CFA Society United Kingdom

15 February, 2022

Richard Wilson
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

Submitted by e-mail to: cp21-36@fca.org.uk

Dear Richard,

CFA UK response to the FCA regarding CP21-36: A new Consumer Duty

The CFA Society of the UK (CFA UK)[1] is pleased to have the opportunity to respond to this consultation paper and the FCA's responses to feedback from the earlier consultation CP21/13.

We welcome the FCA's drive to increase retail investment firm's focus on their clients' interests and especially the new focus on consumer outcomes. We fully agree that achieving the strongest possible focus to meeting client needs and exceeding client expectations is the key to building an investment profession that is trusted by wider society. *Standard III: Duties to clients* in the CFA Institute's *Codes of Ethics and & Standards of Professional Conduct* underlines how our members' responsibilities to their clients must take priority over their responsibilities to their employer [2]: the focus on client outcomes should be held front-and-centre at all times.

We note that many UK-based retail investment firms already put customer outcomes at the centre of their business models and customer propositions and for them these new proposals should not represent a significant change or prove costly to implement. However, ongoing levels of customer complaints and dissatisfaction in client surveys and the variability in the quality of assessment of value reporting evidence that some firms currently do not achieve this - either through unintentional faults in their firms' organisation or culture or because they are to varying degrees putting their firms' own interests first at some stage(s) in their product lifecycles. In this context we applaud the FCA's move to 'raise the bar' and require firms to focus on consumer outcomes rather than meeting a checklist of procedural requirements, while accepting that outcomes may depend on a number of additional factors such as a consumer's own decisions.

The FCA has already widely consulted on these measures and responded to feedback with refined proposals in some areas and so our responses to the individual questions in Appendix II are relatively light.

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[1] CFA UK's mission is to help build a better investor profession for the ultimate benefit of society. We refer you to Appendix 1 for a brief overview of both CFA UK and our umbrella organisation, CFA Institute.
[2] https://www.cfainstitute.org/en/ethics-standards/ethics/code-of-ethics-standards-of-conduct-guidance

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While the new Consumer Duty clearly has to capture all firms, we do have concerns about the ability of small firms (which account for 97% of the 51,000 regulated firms) to fully and effectively implement these reforms on the budgets forecast in the CBA. This is especially the case where remediation exercises on back books and IT systems are proven to be necessary or where significant additional testing of consumer communications is required. At the same time, we note the aggregate forecast for up-front costs on firms of £0.7-£2.4bn, half of which falls on smaller firms, is already significant; the on-going costs thereafter on the other hand seem relatively modest. Perhaps this would argue for a longer implementation period for some elements of the reforms.

Should you have any questions or points of clarification regarding this letter or our responses to the questions, do not hesitate to contact us.

Yours sincerely,

Will Goodhart
Chief Executive
CFA Society of the UK

Andrew Burton
Professionalism Adviser
CFA Society of the UK

With thanks for the oversight of the CFA UK Professionalism Steering Committee

APPENDIX I: About CFA UK and CFA Institute

CFA UK serves nearly twelve thousand leading members of the UK investment profession. Many of our members work with pension funds, either managing investment portfolios, advising on investments, or as in-house employees responsible for pension investment oversight.

- The mission of CFA UK is to build a better investment profession and to do this through the promotion of the highest standards of ethics, education and professional excellence in order to serve society's best interests.
- Founded in 1955, CFA UK is one of the largest member societies of CFA Institute and provides continuing education, advocacy, information and career support on behalf of its members.
- Most CFA UK members have earned the Chartered Financial Analyst® (CFA®) designation or are candidates registered in CFA Institute's CFA Program. Both members and candidates attest to adhere to CFA Institute's Code of Ethics and Standards of Professional Conduct.
- For more information, visit www.cfauk.org or follow us on Twitter @cfauk and on LinkedIn.com/company/cfa-uk/.

CFA Institute is the global association for investment professionals that sets the standard for professional excellence and credentials.

- The organisation is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow.
- CFA Institute awards the Chartered Financial Analyst® (CFA) and Certificate in Investment Performance Measurement® (CIPM) designations worldwide, publishes research, conducts professional development programs, and sets voluntary, ethics-based professional and performance-reporting standards for the investment industry.
- CFA Institute has members in 162 markets, of which more than 170,000 hold the Chartered Financial Analyst® (CFA) designation. CFA Institute has nine offices worldwide and there are 158 local member societies.

