ABCUL
Association of British Credit Unions Limited

Consumer & Retail Policy
Financial Conduct Authority
12 Endeavour Square
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15th February 2022

To Whom it May Concern,

CP21/36 – A new Consumer Duty

We welcome the opportunity to respond to this consultation. ABCUL is the primary trade association representing credit unions in England, Scotland and Wales with around two thirds of credit unions in mainland Great Britain affiliated to the Association.

Credit unions are co-operative societies who provide financial services – primarily savings and loans facilities – to their member-owners. They are registered as Co-operative Societies under the Co-operatives and Community Benefit Societies Act 2014 and the Credit Unions Act 1979. As deposit-takers they are dual-regulated by the Prudential Regulation Authority and the Financial Conduct Authority.

Credit unions have since their inception in Britain in 1964 been closely associated with anti-poverty and financial inclusion. They tend to provide savings and loans facilities to those with limited or no access to financial services from mainstream providers, generally due to their low income and / or lack of a developed credit profile. They have been a central element of numerous government and philanthropic initiatives to extend financial inclusion and address the lack of adequate provision of affordable credit and secure savings facilities for large sections of the population. They are capped in the interest that they can charge at 42.6% APR under the Credit Union Act 1979 and provide credit in competition with high-cost lenders.

They are numerous, with 250 credit unions active in mainland Great Britain today and have 1.4 million members and £1.95 billion in assets under management. They range from mid-sized businesses of up to 50 staff to small voluntary organisations.

Response to Consultation

ABCUL would like to express great support of the overarching principle of the proposed new Consumer Duty. Credit unions are dedicated to serving their members, so the incentive to widely deliver good outcomes for consumers strongly aligns with the principles of the credit union movement. We hope that the introduction of the Consumer Duty brings about great positive change in consumer outcomes across the financial services market.

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Nevertheless, credit unions have unique characteristics that require a proportionate and tailored regulatory approach. Whilst credit unions will not struggle to comply with the overarching principle of delivering good outcomes for consumers, the proposed rules entail a vast number of new compliance requirements that will be challenging for the sector to administrate.

Subsequently, we believe that there are actions that the FCA can take to smooth the implementation journey and ease the administrative burden for credit unions specifically. These steps would be to extend the proposed implementation period, clarify the FCA's expectations of credit unions specifically, and consider taking steps to reduce the administrative burden of the new Consumer Duty rules on credit unions.

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?

We agree with the FCA's proposed approach to existing products and services. We support that the Consumer Duty would not require retrospective changes to pre-existing contracts and that firms can continue to receive payments and remuneration from previous agreements entered into with consumers.

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

We support the decision to go with option one over option two for the Consumer Principle. The second option for the principle could imply that the best outcome must be reached for consumers, which would place an unreasonable level of expectation on firms. Acting to deliver good outcomes for consumers, on the other hand, is a reasonable standard to expect from firms and aligns with the credit union movement's core principles. We support that the rules acknowledge that firms may not be able to deliver a good outcome for consumers in all cases.

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

We agree that the FCA should disapply Principles 6 & 7 where the consumer duty applies to avoid duplication of rules within the Handbook.

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?

It would be preferable for material associated to Principles 6 and 7 to be incorporated into the guidance for the Consumer Duty, to help ensure the new requirements are straightforward for firms to follow. Credit unions will require relatively significant resource to implement the proposed Consumer Duty rules, so any steps to simplify the new regulatory regime will help ease the burden of compliance on the credit union sector and other small firms.

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

We strongly agree with the first cross-cutting rule and believe that credit unions are widely and consistently acting in good faith towards their members. The concept of acting in good faith is clearly set out in the draft Handbook rules.

For the second cross-cutting rule, we agree with the principle that foreseeable harm to consumers should be avoided, but find that the proactive approach the draft rules set out for firms may be difficult for credit unions to adopt in practice. In particular, guidance 2A.2.6 (1) may will require firms to carry out testing and assessment of various aspects of product and service delivery that is beyond the scope of a credit unions operations.

For the third rule, we feel that the Handbook guidance (particularly 2A.2.12 and 2A.2.15) should provide sufficient clarification for firms to understand and apply the concept of consumer financial objectives in relation to the Consumer Duty.

However, one aspect of the draft rules that may not apply proportionately to credit unions is 2A.2.19. This guidance states that firm must understand and take account of cognitive and behavioural biases as a part of following the cross-cutting rules and does not take into account the varying levels of sophistication of firms. Due to their limited staff and knowledge resource, we do not see credit unions as being able to analyse cognitive and behavioural biases consistently and meaningfully when governing their products. Due to their limited ability to assess behavioural biases, there is room for credit unions to erroneously break the cross-cutting rules in aspects of service delivery such as communication. This risk is increased in the case of credit unions which have little resource to devote to strategically plan and test their outputs, such as communications.

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?

