would urge the FCA to ensure that it seeks to minimise any such delta between how PROD3/4 has been interpreted to date and the equivalent Consumer Duty obligations.

The Consumer Duty also requires firms to undertake fair value assessments as a way of demonstrating if the price a consumer pays for a product or service is reasonable. This will interact with the MiFID II-derived 'best execution' rules which require firms to provide the best possible result when executing client orders, accounting for factors such as price (a priority for retail investors), speed of execution, and market impact.

In relation to Consumer Duty governance, the FCA's guidance recommends that a firm's Consumer Duty Champion at Board level must be an Independent Non-Executive Director (i-NED) where possible: "The champion should be an i-NED, where possible. For larger organisations with group structures, we expect this champion to be at an appropriate level to ensure that the Duty is discussed in a meaningful way." In some circumstances, the i-NED may not be the best person for the role. An example may be where a board member has a very granular understanding of the client base or products offered by the firm. Firms should have the clear flexibility to choose an executive best qualified to ensure consistency with the Duty rather than being directed to choose an i-NED. Whilst we understand this is not a legally binding requirement, having this part of the FCA guidelines could lead to supervisory expectations which are not aligned with the intended objective.

There is also a lack of clarity on the interaction between SYSC 8 and non-handbook guidance on outsourcing activities subject to the Consumer Duty, in particular the expectations on firms in the context of outsourcing to third-party firms. For example, it is unclear how the non-handbook guidance interacts with the SYSC 8 rules and what the FCA's expectations are when firms outsource activities subject to the Duty to unauthorised third parties. The extent to which the FCA considers such third-party unauthorised service providers materially influence consumer outcomes is also unclear.

Question 4: Do you agree that work towards simplifying our retail conduct rules can help us meet all our objectives, including the secondary objective? Please explain why or why not.

- Although we acknowledge the scope of this CfI does not ask for input on changes to the Duty itself, we do not think it is possible to address the Duty in the context of the FCA's secondary growth and competitiveness objective without commenting on the outcomes-based nature of the Duty.

- While we generally believe that simplifying the FCA rules would help with the competitiveness of the UK as a place for doing business, and we generally welcome flexible, non-prescriptive regulation, this must be balanced with regulatory clarity. The interim step between prescriptive detailed rules and outcomes-based regulation, is principles-based regulation that has been a historic strength in the UK market. In the longer term, we would encourage the FCA to consider as part of its upcoming post-implementation review of the Duty how to amend the Duty to be more in line with a principles-based approach.

- A clearer, less ambiguous approach to regulation is beneficial for both firms and consumers. Going forward, simplification of rules in the context of the Consumer Duty and providing further regulatory clarity would increase the attractiveness of the UK as an international financial centre, aligning with the FCA's secondary objective on growth and competitiveness.

- The Duty in the wholesale space has been seen as an additional layer of ambiguous rules requiring well established processes, procedures and governance models to be reviewed even where they do not have any direct retail client relationships. This additional layer makes the FCA rules for wholesale business more complex and unclear and ultimate puts the UK at a competitive disadvantage compared to other financial centres.

As an example of where the current interaction between the Duty and the retail conduct rules may undermine competitiveness, some members have received legal advice that the Consumer Duty may apply to overseas/foreign retail clients on a proportionate basis, where the products and services are manufactured by an FCA regulated firm in the UK.

This puts UK firms at a competitive disadvantage with firms based in overseas jurisdictions where the Duty does not apply. We question why the Consumer Duty has

this broader application, assuming the intention should be to protect retail customers in the UK.

In addition, some aspects of the Consumer Duty, such as enhanced Management Information (MI), are difficult to apply outside the UK, as local distributors are not subject to the same rules. In question 2, we outline the challenges that additional FCA guidance to wholesale firms may introduce at this late stage of the application of the Consumer Duty. Notwithstanding this, it would be helpful to have FCA confirmation that requirements relating to MI and reports to the board should focus on activity in the UK.

Question 5: In which circumstances do you think it is appropriate to rely on:

a) High-level rules under the Consumer Duty

b) More detailed rules

c) A hybrid approach with both high-level and detailed rules?

See response to preceding questions above.

Question 6: What do you see as the main costs and benefits of making changes to the FCA Handbook by simplifying or removing detailed expectations of firms?

See response to preceding questions above.

Question 7: Where do you see high-level or detailed expectations having differing costs or benefits for different types or sizes of firm?

Costs of high-level requirements to wholesale firms

For wholesale firms, it would be helpful if the FCA considered the potential impact of its high-level regulatory requirements under the Consumer Duty and provided a sensible balance of application.

In particular, it is important for the FCA to understand that there is limited ability for firms that primarily deal with wholesale clients to "determine or materially influence outcomes for retail customers" even when considering any "look through" to underlying retail clients.

Although the Duty purports to be aimed at protecting retail customers, the effect of the "look through" requirements of the Duty resulted in wholesale institutions spending a lot of time and effort to analyse the impact. Achieving this balance of application is especially important bearing in mind the FCA's secondary competitiveness objective.