For more information, visit www.cfainstitute.org or follow us on Twitter at @CFAInstitute and on Facebook.com/CFA Institute.

APPENDIX II: Responses to questions

Q1. Do you have any comments on the proposed scope of the Consumer Duty?

CFA UK welcomes this initiative and the fact that it embraces all UK retail financial services, rather than different markets, investments, banking, insurance etc. There would be a risk of confusing the customer if radically different consumer standards and expectations applied to different product markets.

The proposed definition (page 6 of the draft Handbook rules) of a retail customer as "an individual which is acting for purposes which are outside of their trade, business or profession" is appropriately flexible, though will require application of judgement in certain circumstances. This necessarily broad definition coupled with the decision (paragraph 3.10) to define 'a customer' according to the different sectoral sourcebooks rather than generically does, however, create the possibility that certain consumers in certain product sectors could be unintentionally excluded from the protections afforded by this new proposed regulation. We suggest this is an area that may require monitoring.

With specific reference to paragraph 3.30, CFA UK still would regard elements of occupational pensions as a 'retail activity' in the sense that most scheme members are consumers and not professionals. We see no reason why, for example communications to scheme members should not have to meet the same Consumer Duty expectations as will apply to communications relating to investment, insurance or banking products. We agree with the objective of ensuring UK consumer expectations are broadly identical across all financial products and so we believe the protections of a Consumer Duty' really should apply here also. Whilst occupational pensions are regulated by the TPR and not the FCA, we would still wish for the FCA to encourage the TPR to review where existing pensions provision and regulation should, but currently would not, meet the higher standards of this new Consumer Duty.

Q2: Do you have any comments on the proposed application of the Consumer Duty through the distribution chain and on the related draft rules and non-Handbook guidance?

With regards to 3.22 and the issue of liability within an investment product chain, CFA UK agrees with the FCA's conclusion that the primary responsibility for applying the Consumer Duty lies with the customer facing firm, but that that firm should not shoulder all responsibility. Precisely where responsibility lies and to what extent, however, will depend on the product or service provided and the circumstances in which it was sold or serviced. As such it may be a grey and complex area.

CFA UK would note further that in practice, where customer complaints arise, the efforts and focus of firms may be on blame apportionment rather than achieving a swift resolution for the customer. CFA UK recommends that the guidance in Appendix 2, for example within paragraphs 8.8 – 8.28 on consumer support, be augmented to include emphasis that firms within a chain are expected to prioritise collaboration towards resolving customer complaints swiftly so as to not be distracted from that 'customer first' principle by seeking to first defend their own position in the matter and/or apportion blame to another firm within the chain. We suggest the FCA considers going further than requiring collaboration, and in situations where a customer has a complaint directly or indirectly involving more than one firm, those firms should be required to agree and nominate one contact point (e.g. a "lead firm") to handle that complaint, so the customer is not bounced between firms.

Q3: Do you have any comments on the proposed application of the Consumer Duty to existing products and services, and on the related draft rules and non-Handbook guidance?

As acknowledged in paragraph 4.6, the new Consumer Duty may be challenging to apply for firms to their existing back-book business, especially where that business has no maturity or renewal date. This is particularly the case where the product or service has been bought on an unadvised basis, perhaps digitally, and where circumstances change, either in the market (the investment suffers a significant drop in value) or with the client specifically (they fall seriously ill or become vulnerable).

We believe it would be helpful for the FCA to provide additional guidance about the expectations of firms' tangible actions arising from the new Consumer Duty in regard to such situations (referred to also in paragraph 9.24), noting that firms will not be held accountable for all outcomes.

In the case of the two specific examples above, are firms providing execution only and non-advised services expected to contact retail clients subsequently on an (annual) basis or after extreme events to ensure the service or product previously sold remains suitable for that client and, if yes, how would that best be evidenced? Can providers of digital financial services and products rely on digital communications as evidence or is personal contact required? If digital communication can be relied on, is it sufficient if a message is sent (for example, an update of a fund's performance) but no response or acknowledgement of receipt received?