The proposed requirements for firms under the products and services outcome are numerous. The set of requirements under this section of the draft rules risk being overly prescriptive for the credit union sector, as credit unions are legally restricted in the types of products and services they can offer. We would welcome further measures to ensure proportionality for credit unions in the rules related to this outcome.

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

We strongly feel that the proposed implementation period provides insufficient time for credit unions to implement the proposed Consumer Duty rules. A significant amount of work is needed from all firms to implement the required changes. Whilst credit unions will in general already be complying with the proposed principle and cross-cutting rules in terms of the outcomes they deliver, the introduction of the Consumer Duty rules will require them to approach product development, product governance and service delivery with a new frame of reference and terminology. Credit unions will need to undertake a deep review of all products, communications, policies and procedures across all aspects of their business, as well as provide training for all staff. Credit unions have relatively small staff resource compared to most firms, so dedicating the level of staff time needed to implement the Consumer Duty will be highly challenging. As a result, we would strongly recommend that the implementation period is extended.

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

We would request further clarification on the FCA's expectations of the monitoring requirements credit unions will be expected to take. Though we acknowledge that there are provisions to ensure a level of proportionality in the monitoring requirements within the draft Handbook rules, we would like assurance and confirmation that credit unions will only be expected to carry out very basic monitoring and board reporting requirements.

There are two key reasons why we would request that minimal monitoring requirements are put in place for credit unions. The first is that credit unions are notably limited in resource, with many credit unions are supported operationally by a small number of staff or volunteers. Even when taking guidance on proportionality into account, the list of new procedural requirements that credit unions will need to demonstrate in their delivery of the four consumer outcomes are numerous. As a result, credit union practioners will find it challenging to monitor these four outcomes procedurally and systematically as the draft Consumer Duty rules entail.

We see credit unions being able to monitor for good and bad outcomes for their members on an ad hoc, flexible basis, in which front line staff (which generally includes more senior staff as well) identify emerging risks based on their interactions with members. However, it will require great resource from credit unions to document and provide an audit trail of any monitoring and changes made to ensure compliance with the new principle, even though the intent to deliver good outcomes is likely already present.

The second reason is that credit unions are already dedicated to delivering good outcomes for their members. Credit unions often work closely with their members to support their financial wellbeing and lead on financial inclusion. As an ethical and consumer-led sector, the challenge for credit unions in implementing the proposed Consumer Duty will not be changing their processes and culture to deliver good outcomes for members. Instead, it will be the broad range of procedural and administrative changes required to comply with the Consumer Duty rules, including the new monitoring and board reporting requirements. There is concern that the formal requirement to routinely monitor, document and demonstrate that they are delivering good outcomes for their members will result in a bureaucratic exercise for credit unions.

It is important to ensure that the proposed rules remain relevant and necessary to all firms within scope of the Consumer Duty. Credit unions will be facing a much stricter regulatory regime as a result of the behaviours of other types of financial services firms, so it is felt that credit unions should be acknowledged for the positive impact they have for their members with a relatively minimal administrative burden to be applied by the final Consumer Duty rules.

There is, therefore, potential for credit union exemption from monitoring, governance and assessment requirements of the Consumer Duty, given credit unions unique social impact, legally restricted scope and dedication to serving members. Such an exemption would acknowledge that credit unions already pay due regard to whether their services deliver good outcomes to members, but allow them to continue doing so on an informal basis that presents less administrative burden. Credit unions benefit from similar regulatory exemptions elsewhere. For example, credit unions are exempt from Consumer Credit rules for most of their products and services, but will still routinely abide by these rules as best practice.

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

As the cost benefit analysis covers a vast range of firm sizes and types, we will comment on the anticipated cost of the New Consumer Duty will place on the credit union sector. We do not anticipate significant change in outcomes delivered by credit unions for their members, given that that credit unions are already dedicated to serving their members and supporting them to reach good outcomes. On the other hand, we would anticipate there to be a great cost placed on credit unions in fulfilling the regulatory requirements as proposed. The rules specify that all firms will be required to take a vast number of new actions in product design, delivery, marketing and governance, all to be incorporated and documented into new procedures. These new requirements will be hugely burdensome for credit unions. We would therefore anticipate that the cost for credit unions of implementing the proposed rules and guidance is likely to be far outweighed by the benefits for credit union members.

There is a concern that extra regulatory complexity involved with product development will prevent credit unions from expanding their products ranges offered to their members. The amount of new steps required to comply with the proposed rules could work to discourage credit unions developing and offering new products and services, as the resource, cost and risk involved with developing a new product would be heightened. There is also the risk that the extra cost presented by the Consumer Duty may need to be passed on to credit unions members in some cases, such as through a reduced dividend paid out on member savings or on increased loan interest rates to reflect the increased cost of providing financial products.

Please let me know if you wish to further discuss ABCUL’s consultation response.

Yours sincerely,

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