

Consumer Duty Policy Team
Financial Conduct Authority
12 Endeavour Square
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13th January 2023

FCA CP22/26: Quarterly Consultation Paper No. 38 – Consumer Duty Policy

Dear Consumer Duty Policy Team,

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. Since their inception in Britain in 1964, credit unions have 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 a vital alternative to illegal money lenders.

They are numerous, with over 250 credit unions active in Great Britain today with more than 1.4 million members and £2.3 billion in assets under management. They range from mid-sized businesses of up to 50 staff to small voluntary organisations.

Feedback on Consumer Duty Policy

We would like to take the opportunity of the FCA's quarterly consultation to recommend potential changes to the policy and guidance of the

Consumer Duty, in relation to its application to the credit union sector. Our response will make the two following recommendations:

1. Formal guidance and clarification of the application of the Consumer Duty regulations to the credit union sector are issued by the FCA.
2. The disincentives created by the Consumer Duty for credit union save-as-you-borrow loans are addressed.

Credit Union Specific Clarification and Guidance

This section of our response will highlight the need for formal guidance and clarification from the FCA on the Duty's application to credit unions.

Credit unions benefit from unique regulatory exemptions in recognition of their social purpose and limited legal scope. Notably, credit union borrower-lender-agreements are exempt under the Financial Services and Markets Act Regulated Activities Order from qualifying as regulated consumer credit activity. This not only means that the majority of credit union lending is exempt from consumer credit requirements, but also that this lending is also exempt from the Consumer Duty. Credit unions benefit from a range of smaller exemptions within the FCA Handbook, as well as an exemption from the Payment Service Regulations 2017.

These exemptions mean that, for the majority of credit unions that primarily offers savings, loans and financial education, it is only deposit-taking or their savings product offering that is within scope of the Duty, as well as any ancillary activities to these savings products. Credit unions that offer further products regulated by the FCA, such as consumer credit regulated products, mortgages, or insurance distribution, will need to apply the Duty to these activities in addition.

It is encouraged that formal guidance is provided by the FCA as to how the Duty applies to the credit union sector in light of the sector's exemptions and unique challenges with compliance. It is understood that the consumer duty policy is designed to cover a vast and varied range of firms regulated by the FCA. However, the credit union sector is unique, and deserves further guidance as it faces this significant change in regulation. It also must be recognised that the credit union sector has significantly less compliance resource than larger and for-profit firms to

dedicate to engaging with the Duty. In order for the FCA to approach regulation of the credit union sector in a proportionate manner, information on the application of the Duty to credit unions needs to be made clear and accessible.

Credit Union Save-as-You-Borrow Loan Products

The second matter that this consultation will raise to is the unintended consequences the Duty creates for credit union save-as-you-borrow model loan products. This section will provide the case for the FCA to address the disincentives created by the Consumer Duty regulations for credit unions offering save-as-you-borrow model lending.

A significant proportion of British credit unions offer save-as-you-borrow loans (referred to as SAYB loans for the remainder of this paper). A product unique to the sector, SAYB loans are standard credit union unsecured loans, but with a savings aspect built directly into the product. As part of the loan agreement and payment plan, a small portion of each loan payment will be paid into the credit union member's savings account. It is usually set out in the loan agreement that the member will be able to access these savings upon full repayment of the loan. At the end of the loan, the borrower is left with a small savings sum in their account.

The purpose of the SAYB loan model is to encourage and instil a savings habit amongst borrowers. By ensuring members build up a small amount of savings whilst they borrow, credit unions use SAYB loans as a mechanism to encourage good money habits and financial wellbeing. SAYB loans are often targeted at individuals who don't already have a regular savings habit, with the aim to turn these borrowers into habitual savers. This loan product is particularly relevant for those in lower income brackets that may struggle to regularly save, by helping them build up a small savings buffer. Many credit unions members will continue to save following the repayment of their SAYB loan. As a result, SAYB loans are a vital tool for credit unions in their wider mission to foster financial resilience and encourage good money habits.

However, credit unions face a unique challenge in the application of the new Consumer Duty regulations to SAYB loans. As previously highlighted, credit union borrower-lender-agreements are not within scope of the Duty as they are exempt from consumer credit regulation

under the Financial Services and Markets Act Regulated Activities Order. However, credit unions' deposit-taking activities are within scope of the Duty. Consequently, SAYB loans are brought within scope of the Duty due to the savings aspect of the loan product.

It is important to note that the exemption for credit union loans provides significant relief from the regulatory burden that credit unions are facing with the Consumer Duty. Credit union's exemption from Consumer Credit regulation, and by extension the Duty, is provided in recognition that credit unions are distinct from other creditors in their social purpose and not-for-profit business model. This exemption provides vital relief from the regulatory burden of the Duty for credit unions. Whilst credit unions report that they will follow the principles of the Duty for their loan products, they are relieved of the administrative burden and compliance risk the Duty creates for credit unions.

However, the exemption from the Duty will not apply to SAYB loans, due to the deposit-taking aspect of these products. This means that, for a credit union, there will be significant extra compliance requirements from incorporating a savings aspect into the loan product. As a result, the current Consumer Duty policy unintentionally creates a disincentive and barrier for credit offering SAYB loans through the new compliance requirements associated with these loan products. Unfortunately, this disincentive may discourage credit unions from offering SAYB loans and is likely to lead some credit unions to withdrawing the provision of SAYB loans.

It is important to note that a statutory object of credit unions in Britain is "the promotion of thrift among the members of the society by the accumulation of their savings". By disincentivising SAYB loans, the Consumer Duty regulations could unintentionally hinder credit unions in their delivery of this objective.

In light of this challenge and potential unintended consequence of the Duty, we would ask that the FCA considers how to address the disincentives being put in place for Save-As-You-Borrow loans by the Consumer Duty.

We would welcome the FCA to further engage with ABCUL and the credit union sector on the issues raised in this response. Please contact policy@abc.ul.org if you wish to discuss these matters further.

Yours sincerely,

Niamh Evans

Policy and Advocacy Manager, ABCUL