To the extent that the FCA determines that it intends to provide additional guidance on the application of the Consumer Duty to wholesale firms, intends to simplify existing rules with a principles-based approach, or generally intends to change expectations of firms, the FCA should provide at least nine months in advance of the implementation date to allow the wholesale industry to assess the impact and implement the changes. Our members have noted that the FCA provided guidance detailing expectations on firms under the FCA anti-greenwashing rule around six weeks before the implementation date. This did not leave sufficient implementation time for firms and resulted in additional costs.

Costs to wholesale firms that operate in both the UK and EU/other jurisdictions

When assessing the cost or benefits of the proposed high-level redrafting of provisions reflecting Retained EU Law/assimilated law in the FCA rulebook, the FCA may wish to consider whether such redrafting might potentially lead to:

- ***higher costs*** for UK branches of EU firms in particular, and international firms generally;

- ***legal uncertainty*** which could occur even if regulatory guidance is given by the FCA as to how to interpret or achieve the desired outcome. The FCA outcomes-focussed/high-level redrafting is seemingly at odds with HM Treasury's focus on drafting clear, legally certain, primary and secondary legislation, to ensure clear legal parameters for regulators to work within.

UK Finance

Annex 5: Payments and Innovation

October | 2024

UK Finance Response – payments and innovation

Commentary relating to payments

- DISP
  - Reference is made to the Personal Banking Annex 2, response to Q3 relating to the differences to DISP rules and PSR 2017 rules on complaints and that they should be made consistent. Those comments are supported from a payments perspective, also.
- Enterprise definitions
  - Reference is made to the Commercial Finance Annex 6, response to question 3, noting the differences to enterprise definitions (e.g. 'micro-enterprise' (EUR2m) and "Charity" (GBP1m). There is a further point made in that microenterprise subsidiaries of larger groups fall within BCOBS and the PSRs, but ideally should not be so included. Those comments are supported from a payments perspective, also.
- Strong Customer Authentication
  - We note the FCA is due to consult on the strong customer authentication rules in the FCA handbook. We look forward to that exercise with the aim of reducing the number of prescriptive rules and introducing more flexibility into the requirements, both 'on day one' and in relation to how those rules may be adapted quickly and efficiently in the future. This will be important to maintain the UK's leading position on superior SCA performance and will support innovation, security and competition.
- Safeguarding
  - We note that the FCA is reforming the safeguarding regime into a much more prescriptive set of rules. It will be important that future guidance on the Consumer Duty as relates to safeguarding recognise that added prescription.
  - Any new Consumer Duty guidance should take into the following:
    - We re-iterate some points made previously to the FCA, that absent specific arrangements between card acquirers and cardholders, card acquirers do not have a regulatory nexus or 'manufacturer' or 'distributor' role with cardholders and the Consumer Duty does not apply in that context.
    - Similarly, absent specific services being provided for consumers, the safeguarding bank does not have a regulatory nexus or 'manufacturer' or

'distributor' role with the underlying payment service user whose funds are being safeguarded.

FCA Consumer Duty expectations and PECR interplay:

- The Consumer Duty 'consumer support' and 'consumer understanding' outcomes may require firms to send certain types of communication to customers, such as information about financial advice or savings products. This overlaps with the direct marketing consent / soft opt-in requirements of the Privacy and Electronic Communications Regulations (PECR), enforced by the Information Commissioner's Office (ICO).
- Similarly, it is unclear to what extent firms can send educational material to customers intended to improve their financial literacy and enable better decision-making, such as information about pension planning, jargon busting material, information about tracing forgotten accounts, information about support available for those struggling with the cost of living, etc. Such material could assist firms in complying with the Consumer Duty 'consumer support' and 'consumer understanding' outcomes but may also fall under the PECR direct marketing rules.
- It is unclear under the existing **FCA/ICO joint letter** and the ICO's '**regulatory communications**' guidance to what extent such communications can be sent to customers who do not already hold similar products (e.g. nudging a customer with a large current account balance to consider savings products), or where products they do hold are not specifically or solely savings-related (e.g. 'packaged' accounts), if they have not provided marketing consent (or soft opt-in).

Consumer Duty duplication of GDPR protections:

- The Consumer Duty rules and guidance seem in many cases duplicative of GDPR protections (emphasis added):
  - **PS22/9:**
    - 2A.4.9 (in relation to product manufacture):
    - "Guidance on the value assessment: benefits and costs
      - 1) The types of benefits that retail customers may reasonably expect to obtain may include non-financial benefits such as an enhanced level of customer service providing extra assistance to retail customers in using the product.
      - 2) ***Examples of non-financial costs include the provision of personal data and the granting of permission to use that data***."

- **FG22/5:**
  - "7.28: Firms also need to consider whether consumers will incur other costs which may not be financial. Non-financial costs may include:
    - the time and effort it takes to access, assess and act to buy, amend, switch or cancel a product
    - ***firms' use of consumer data where consumers knowingly or unknowingly 'pay' with their data, privacy or attention***
  - 7.29: Firms should not impose unreasonable non-financial costs. For example, unclear or misleading information could make it hard for a customer to assess their options. If a firm imposes unreasonable barriers to assessing or accessing the benefits of a product or service, it may be thatmany customers do not act to realise their financial objectives. In effect, this increases costs relative to the benefits of a product or service."

