



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

By email cp21-13@fca.org.uk

20 July 2021

Dear Sir/Madam,

FCA SMALLER BUSINESS PRACTITIONER PANEL RESPONSE TO CP21/13: A NEW CONSUMER DUTY

The Panel appreciates the opportunity to comment on such an important regulatory initiative as the introduction of a new consumer duty. We still very much support the outcomes relating to communications, products and services, customer service, and price and fair value, which the FCA seeks to achieve with this work. In particular, we have worked with the FCA on improving the clarity of disclosure documentation, and this focus is particularly welcome.

The Panel is, however concerned with elements of the proposals, in particular the context within in which they are being made, clarity about how they will sit with other regulation, and the wording of the new principle when used across a diverse range of sectors.

Context

The proposals for a new consumer duty lack important elements of context without which it is difficult to evaluate their likely effectiveness. In particular, without knowing whether the FCA intends to go ahead with a private right of action and whether this would sit alongside or instead of, existing principles 6 and 7, the impact on behaviour and business models is hard to judge. The Panel's view is that the existence of a private right of action would be counterproductive and would result in an overly legal approach to firm compliance, which would be at odds with an outcomes-based approach to regulation and a constraint on firms' offering to customers. We would like to see further clarification on how it is intended the new principle would sit within, or instead of, the existing framework.

Existing FCA powers and tools

The Panel welcomed the introduction of the Senior Managers' and Certification Regime (SM&CR) which has only been in place for a short time. Given that it is clearly understood by industry, and was well received, we question whether this is the right time to make a fundamental change to regulation. If the SM&CR is not meeting its objectives, does this need to be addressed – is it failing to in its objective of requiring individuals to take ownership? If so, is this best addressed through that channel rather than by the introduction of a new duty?

Proposed wording of the principle

Given the two options of the proposed principle, there are different interpretations of which is preferable depending on sector and business model. In the consumer credit sector, for example, option 2, 'best interests', could be seen as clearer and less open to interpretation. In a different sector, such as building societies, where firms have both borrowers and lenders, if the wording is 'best interests' it would be impossible to serve the best interests of all customers. As proposed, the principle would apply across the whole industry, and for this reason we would see option 1, addressing good outcomes, as preferable, in that it can be

applied across all sectors. In either case, any wording also needs to be clear and to resonate with firms whose main business is not financial services.

Understanding of existing regulation

Principle 6 is the most well known, and best understood, of the FCA's principles for business, particularly among the consumer credit sector where firms may be relatively new to FCA regulation or whose main business is not financial services and may not be familiar with the language of the Sourcebook. It is important that the FCA bears this in mind before making any changes and avoids overcomplicating or muddying the waters.

Claims management companies

The actions of some firms within the claims management sector have been a cause of significant concern for the Panel, and it has welcomed the FCA's recent work to address these. Nevertheless we are still concerned that a concept of 'best interests', especially if combined with a private right of action, will generate substantial activity in the claims management sector, and even firms which have complied with the principles will have to devote substantial resource to evidence that they have done so and to deal with such claims. This is not in the interests of firms or customers.

In conclusion, we urge the FCA to provide further clarity on how the new consumer duty will fit with existing regulation, to articulate clearly what is required across all sectors and not to go ahead with a formulation of a principle which refers to 'best interests' if it wishes to achieve good consumer outcomes and support an industry which can provide an appropriate range of products and services.

Yours faithfully,

MARLENE SHIELS
Chair, FCA Smaller Business Practitioner Panel