

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

30 July 2021

Dear Consumer & Retail Policy Team

Financial Conduct Authority – 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 280 credit unions active in mainland Great Britain today and have 1.4 million members and £1.8 billion in assets under management. They range from mid-sized businesses of up to 50 staff to small voluntary organisations.

Response to consultation

Overall, we support the principles behind a new consumer duty. We wholeheartedly agree with cross-cutting rules of avoiding foreseeable harm, acting in good faith, and enabling customers to reach their financial goals. Credit unions have statutory objects that include the promotion of good financial habits and the creation of sources of credit at fair and reasonable rates of interest.

We would also make the point that as co-operatives, credit unions have a higher focus on their 'membership' through being owned and democratically accountable to the same people who use their services through a one-member-one-vote system. This removes the conflict between

ABCUL Association of British Credit Unions Limited
Holyoake House, Hanover Street, Manchester M60 0AS
Tel 0161 832 3694 Fax 0161 832 3706
Email info@abcul.org Website www.abcul.coop

shareholder return and acting in the best interests of customers that is inherent in other models of financial services.

The credit union sector does make use of behavioural biases and nudge theory to form positive financial habits such as through establishing default payroll savings arrangements¹ and encouraging members to save alongside repaying their loans². However, credit unions have developed these practices over a number of years, and these are not applied granularly. Some of the suggestions within the paper of segmenting members by psychological biases and designing communications to target and lead to the best outcomes would be extremely difficult for most credit unions to achieve.

The sector is still subscale with most having few staff or in some cases are entirely led and operated by volunteers and we would as ever encourage FCA to build in proportionality to their proposals and consider the nature, scale, and complexity of the firms that they regulate.

Q1: What are your views on the consumer harms that the Consumer Duty would seek to address, and/or the wider context in which it is proposed?

As acknowledged in the paper, most of the harms FCA still encounters are covered by one or more of the principles. For example, unclear and misleading communications still seen by the FCA are well covered by Principle 7 and therefore points to other issues rather than a gap in the scope of a principles-led regulatory framework.

However, we do see utility in providing information for firms that sits in between the principles and thematic reviews of specific areas of harm to consumers. It is likely that raising awareness of types of harm and ways that firms can avoid this such as “putting yourself in the customer’s shoes” or performing some level of testing before releasing a communication or product will pre-empt at least some harm regardless of any overlap with the principles.

There will remain a swathe of other market, systemic and enforcement issues apart from the presence of further rules that would be needed to ensure that firms get things ‘right the first time’. With the Consumer Duty going further than the principles in areas, it is just as likely that more supervisory intervention will be needed rather than less. There will also always be situations where firms do not act in good faith, and we do think this is a crucial distinction to make during supervisory action and where contraventions are being examined.

¹ Gareth Evans and Mick McAteer, *Getting Workforces Saving: Payroll Schemes with Credit Unions*. The Financial Inclusion Centre, 2021, ([accessible here](#))

² Antony Elliot, *Save As You Borrow – credit unions creating good habits*, The Fairbanking Foundation, 2017 ([accessible here](#))

Q3: What are your views on the proposed structure of the Consumer Duty, with its high-level Principle, Cross-cutting Rules and the Four Outcomes?

The structure seems to be a product of the uncertainty of where this sits within the greater FCA regulatory framework. It sits awkwardly on top of the principles and is both much more detailed and more vague at the same time. When looking at enforcement actions, where the principles act as a quick reference of what has gone wrong, a contravention of the Consumer Duty would be much more opaque.

We would be concerned that the way the Consumer Duty is currently structured adds a number of confusing layers which are both similar in kind and in scope to existing rules. This wouldn't be helpful for either firms or customers who are trying to understand how firms should behave.

Q4: Do you agree or have any comments about our intention to apply the Consumer Duty to all firms engaging in regulated activities across the retail distribution chain, including where they do not have a direct customer relationship with the 'end-user' of their product or service?

We generally support a wholistic approach and agree that the firm holding the customer relationship may not always be the appropriate place to address harm.

Q5: What are your views on the options proposed for the drafting of the Consumer Principle? Do you consider there are alternative formulations that would better reflect the strong proactive focus on consumer interests and consumer outcomes we want to achieve?

We believe both formulations are problematic due to being far from objective or demonstrable. Rulemaking shouldn't be the instrument to set firms 'challenges' but should be achievable and not overly ambiguous. A slightly stronger version of 'pay due regard to the interests of customers' would be to 'act in the interests of retail clients' which instructs firms to act upon these interests rather than merely considering them.

The inclusion of 'best' adds an impossible expectation and is unactionable as the firm, customer and FCA could with all rigour and good faith disagree on what is best for any particular individual. Whilst FCA has caveated that hindsight will not be held against firms, it is often only with hindsight that one can determine whether there was a better way to approach a certain situation not seen at the time or whether a good outcome was achieved.

Q6: Do you agree that these are the right areas of focus for Cross-cutting Rules which develop and amplify the Consumer Principle's high-level expectations?

We would consider both avoiding foreseeable harm and acting in good faith to be minimum expectations for firms. We see what FCA are seeking to achieve through enabling customers to pursue their own financial goals in tackling sludge and preventing firms limiting genuine choice by funnelling people down a particular route.

However, the wording of this rule itself is overly ambiguous, it could be taken to imply that firms should broaden services or meet some undefined objective that a retail customer may have. As an aside, HM Treasury are currently working on revising the Credit Unions Act to enable credit unions to offer a broader suite of services to meet members' varied needs but the sector is currently lacking the legislative clarity to do so.

Q7: Do you agree with these early-stage indications of what the Cross-cutting Rules should require?

As above.