- We infer from these rules and guidance that the FCA's concern is that firms might unfairly 'force' customers to consent to the collection and processing of their personal information as a condition of service through 'take-it-or-leave-it' terms and conditions that include unfair or unreasonable data processing.

- This risk is already strictly governed by articles 6 and 7 of GDPR (in addition to the Article 5 overarching requirement that data processing must be fair). To collect and process personal data, firms must *inter alia* satisfy the conditions of a legal basis. The most pertinent of these to the FCA's concern are as follows:
  - **The processing is necessary to enter into a contract with the individual or to perform a contract with the individual (article 6(1)(b)).** ICO guidance makes clear that this is limited to situations in which the service sought by the individual cannot be provided without the personal data, such as processing account and card details to execute a payment. The personal data processed under this condition must be necessary for entering into/performing the contract. It would not cover a contractual requirement on the individual to agree to data collection or processing desired by the firm for some other reason (e.g. marketing or onward sale to a third party).
  - **The individual has consented to the collection or processing of the personal data (articles 6(1)(a) and 7).** This legal basis only applies where the consent is "freely given," not (in general terms) when the individual is 'forced' to consent as a condition of access to a service or is otherwise manipulated. Consent is typically applicable to 'optional extras' on top of core services (e.g. receiving marketing). Individuals are also legally able to

withdraw consent and effectively stop processing of personal data pursuant to that consent at any time.

- **The processing or collection is necessary for the purposes of the legitimate interests of the firm (article 6(1)(f)).** This is the only legal basis that allows firms to collect and process personal data for their own business purposes beyond the minimum needed to provide the service sought by the customer, other than under customer consent (as above). It is the most flexible legal basis and the only one that could, in theory, cover the kind of data-collection and -processing risks that the FCA appears to be targeting. However, this legal basis cannot be relied on by a firm when its interests "are overridden by the interests or fundamental rights and freedoms of the data subject" (article 6(1)(f)). There is detailed ICO guidance on legitimate interest assessments. Individuals also have an established, qualified right to object to a firm's processing of their personal data and, ultimately, the ICO if a firm does not have compelling legitimate grounds to continue processing them.

- As such, the risk that the FCA appears to wish to address already has a well-established and robust set of controls around it, **enforced by the ICO**.
- Furthermore, the GDPR principle of lawfulness, fairness and transparency requires firms to advise individuals about how their personal data will be processed, ensuring that processing is fair.
- GDPR therefore already prevents firms from imposing unfair take-it-or-leave-it contractual obligations on customers to allow collection and processing of personal data, with comprehensive controls to prevent unfair use of such data for business purposes. We doubt that there are situations in which personal data processing could be permitted by a GDPR legal basis, and consistent with the wider data protection principles, but considered "unreasonable" by the FCA. As such, the Consumer Duty rules here seem to add unnecessary complexity without improving consumer protection.
- Unless there is a clear gap in the GDPR rules, these provisions in the Consumer Duty should simply be removed.

UK Finance

Annex 6: Commercial Finance Working Group Response to FCA Call for Input

October | 2024

Question 1: Could any of our retail conduct rules or guidance be usefully simplified or removed by relying on requirements under the Consumer Duty?

Please tell us:

a) Which rules or guidance (e.g. Handbook chapters, or non-Handbook guidance) you consider cover similar ground to the Duty requirements, or are otherwise overly detailed or prescriptive, or arguably redundant in light of other materials, and why

b) Your thinking on the likely benefits including, for example, any estimate on compliance cost savings

c) What the impact could be on consumers or consumer protection, or other relevant considerations

Commercial Finance members are supportive of any changes to increase the clarity of the regulatory rulebook. Member firms are in a slightly different position to more retail-focused firms as much of their lending occurs outside of the regulatory perimeter. However, where the Duty does apply members do have views on ways in which it might facilitate the simplification of existing rules and guidance. We have set these out below. The FCA should note that the views expressed here are based strictly on the understanding that there is no change in the regulatory perimeter as regards business lending.

Notwithstanding the benefits that can arise through removal of prescriptive rules, the FCA should bear in mind that in certain circumstances lack of prescription can give rise to greater uncertainty and, consequently, a lack of consistency across the industry. By way of example, members recognise that firms generally have a good degree of flexibility as to how they carry out creditworthiness assessments under CONC 5. However, feedback has highlighted that lack of a mandated approach to such assessments means some in the industry have adopted a more cautious approach to creditworthiness assessments for business lending than the FCA may have intended to encourage. Pursuant to this approach, these firms take account of sole traders' consumer lending when making a creditworthiness assessment for business lending purposes but do not do so for the purposes of consumer lending, meaning sole traders

may more frequently fail creditworthiness assessments when applying for business lending than they would for consumer lending. Overall, members remain strongly in favour of continued flexibility as to how creditworthiness assessments are carried out. We raise this, however, as an example of how practices or interpretations can emerge from a lack of prescription or clear guidance.