Q4: Are there any obstacles that would prevent firms from following our proposed approach to applying the Consumer Duty to existing products and services?

Please see our response to question 3 above.

Q5: Do you have any comments on the proposed Consumer Principle and the related draft rules and non-Handbook guidance?

Whilst many investment firms already do put customers at the centre of their business models, CFA UK welcomes the new emphasis on consumer outcomes in these proposals and the change of mind-set and culture that this should encourage within the investment sector.

We welcome the fact that the requirement to "deliver good outcomes" sets a high, aspirational goal for firms. However, this is also a goal which, as the FCA accepts, will not always be met given the many risks outside of a firm's control which can determine consumer outcomes. Provided a firm can evidence they have explained relevant risks *ex ante* and responded to them *ex poste* they should be seen as having delivered under their 'Consumer Duty'.

Q6: Do you agree with our proposal to disapply Principles 6 & 7 where the Consumer Duty applies?

Yes. To retain them would be confusing and duplicative.

Q7: Do you agree with our proposal to retain Handbook and non-Handbook material related to Principles 6 and 7 should remain relevant to firms considering their obligations under the Consumer Duty?

Our preference would be for a clearer delineation i.e.

i) a clear definition of a) retail business considered to be caught under the provisions for the new Consumer Duty and b) 'old' retail business that is not caught by the provisions of the new Consumer Duty and therefore is still bound by Principles 6&7;

ii) the drafting of the separate and distinct rules and provisions applying to a) and b) above.

Q8: Do you have any comments on our proposed cross-cutting rules and the related draft rules and non-Handbook guidance?

No comment. We support the proposals.

Q9: Do you have any comments on our proposed requirements under the products and services outcome and the related draft rules and non-Handbook guidance?

We refer you to our response to question 2 in relation to 7.22. In cases of complaint, firms should be expected to prioritise and constructively work towards achieving a successful customer outcome rather than defending their own respective positions. We recommend wording to this effect should be included in the guidance after paragraphs 5.04-5.37.

Q10: Do you have any comments on our proposed requirements under the price and value outcome and the related draft rules and non-Handbook guidance?

In the context of investments, the requirements of paragraph 8.17 overlap with the requirements introduced by the FCA in assessment of value reporting regulations 2 years ago. We note the role of I-NEDs in promoting consumer interests on fund boards and the production of the value assessment reports and suggest there could be a role for I-NEDs on the boards of other regulated retail consumer financial services businesses.

Q11: Do you have any comments on our proposed requirements under the consumer understanding outcome and the related draft rules and non-Handbook guidance?

In changing the focus of communications and literature from an input lens ("fair, clear and not misleading") to an outcome assessment, we assume that the most credible way for a firm to consider outcomes is to pre-test the understanding of customers. We therefore consider the tailoring and testing of mass communications, to clients with varying degrees of financial literacy or that potentially meet with different vulnerability criteria, to be one of the biggest practical challenges for firms of implementing this new Consumer Duty.

The draft guidance provided seeks to address previously aired industry concerns as to how and to what lengths firms will be expected to go to successfully meet the new Consumer Duty in this area and acknowledges the need for proportionality to apply. This will be needed given the relatively high costs of testing and the possibly inadequate size of the budgets set aside in the CBA for firms to comply.

Q12: Do you have any comments on our proposed requirements under the consumer support outcome and the related draft rules and non-Handbook guidance?

With regard to paragraph 10.4 and switching ISA or JISA providers, this still can be more problematic than it should be and prone to unnecessary delay. Firms losing the investment account to a new provider can work to the latest deadline and may return documentation for the smallest mistake, often blaming the firm to whom the account is to be transferred, to restart the process to no benefit to the end client. This is an example of practice which is unreasonable and not delivering the best outcome for consumers.

Otherwise, we refer you to our response to question 2 and our recommendation that the guidance in Appendix 2, paragraphs 8.8 – 8.28 be augmented to include emphasis that firms within a chain are expected to prioritise working together to resolve customer complaints swiftly and not be distracted from that 'customer first' principle by seeking to first defend their own position in the matter and/or apportion blame to another firm within the chain.

Q13: Do you think the draft rules and related non-Handbook guidance do enough to ensure firms consider the diverse needs of consumers?

Yes.