Q8: To what extent would these proposals, in conjunction with our Vulnerability Guidance, enhance firms' focus on appropriate levels of care for vulnerable consumers?

We thought that the Vulnerability Guidance provided by FCA was a useful intervention and should lead to better outcomes for vulnerable people. As an extremely complex and developing area vulnerability is a ripe area for guidance where firms are still developing and trying to put in best practices for serving the vulnerable.

We're conscious that vulnerability takes many forms, and some vulnerable people may benefit more from areas given greater attention due to the Consumer Duty such as from any improvements in the clarity of products and communications. Whilst considering what might be a good outcome for a customer and trying to steer them in the desired direction, we should also be guarded against taking this too far and denying some people their agency.

Q9: What are your views on whether Principles 6 or 7, and/ or the TCF Outcomes should be disapplied where the Consumer Duty applies? Do you foresee any practical difficulties with either retaining these, or with disapplying them?

As discussed above, there is not an ideal solution to reconcile the consumer duty with the Principles it will displace. If the Consumer Duty is implemented, it would likely be more straightforward to implement as a separate and additional requirement rather than deleting the principles with all the consequential effects that may have.

Removing the principles and the relevant handbook requirements could be achieved and reconciled later if necessary.

Q10: Do you have views on how we should treat existing Handbook material that relates to Principles 6 or 7, in the event that we introduce a Consumer Duty?

As above.

Q11: What are your views on the extent to which these proposals, as a whole, would advance the FCA's consumer protection and competition objectives?

Overall, it should improve consumer protection and outcomes among those firms who are already successfully complying with the principles. We don't believe that a consumer duty will do a great deal to improve the behaviour of firms which would cause consumer harm under the rules already in place today.

Increasing regulatory complexity and the necessary size of compliance departments generally favours larger incumbent firms as the base costs of compliance act as a greater drag on smaller firms that lack the same economies of scale.

Q13: What are your views on our proposals for the Communications outcome?

We agree that communications should be clear across all channels and understood by the likely recipients, whilst ensuring that the requirements of vulnerable people are met.

However, we would have proportionality concerns around requiring small firms such as credit unions assess and document every channel of communication and subgroup of customers to tailor the content and format of each communication sent.

Q15: What are your views on our proposals for the Products and Services outcome?

Credit unions largely serve a retail customer base, and whilst they can accept corporate members these are in general limited to local councils and other firms that may have a philanthropic relationship with the credit union. Most credit unions offer a simple savings and unsecured loans proposition.

It is promising that the FCA suggests that assessments may be straightforward in some cases but overall, the outcome adds further burden to credit unions that rarely have a specific product manufacturing or design resource.

We would also be concerned at the level of prescription over product development and segmentation. To serve financially excluded people at fair rates of interest credit unions may cross-subsidise between different products or people using the same product. Even at the maximum interest rate permitted by the Credit Unions Act, a credit union may not fully recover the costs of a short term, small value loan to a member that has suffered a short-term financial shock. Overly prescriptive rules on products and pricing may prevent credit unions from serving underserved markets due to trying to hit FCA-prescribed value targets for better off consumers with more options available to them.

Q17: What are your views on our proposals for the Customer Service outcome?

The Customer Service outcome could be quite easily subsumed into both communication and product, particularly in an increasingly digitalised financial services market. We, however, agree that for some firms there is definite divide between pre and post sales services. We can see the

need for regulatory pressure to ensure that customers are well served through the lifecycle of a product.

Credit unions generally do not think in such terms, due to most credit unions being of a size that customer services would be resourced centrally and not split between departments but also because of credit unions' co-operative nature and the longer-term relationship that membership entails.

Q19: What are your views on our proposals for the Price and Value outcome?

As explained in the introduction, credit unions are subject to a statutory interest rate cap of 3% per month (42.6% APR). This was increased from 2% per month in 2014 to allow credit unions to form more effective competition to payday lenders and home lenders who were charging many multiples of this cap not to mention other harmful practices which the FCA has thankfully largely addressed.

Even with this increase it is necessary for many credit unions to cross-subsidise some of their services to the underserved or financially excluded. A credit union providing a £500 loan for several months to deal with an income shock would recover a maximum £15 in the first month with many credit unions taking payments weekly and charging interest on the reducing balance. In addition, in line with the sector's ethos of encouraging sound financial decisions most credit unions do not charge for early repayment. These factors mean that credit unions are already on the edge of being able to serve underserved markets and meet the requirement of small value, short term finance used by those on low incomes to deal with shocks such as vehicle or appliance breakdown.

We would be concerned that FCA pressure to further granularise buckets of risk – which currently offer a way of sustainably providing services to the underserved – to seek optimum value for every segment will make it more difficult for credit unions to continue to serve the financially excluded.

Q21: Do you have views on the PROA that are specific to the proposals for a Consumer Duty?

Credit unions are unlikely to ever be subject to PROA due to the sums that would need to be involved for this to be a reasonable option, the Financial Ombudsman Service has more than adequate headroom to provide redress for our sector.

We would generally oppose a PROA as we would not welcome any increase in costs of insurance and do not feel that the responsibility for handing out financial penalties for regulatory breaches should be passed on to private citizens.

Q27: What are your views on the amount of time that would be needed to implement a Consumer Duty following finalisation of the rules? Are there any aspects that would require a longer lead-time?

As ever, we would encourage as long an implementation timeline as possible to allow firms and other stakeholders to interpret how the rules would apply to their respective sectors and to implement these. We would also encourage flexibility and proportionality from the regulator in the period after the rules come into effect where the core cross-cutting rules (in our view) of acting in good faith and avoiding foreseeable harm are met.

Please let us know if you wish to discuss this further.

Yours sincerely,

Daniel Arrowsmith
Policy, and Regulatory Compliance Manager