More generally, Commercial Finance members would highlight that the FCA's rules and guidance are almost exclusively framed from the consumer perspective. An example of this is the FCA's guidance on the fair treatment of vulnerable customers, which focuses heavily on consumer vulnerability, including in its examples of behaviours firms should be attentive to. This can give rise to difficulties where firms are seeking to interpret and apply the FCA's rules and guidance to dealings with business customers.

Question 2: Is there a lack of clarity on how requirements under the Duty and other FCA rules interact? Please tell us where this issue arises and your views on how it could be addressed. For example, would guidance on the interaction be helpful?

Commercial Finance members did not have particular points to raise in response to this question.

Question 3: Are there other areas in our rules or guidance, beyond those with an overlap with the Duty, where we should consider simplification or removal?

Please tell us:

a) Which rules or guidance (e.g. Handbook chapters, or non-Handbook guidance) we should review, and why

b) Your thinking on the likely benefits including, for example, any estimate on compliance cost savings

c) What the impact could be on consumer protection, or other relevant considerations

Members referred to the terms “micro-enterprise” and “charity” in the definition of “banking customer” in BCOBS and some members suggested the value component of these definitions should be aligned. As currently defined, the value threshold for a “micro-enterprise” classified as a “banking customer” requires that the enterprise has a turnover or annual balance sheet that does not exceed EUR 2 million. By contrast, in order for a charity to be classified as a “banking customer” it must have an annual income of less than GBP 1 million. Some members considered it would contribute to greater simplification in their processes for these thresholds to be denominated in sterling and, preferably, for the value thresholds for both types of organisation to be aligned. Any such change would need to be subject to a full cost benefit analysis and proper consideration of what the appropriate threshold would be, on which we would be keen to engage. The existing definition of “micro-enterprise” in BCOBS is consistent with the definition in the Payment Services Regulations 2017 (the “**PSRs**”), therefore any change to the BCOBS definition should also be made in the PSRs, in order to ensure continued alignment between the two frameworks.

Members also identified that the application of the turnover threshold for a “micro-enterprise” is currently complicated to apply in practice, given the proliferation of ownership structures that may apply. For example, should the turnover threshold be applied only to the enterprise, or to the group within which the enterprise sits?

More broadly, members are of the view that micro-enterprises forming part of a larger corporate group should be excluded from its scope altogether and that only the smallest businesses should be captured within the scope of the rules and treated as consumers. They do not consider there to be a sufficiently strong policy justification to bring micro-enterprises sitting within a larger group within the scope of the definition in order to benefit from enhanced protection. Such enterprises are likely to benefit from the financial and operational support of their group structure, including the ability to draw on the resource and expertise of group personnel (such as the group finance director or the legal department supporting group operations) making them far less vulnerable than stand-alone micro-enterprise businesses. Members do recognise that any change to the definition of “micro-enterprise” would have implications for UK / EU equivalence, which would need to be considered before making any change.

UK Finance

Annex 7: UK Finance response on DISP

October | 2024

For Noting

- Direct Member response to the CFI was limited, no responses received in relation to FCA's questions 1 and 2.
- One member responded to UK Finance CFI; response indicated with (1).
- Engagement sought through discussions during Complaint Handling Committee; responses indicated with (2).
- Examples of historic UK Finance DISP review work shared recently with Complaint Handling Committee, feedback sought on whether members still thought it was relevant. Three members fed back; responses indicated with (3).
- Engagement sought through Privileged Interest Groups, consisting of legal representatives and members, indicated with (4).
- Where members don't agree, comments will be highlighted in red.

General suggestions:

- Whilst not directly linked to the sourcebooks members raised concerns about the lack of representation on the Wider Implications Framework and the consequences it has on the application of Consumer Duty. The explanatory notes to section 415C FSMA state that the Framework provides a transparent structure for collaboration and information sharing. However, the Framework lacks representation from industry, consumers, the PRA, and PSR, despite prudential risks for firms arising from wider implications complaints. Although firm engagement has been discussed, no detailed information has been provided. Published minutes and logs are infrequent and lack depth. Including industry, consumer representatives, and the PRA in the Framework would enhance decision-making. Additionally, increased transparency and sharing of detailed minutes and guidance, especially in light of Consumer Duty, is needed. (4)
- In addition (and also not directly associated with the sourcebooks), members also noted Schedule 17, Paragraph 3 of FSMA gives the FCA power to appoint directors to the FOS board. While the FOS must remain independent, it currently lacks representatives from consumers or the financial industry. To ensure balanced and fair decision-making, the FCA should review its board's constitution to include representatives from both groups
- Members noted the overall format and layout of DISP Sourcebook could be improved (2) & (3). The structure and order of DISP is difficult to navigate, with no sense of the whole or following the flow of how a firm would handle a complaint. Customers may be disadvantaged if their complaint is not managed

in line with DISP rules and firms potentially fail to meet their DISP obligations, as the rules within the sourcebook are not structured clearly.

