

Consumer and Retail Policy  
Financial Conduct Authority  
12 Endeavour Square  
London E20 1JN



By email to [cp21-36@fca.org.uk](mailto:cp21-36@fca.org.uk)

15 February 2022

Dear Sir/Madam,

### **SBPP RESPONSE TO CP21/36: A NEW CONSUMER DUTY**

The Panel responded<sup>1</sup> to the earlier CP21/13 consultation, raising significant concerns about the context within in which the proposals were being made, clarity about how they would sit with other regulation, and the wording of the new principle when used across a diverse range of sectors. The final proposals in this consultation are a significant step forward and, we believe, address many of our, and the broader industry's, concerns.

#### *Implementation timescales and coordination with other work*

We have significant concerns that firms will not have time to implement this properly by April 2023, especially as some firms might face significant changes, such as enhanced customer segmentation. In addition, we are mindful of the other regulatory change currently underway. For example, we welcome the explicit linkages to the new consumer duty work in the recent discussion paper on the compensation framework review, as these are closely linked and will need to be considered together in order to achieve good consumer outcomes. Likewise, the proposals for improving the appointed representatives regime will impact upon 50% of the distribution market. The FCA needs to be mindful about the timing and communications of the multiple initiatives underway to ensure these pieces of work are aligned and that implementation is both practical and feasible for all sizes of firms.

#### *Complexity and proportionality*

While the Duty addresses the right areas, it has become increasingly complex and includes many facets which overlap with and duplicate some of the other principles, not only Principles 6 and 7. The FCA should consider in the medium term how it needs to evolve from being 'Principle 12' to a broader review of all the principles. Most firms would be able to deal with this current ambiguity, but there is the potential for bad actors to game the system, for example, creating grey areas around the definition of retail customers.

Fair value is not just about price, it is driven through service, service levels, features and benefits, and risk, and we believe this needs to be made clearer. This will all be particularly complex for smaller firms, some of which might not think the duty applies to them – it will require guidance and simplification.

We note that there is no reference in the consultation to the large proportion of limited permission firms in the consumer credit sector. These are often very small, do not have much resource and financial services is not their primary activity. Similarly, firms with direct relationships with the end user have the greatest responsibility under the new Consumer Duty. In motor finance, for example, this could potentially be a limited

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<sup>1</sup> [https://www.fca-sbpp.org.uk/sites/default/files/sbpp\\_response\\_cp21-13\\_new\\_consumer\\_duty\\_final.pdf](https://www.fca-sbpp.org.uk/sites/default/files/sbpp_response_cp21-13_new_consumer_duty_final.pdf)

permission small sole trader motor retailer which was distributing a major high street bank's lending product so the proposed scale and resources to oversee things are disproportionate. We would like to see this taken into account.

*Diversity and inclusion*

We agree with the objective that firms must act to meet the diverse needs of their customers. This should be visible and transparent, and everyone should be treated with the same dignity and respect. It is also welcome that the FCA is aligning this with its work on improving outcomes for firms in vulnerable circumstances.

*Private right of action*

We support the FCA's current approach to a private right of action although we remain concerned that in future if such a right were to be introduced firms would rely on the law rather than regulation, consumers would lose out and the role of the FOS would become redundant.

*Examples and guidance*

We welcome the examples of good and bad practice in the consultation but note that many relate to the general insurance sector - it would be helpful to provide more examples from across the market. There is also an opportunity with non-handbook guidance for the FCA to set out its expectations that regulated firms should be dealing with their customers in the same way whether the business is inside or outside the regulatory perimeter.

We support the direction of travel of the work and look forward to engaging further.

Yours faithfully,

[signed]

Marlene Shiels  
*Chair, FCA Smaller Business Practitioner Panel*