Q14: Do you have views on the desirability of the further potential changes outlined in paragraph 11.19?

No additional comment. We believe the proposed rules are adequate.

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

Yes.

Q16: Do you have any comments on our proposed implementation timetable?

For firms with a significant back book of business, we agree that this new regulation could involve a significant amount of work and demand deployment of extra resources as acknowledged in paragraph 13.7. Depending on feedback to this consultation received from affected firms, we suggest the FCA could consider either:

- a slightly longer implementation date for back book business and in lieu of that a slightly accelerated implementation date for new business; or
- a risk-based approach that focuses on certain identified areas of concern.

Q17: Do you have any comments on our proposed approach to monitoring the Consumer Duty and the related draft rules and non-Handbook guidance?

The steps outlined under paragraph 14.15 for boards' annual assessment of their <u>firm's</u> compliance with the Consumer Duty are well developed. With respect to investment, we think <u>fund</u> boards, with the assistance of their appointed I-Neds, should be undertaking a similar review as part of their annual assessment of value process. The results of fund board assessments should be fed back at the firm level to provide the firm board with comprehensive input from across the UK fund investment activities. With respect to UK investment funds therefore, perhaps reference should be made In the guidance as to how these proposals at the firm level should co-exist with and complement the assessment of value process at the fund level.

Q18: Do you have any comments on our proposal to amend the individual conduct rules in COCON and the related draft rule and non-Handbook guidance?

No comments. We support the amendments.

Q19: Do you have any comments on our cost benefit analysis?

The aspiration for this new regulation is to increase consumers' trust in UK financial services through achieving a cultural change within firms. This is a significant strategic objective that can only be fully achieved over the longer-term and one that will require significant investment if it is to be fully successful.

We would observe that the estimated average cost per small firm for on-going costs of £900-£2,300 per annum and the one-off costs of £6,700-£25,000 seem low when compared with the scale of intended change arising from this initiative.

These costs seem especially low if compliance is to include provision for IT remediation projects, back-book remediation, change projects and training. We note that with 51,000 firms affected and only 1,750 firms classified as large or medium [3], the cost estimates for small firms will pertain to 97% of regulated firms by number.

Clearly, conduct regulations such as the Consumer Duty should not be implemented on a partial basis and should impact all firms. So, we are not disagreeing that small firms should be included, just that we are not confident that the costs have been correctly calibrated for small firms if the reforms are to achieve the transformational conduct changes that this reform is targeting. For small firms especially, perhaps some elements of the reforms (e.g. IT projects, back-book remediation) should have a longer implementation period to allow these up-front costs to be defrayed over a slightly longer period or be risk-based to target specifically identified areas.

Q20: Do you have any other comments on the draft non-Handbook guidance?

No further comments.

Q21: Can you suggest any other examples you consider would be useful to include in the draft non-Handbook guidance?

As referenced in our answer to question 12 above, certain practices of firms asked by their clients to transfer their funds away to switch to another provider do not focus on the consumer outcome and serve only to delay the transfer for no good reason.

[3] https://www.fca.org.uk/publication/corporate/how-analyse-costs-benefits-policies.pdf, Box 7, p42

Appendix III: Previous CFA UK Publications on consumer markets:

- CFA UK Response on Consultation DP 21/2: Diversity and inclusion in the financial sector – working together to drive change (September 2021): https://www.cfauk.org/-/media/files/pdf/pdf/5-professionalism/2-advocacy/responses/fac-prudential-regulation-authority-pra-bank-of-england-and-fca.pdf

- CFA UK response to the FCA's Call for Input: The Consumer Investments Market (December 2020): https://www.cfauk.org/-/media/files/pdf/pdf/5-professionalism/2-advocacy/responses/call-for-input--the-consumer-investments-market.pdf

- CFA UK response to the FCA regarding Call for Input: Open Finance (March 2020): https://www.cfauk.org/-/media/files/pdf/pdf/5-professionalism/2-advocacy/responses/cfa-open-finance-paper.pdf

- CFA UK response to the FCA regarding MS17/1.2: Investment Platforms Market Study (September 2018): https://www.cfauk.org/-/media/files/pdf/pdf/5-professionalism/2-advocacy/responses/cfa-letter-to-kate-blatchfordhick-final.pdf