- For example, the rules on root cause analysis in section 1.3 are detailed ahead of the rules on resolving a complaint under section 1.4
- The way MiFID and PSD2 have simply been slotted into the existing rules makes DISP hard to navigate. One member didn't believe this was relevant to them currently.
- It would be beneficial if the sourcebook contained a flow chart or decision tree to better support obligations in handling a complaint.
- Members raised general concerns with CMC behaviours and misalignment within the rules to enforce better behaviour, members noted (2) & (3):
- DISP and COBs misaligned around expectations for CMCs, which results in CMCs not always being held to the same standards, if CMCs are not meeting their regulatory standard they cannot engage in DISP.
- CMCs are taking advantage of the broad definition of 'complaint'.
- CMCs should have an authority time bar to prevent revisiting old complaints
- Concerns about whether current rules adequately address the obligation of CMCs to forward complaints to the correct firm.
- Members felt that that Consumer Duty should be consistently applied to all professional entities using DISP, including CMC's.
- Members noted that during the Coronavirus crisis, the FCA provided updates on complaint handling and granted dispensations to certain rules. External factors, such as high volumes of templated complaints from CMC's, could strain firms operations and delay responses beyond the 8-week target. This could lead to increased escalations to the FOS, adding pressure and fees for firms. Members requested FCA guidance on managing complaints during periods of strain caused by external factors or disruptive behaviour from third-party firms. This would help firms coordinate directly with the FCA, agree on extended timelines, and manage expectations more effectively. (3) One member did not believe this was relevant at this time.

Question 1: Could any of our retail conduct rules or guidance be usefully simplified or removed by relying on requirements under the Consumer Duty?

a) Which rules or guidance (e.g. Handbook chapters, or non-Handbook guidance) you consider cover similar ground to Duty requirements, or are otherwise overly detailed or

prescriptive, or arguably redundant in light of other materials, and why?

b) Your thinking on the likely benefits including, for example, any estimate on compliance cost savings

c) What impact could be on consumers or consumer protection, or other relevant considerations

No member responses.

Question 2: Is there are a lack of clarity on how requirements under the Duty and other FCA rules interact? Please tell us where this issue arises and your views on how it could be addressed. For example, would guidance on the interaction be helpful?

No member responses.

Question 3: Are there other areas in our rules and guidance, beyond those with an overlap with the Duty, where we should consider simplification or removal?

Please tell us:

a) Which rules or guidance (e.g. Handbook chapters, or non-Handbook guidance) we should review, and why.

Summary Table:

Below is a summary table of which rules and guidance members suggested should be amended or clarified, deleted or added. More detail on these can be found in the written section following this.

DISP reference/Section	Amend/Clarify	Delete	Add
DISP 1: Purpose and Application	• **DISP 1.1** (inc various references), Amalgamation of PSD2 & DISP reporting, it causes unnecessary complexity. (3)	• **DISP 1.1a MiFID**, Merge with the existing rules or remove MiFID rules from DISP (3) • **DISP 1.1** (inc various references), Remove the distinction between PSD2 and non-PSD2 complaints. (3)	• **DISP 1.10.3(3),** Add 'Complaints Data Items: FAQ' into DISP. (3)
DISP 1.2 Consumer Awareness Rules	• **DISP 1.2** (inc various references), Providing physical leaflets. Include option to use other mediums of communication (3)		
DISP 1.3 Complaints Handling Rules	• **DISP 1.3.2A and 1.4.2**, firms required to learn from FOS decisions results in FOS evolving into a quasi-regulator. Clearer boundaries requested between FOS dispute resolution role and regulatory decision making (4) • **DISP 1.3.2A**, Ask FOS to clarify if uphold was result of a: process, practice, policy or whether individual circumstances – to help ensure lessons learned. (3) One member suggested there should be consideration for industry or individual firm engagement with FOS on these matters.		
DISP 1.5 Complaints Resolved by Close of Third Business Day	• **DISP 1.5**, Clearer guidance on 'business days', DISP has two materially different definitions of a business day. (2) & (3) One member didn't believe this was relevant to them currently.		

	• **DISP 1.5**, Amend SRC timeframe from 3 business days to 5. (3) One member noted this does not cause them problems currently.		
DISP 1.6 Complaints time limit rules	• **DISP 1.6.2**, Amend. Include option to signpost to online information (where possible), or whatever a customer may require. (3) • **DISP 1.6.2A**, Amend. The concept of a 'durable medium' is inconsistent. (2) & (3) • **DISP 1.6.2A**, Amend. Allow more modern mediums to be used to convey messages, such as SMS and E-Mail. (3) • **DISP 1.6.2.(d) & (da),** Amend. Is there a requirement to include the FOS leaflet if a link is also being included in the Final Response. (3)	• **DISP 1.6.2.(A-C)**, Whole section. PSD2 Created operational complexity and risk customer confusion (1)	• **TO ADD**, allow firms to formally challenge unsubstantiated professional representative complaints and pause 8-week resolution clock. (4) • **TO ADD**, introduce guidance regarding re-opening complaints after FOS rights have been provided. (3) One member didn't believe this was relevant to them currently.
DISP 2.8 Was the complaint referred to the financial ombudsman service in time	• **DISP 2.8.2** amend ambiguous terms like "event" and "cause for complaint" – need for clearer provisions and guidance particularly for complaints with wider implications. (4) • **DISP 2.8.2R(2)(a),** Clarification welcome as to whether 3-year date of awareness referred applies to insolvency practitioners / attorneys (i.e. where right to complain passed by law). (3)		
DISP 3.4 Referring a complaint to another complaint scheme			• **TO ADD,** DISP 3.4.3 recognises the concept of Wider Implications – members ask for a formal definition to be added to DISP along with provision for FOS to pause such complaints until FCA provides regulatory clarity. (4)
DISP 3.5 Resolution of complaints by the Ombudsman	• **DISP 3.5.5 and 3.5.6** amend to grant both complainants and respondents the right to request a hearing for wider implications		

	complaints, invite FCA to attend or submit opinions in writing. (4)		
DISP 3.6 Determination by the Ombudsman	• **DISP 3.6.1 and 3.6.4R,** Change wording 'take into account' relevant laws, regulation and guidance, to 'apply'. (4) • **DISP 3.6.4,** Change how FOS consider non-binding codes of practice. (3) One member suggested there should be consideration for industry or individual firm engagement with FOS on these matters.		• **TO ADD**, If FOS is mandated to apply relevant laws and regulations, there should be a right of appeal to the high court throughout the country. (4)
DISP 3.7 Awards by the Ombudsman	• **DISP 3.7.1R** Permits FOS to award interest at standard rate of 8% - amendment to include DISP provision for FOS to exercise greater discretion rather than apply 8% as a blanket rule. (4)		
DISP 1 Annex	• **FOS Rights wording,** less formal language in FOS wording required in Final response letters. (3) One member didn't believe this was relevant to them currently. • **Time Bar wording,** to include reference to 6- & 3-year rule where applicable (3)		
Glossary	• **Definition of complaint,** Clarity of wording applicable to CMC's – Legal firms operating as CMC's have been submitting high volumes of low-quality complaints. The language within the definition should requires these to be handled in line with DISP requirements. (2) & (3)		

Detailed Explanation:

DISP 1: Purpose and Application

- **DISP 1.1 (including other references to PSD and non-PSD reporting within DISP),** Members suggested for ease of reporting to explore the

possibility of combining the DISP & PSD2 reporting in a single report, perhaps by inserting the PSD2 tables in the existing DISP returns. Doing so would remove unnecessary complexity.

- **DISP 1.1a MiFID**, The inclusion of MiFID rules within the existing FCA framework has resulted in a lack of clear structure in the sourcebook. Members expressed concerns that this could disadvantage customers if their complaints are not handled in accordance with DISP requirements. There is also a risk that firms may inadvertently fail to meet their DISP obligations due to the unclear organisation of the rules within the sourcebook due to where MiFID is placed. Members felt it should be merged, or removed from DISP
- **DISP 1.1 (including other references to PSD2)**, Members agreed that removing the distinction between PSD2 and Non-PSD2 complaints could simplify processes for firms, leading to greater consistency and fairness on how complaints are handled and ensure all customers receive the same level of protection. A unified approach could provide clarity for both firms and customers.

- **DISP 1.10.3(3),** Add 'Complaints Data Items: FAQ' into DISP. Members noted that the complaint reporting requirements currently in DISP weren't sufficient to remove ambiguity when reporting on redress and complaints. Some members had noted an FAQ released by the FCA which helped with complaint reporting, but also noted this wasn't 'front and centre' resulting in some firms missing this guidance. It was agreed that the FAQ's should be more prominent and form part of DISP.

DISP 1.2 Consumer Awareness Rules

- **DISP 1.2,** Members noted the requirement under DISP 1.2 (including references 1.5.4 and 1.6.1) for firms to provide physical FOS leaflets with Final Response Letters is outdated. They felt that alternative methods of delivering this information would better align with customer's needs. Moving away from physical leaflets offers benefits such as improved communication, quicker responses, reduced environmental impact, and lowering printing costs. Members agreed that firms should have the option to use other communication mediums to meet this requirement.

DISP 1.3 Complaints Handling Rules

- **DISP rules 1.3.2A and 1.4.)** Members have raised concerns that the Financial Ombudsman Service is increasingly acting as a quasi-regulator. This arises from the FOS being tasked with applying Consumer Duty principles to individual cases, and from requiring firms to learn from FOS

decisions. As a result, the FOS is effectively shaping regulatory expectations, rather than simply resolving individual complaints. This quasi-regulatory role is creating uncertainty and delays, as FOS decisions on broader issues impact the financial services industry without the transparency or procedural safeguards expected in formal regulatory processes. These challenges can hinder firms' ability to comply with the Consumer Duty, which aims to ensure good outcomes for customers. Addressing this requires greater transparency and clearer boundaries between FOS's dispute resolution role and regulatory decision making.

- **DISP 1.3.2A,** DISP Requires firms to learn from Ombudsman determinations and apply those lessons to future complaint handling. While members support the principle of lessons learned, they feel that the DISP rules may not fully account for the nuanced differences in individual cases. Similar complaints may not always lead to the same outcomes due to unique circumstances. Members are concerned that firms may make decisions based on a broad application of lessons learned, rather than considering each case individually. The FOS is required to adjudicate based on what is fair and reasonable in the specific context of each case, and firms should have the same ability to account for individual circumstances. To help firms learn effectively, the FOS should clarify whether lessons learned are related to processes, practices, policies or the unique circumstances of the complainant.

DISP 1.5 Complaints Resolved by Close of Third Business Day

- **DISP 1.5**, Members feel there needs to be considerations of what defines a business day, Monday to Friday is not reflective of what actual working days are presently. One member noted that DISP has two materially different definitions of a business day depending on whether it's a PSD2 complaint or not. This causes operational challenges and has the potential to cause customer confusion. Members ask for clearer guidance on what defines a business day.

- **DISP 1.5**, Members noted differentiation of process based on 3 business days does not necessarily reflect customer expectations and could drive poorer customer outcomes. Differentiation based on customer acceptance of the firms proposed complaint resolution could provide a more logical distinction. Customers may receive less timely outcomes due to additional requirements associated with producing final response letters. A change to emphasise customer acceptance would increase emphasis on overall quality of customer outcomes.

DISP 1.6 Complaints time limit rules

- **DISP 1.6.2**, **& 1.6.2.(d) & (da),** Amend. Members felt the requirement to include leaflet and website address in Final response Letters was unnecessary. Members felt the same impact could be achieved by signposting to the website, even on letter correspondence. Members also noted the potential negative impacts of providing too much material could be confusing for customers, in addition to the environmental impact.
- **DISP 1.6.2A**, Amend. Members noted the concept of a 'durable medium' is inconsistent, as its only applicable to PSD complaints and only Final Responses. Customers may receive different complaint communication methods depending on whether their complaint is PSD or non-PSD, and resolved at FR or SRC. This can also create confusion when firms use a non-durable communication method, as the customer will see the outcome to their complaint twice, as a durable communication method will also need to be used. Firms will not always be able to communicate via a customers preferred channel. Members feel consideration should be given to removing or amending this rule given there are widely available digital methods of communicating with customers.
- **DISP 1.6.2A**, Amend. Members noted DISP assumes that correspondence will be provided in paper form, with references to messages being required to be in writing and with requirement to enclose the FOS leaflet. Customers potentially receive multiple letters on a given complaint. Letters also introduce delays in conveying messages, creating customer confusion around timing relative to any real time conversations. Use of SMS has proven popular with customers during Covid but does not fully comply with DISP. Members feel there should be options to use other mediums of communication.
- **DISP 1.6.2.(A-C)**, One member requested this whole section be removed, noting one set of complaint resolution timeframes would make things simpler from an operational perspective, and make it less likely for customers to be confused.
- **TO ADD**, Members requested guidance to be introduced regarding re-open complaints after FOS Rights provided - one member noted guidance on how to deal with post-final response letter correspondence and how that impacts the 6-month time limit would be helpful.
- **TO ADD,** Under DISP 1.6.2, firms have 8 weeks to resolve a complaint after receipt, during which they must either provide a final response or an update. Complainants can escalate the issue to the FOS after this period. However, firms often receive templated complaints from professional representatives

(CMCs and CLFs) that lack evidence or substantiation, making them challenging to address within the timeframe. This frequently leads to referrals to the FOS, resulting in significant case fees, especially when large volumes of complaints with wider implications arise. While recent developments (FOS proposal to charge CMCs) aim to reduce speculative complaints, members propose amending DISP to allow firms to formally challenge unsubstantiated complaints by requesting additional information or evidence, which would pause the 8-week resolution clock. This mechanism would ensure professional representatives maintain high standards and prevent them from using the threat of FOS fees against respondent firms.

DISP 2.8 Was the complaint referred to the financial ombudsman service in time

- **DISP 2.8.2** states that the FOS cannot consider complaints submitted more than six months after a firms response, more than six years after the event, or more than three years after the complainant became aware of the issue. Limitation periods are crucial for establishing clear timeframes for legal claims, preventing indefinite litigation exposure, and ensuring fair resolutions as evidence can deteriorate and memories fade. However, ambiguous terms like ‘event’ and ‘cause for complaint’ lead to inconsistent applications by the FOS. There is a pressing need for clearer provisions and guidance, particularly for complaints with wider implications, to balance consumer compensation with firms’ need for certainty regarding past liabilities. Vague limitation periods can deter investment in UK financial services and hinder firms ability to manage stale claims, especially given strict GDPR requirements. Ultimately clear limitation periods are essential for fair dispute resolution.
- **DISP 2.8.2R(2)(a),** Members noted clarification would be welcome as to whether, in circumstances where the complaint is brought by a personal rep / insolvency practitioner / attorney, the 3-year date of awareness referred is that of (a) the complainant in whose name the complaint is brought; or (b) the party empowered to bring the complaint. Where the right to complain has passed by law (e.g., to an IP or a PR) or the customer is unable to bring the complaint themselves (e.g., donor / attorney) then, from that point onwards the relevant 'awareness' for the purposes of this rule should be that of the party empowered to bring the complaint. One member also noted this would be a helpful clarification when the FOS is considering unfair relationship tests.

DISP 3.4 Referring a complaint to another complaint scheme

- **TO ADD**, The Wider Implications Framework requires the FOS, FCA, and FSCS to collaborate on significant issues, but it is not functioning as intended. The FOS often handles complex matters that should be led by the FCA, suggesting a gap in the Framework and DISP rules that prevents FCA intervention before the FOS makes decisions with regulatory impact. The concept of wider implications is already recognized in the Framework and to an extent DISP 3.4.3. A formal definition could be added to DISP, along with a provision requiring the FOS to pause such complaints until the FCA provides its view and, if necessary, issues guidance or new rules. This would ensure the FCA takes the lead on regulatory matters while the FOS focuses on resolving individual complaints. Additionally, the rule could allow any party – complainant, firm, FOS or FCA – to trigger the referral of a Wider Implications Complaint to the FCA, preventing unilateral control by the FOS.

DISP 3.5 Resolution of complaints by the Ombudsman

- **DISP 3.5.5 and 3.5.6**, outline the conditions under which the FOS may hold a hearing to determine a complaint. However, despite firms requests, hearings are rarely granted due to cost and time implications, with the FOS favouring a paper-based process. Reforming DISP 3.5.6 to grant both complainants and respondents the right to request a hearing for Wider Implications Complaints could enhance the process. Additionally, inviting the FCA to attend these hearings or submit written opinions would allow for expert insights on the interpretation of relevant rules and guidance in the context of the complaint.

DISP 3.6 Determination by the Ombudsman

- **DISP 3.6.1 and 3.6.4R,** outline the conditions under which the FOS may hold a hearing to determine a complaint. However, despite member requests, hearings are rarely granted due to cost and time implications, with the FOS favouring a paper-based process. Members feel reforming DISP 3.5.6 to grant both complainants and respondents the right to request a hearing for Wider Implications Complaints could enhance the process. Additionally, inviting the FCA to attend these hearings or submit written opinions would allow for expert insights on the interpretation of relevant rules and guidance in the context of the complaint.

- **DISP 3.6.4,** Members noted FOS has a very wide remit and can consider Legislation, Regulation, Codes and Best practice when deciding the merits of the case. Their decisions can effectively set minimum standards for the industry and this precedence may differ from the intended aims of the

regulator – thereby creating regulatory divergence. One member noted their support of changes to how FOS consider non-binding codes of practice. Noting there have been many instances where firms have been held to standards set out in codes firms had no part in drafting and did not sign up to.

- **TO ADD**, If the FOS is mandated to apply relevant laws and regulations from the time of the act or omission, there should be a right of appeal to the high court in England and Wales, the Court of Session in Scotland, or the Court of Appeal in Northern Ireland, similar to the Pensions Ombudsman. In Ireland, parties can appeal decisions from the Financial Services and Pensions Ombudsman to the High Court or seek judicial review. Our members recognize that this reform would require legislative changes.

DISP 3.7 Awards by the Ombudsman

- **DISP 3.7.1R** permits the FOS to award interest at a standard rate of 8% per year against respondent firms, justified by the current judgement debt rate and the potential higher borrowing costs for complainants. While our members support the entitlement to interest on compensatory awards, the 8% rate can lead to over-redressing complainants and disproportionately impact financial services firms, especially when complaints take time to resolve due to varying time limits or delays. For instance, the typical court compensatory interest for unfair relationship claims is under 4%. This issue is worsened by CMCs/CLFs 'warehousing' claims, resulting in substantial interest accrual, and the FOS's broad interpretation of time limits, which can apply interest over extended periods. Therefore, members ask DISP is amended to encourage FOS to exercise greater discretion rather than applying the 8% interest rate as a blanket rule.

DISP 1 Annex

- **FOS Rights wording,** Members requested the option to use less formal referral right wording in their final response letters. One member noted the consistency of using the approved wording which helps avoid firms using incorrect wording, but felt there were occasions where using different wording, that was more accessible, would be an advantage and should be the firms choice.

- **Time Bar wording amendment,** update wording to ensure it is clear any complaint which relates to something which happened more than 6 years ago (or, more than 3 years after the customer ought to have been aware of a reason to complain) can be time barred. Members felt there could be clearer timescales for resolution.

Glossary

- **Definition of complaint,** members noted Legal firms operating as CMCs have been submitting very high volumes of low-quality complaints. The language within the definition requires these to be handled in line with DISP requirements. This drives incremental costs for firms in handling low quality complaints. Ultimately these costs increase the cost to serve for firms and are passed on to consumers. One member noted the need to ensure CMCs have met the FCA's rules around adequate investigation, making customer aware they can complain for free etc.

b) Your thinking on the likely benefits including, for example, any estimate on the compliance cost savings

Members did not specifically respond to this point, but generally covered at times in the details above.

c) What the impact could be on consumer protection, or other relevant considerations

Members did not specifically respond to this point.