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Consumer Policy and Outcomes
Financial Conduct Authority
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AFM Response to FCA Call for Input, Review of FCA requirements following the introduction of the Consumer Duty

1. I am writing in response to this consultation paper, on behalf of the Association of Financial Mutuals. The objectives we seek from our response are to:
 - Set out observations on plans to simplify the rulebook; and
 - Provide suggestions from our members on FCA rules and the Consumer Duty.

About AFM and its members

2. The Association of Financial Mutuals (AFM) represents insurance and healthcare providers that are owned by their customers, or which are established to serve a defined community (on a not-for-profit basis). The mutual insurance sector manages the savings, pensions, protection and healthcare needs of over 26 million people in the UK and Ireland, collect annual premium income of over £23 billion, and employ nearly 23,000 staff¹.
3. The nature of their ownership and the consequently lower prices, higher returns or better service that typically results, make mutuals accessible and attractive to consumers, and have been recognised by Parliament as worthy of continued support and promotion. In particular, FCA and PRA are required to analyse whether new rules impose any significantly different consequences for mutual businesses² and to take account of corporate diversity³.

¹ ICMIF and AFM, 2023: <https://financialmutuals.org/wp-content/uploads/2023/10/UK-Market-Insights-2023.pdf>

² Financial Services Act 2012, section 138 K: <http://www.legislation.gov.uk/ukpga/2012/21/section/24/enacted>

³ <http://www.legislation.gov.uk/ukpga/2016/14/section/20/enacted>

Introductory comments

4. We welcome the opportunity to respond to this call for input. The Consumer Duty has had an extraordinary impact on conduct regulation in the UK: it has been levered as a powerful tool to underpin intervention across the market to a greater degree than we have seen so far in the history of conduct regulation by the Financial Services Authority and FCA. It has galvanised action by firms, to overhaul procedures and training, and to change mindsets.
5. But its implementation, together with the market action that we've seen from FCA in the name of the Consumer Duty in its first year, are likely to witness costs that have exceeded the high-cost estimate from FCA of its initial (£2.4 billion) and annual ongoing costs (£176.2 million)⁴. This Call for Input, to start an exercise that will 'simplify our requirements' (paragraph 1.1), is both timely and crucial, to prevent the Consumer Duty devouring the rest of the rulebook and thereby setting a disproportionate benchmark for firms.
6. We do suggest some caution though, in assuming that substituting lengthy and complex rules and guidance with high-levels principles or rules is always a good outcome- especially for smaller firms. In our experience there is a greater risk of ambiguity and uncertainty for small firms where they are having to interpret for themselves how high-level standards need to be applied. We would like to see FCA's review focus predominantly on:
 - a. removing duplication and simplifying overlap between the Consumer Duty and other parts of the rulebook,
 - b. addressing contradictory standards or ambiguity between the Consumer Duty and other rules,
 - c. monitoring the cost-benefit case in order both to keep the costs of the Consumer Duty within the figures consulted on, and to collate evidence of the benefits as they accrue, and
 - d. ensuring that the Consumer Duty is forward-looking and continues to fit the needs of the financial services market as it evolves in the future.
7. In addition, as FCA will recognise, the rulebook has a different scope to the Consumer Duty. In particular, whereas the Consumer Duty is restricted to retail consumers, many of the rules apply to non-retail activity. Rules which might be removed for retail consumers would still therefore need to be retained for the wholesale markets, unless and until

⁴ <https://www.fca.org.uk/publication/consultation/cp21-36.pdf>, Annex 2, paragraph 14, page 77

activity towards those consumers becomes subject to the Consumer Duty.

8. We have responded below to the questions raised in the paper, and would welcome the opportunity to discuss further the issues raised by our response. We are happy to be included in the published list of respondents.

Yours sincerely,



Martin Shaw
Head of Policy
Association of Financial Mutuals

AFM responses to questions raised in the Call for Input

Question 1: Could any of our retail conduct rules or guidance be usefully simplified or removed by relying on requirements under the Consumer Duty?

We have sought views from AFM members on this and set out below a range of suggestions. We have not been able to quantify in most cases the compliance cost savings, as these are likely to vary enormously across AFM's members (the range for our businesses is from 2 employees to over 2,000).

a. rules or guidance	b. likely benefits	c. impact on consumers
COBS 4.2.1 and ICOBS 4.1A (clear fair and not misleading)	Removes duplication and potential ambiguity against 'consumer understanding' outcome, helping firms focus on information needs of the customer. Also gives flexibility on method of communication.	One set of standards will help ensure consumer information is easier to understand. The greater focus in the Duty on consumer testing means communications are more likely to be understandable
PROD (product governance and pricing)	Manufacturers of life policies would refer to PROD for product governance rules, but also to PRIN 24.4 for pricing and value; this is not a straightforward process. A single set of product governance and value rules for all firms would be simpler, with sector specific guidance dealing with specificities for different products and firms would make the rules more user-friendly.	Simplifies the information received, to aid consumer understanding.
Treating Customers Fairly	There is significant overlap between TCF and the Consumer Duty. Retiring TCF will remove duplication and unnecessary overlap, and provide a clarity on retrospection, including drawing a clear line for FOS of when TCF applied, and when it was superseded.	Both principles work in the same direction, so removing TCF should produce no adverse consequences.
IDD	Greater clarification of the application of ICOBS IDD rules to different insurer activities. It's not always straightforward to determine when IDD	Ensuring a consistent approach to policy amendments and other activities will enable consumers to receive meaningful information, and

	disclosures apply to certain activities. For example, a policy amendment might amount to either administering an insurance contract, or an insurance distribution activity.	to act in the most appropriate way.
PRIPs (investment disclosures)	We welcome the work of HM Treasury and FCA on Consumer Composite Investments to replace PRIIPs. PRIIPs requirements have proven very ineffective, and we encourage FCA to go beyond a consideration of content, to also explore scope. For example, Holloway friendly societies should not be treated as a CCI because they are predominantly a protection product, and hence disclosing investment performance data is misleading and of no value to consumers.	More meaningful disclosure information will encourage consumers to make better financial decisions, based on a better understanding of benefits and risks. Also likely to provide more effective competition, by improving clarity and comparability.
COBS 20 (with-profits)	The current COBS20 rules do not work well in a mutual and cause added conflicts of interest; some mutual products are exempted. Changes to COBS 20, to facilitate greater alignment of these rules with the Consumer Duty principle will enable mutuals to better deliver benefits to policyholders and retain the viability of their business.	This will enhance consumer protection. In January, AFM submitted a paper on a possible 'regulatory dividend' to mutuals, which highlighted COBS20 as a key area of the rulebook for reform, to create a more level playing field for mutuals.

Question 2: Is there a lack of clarity on how requirements under the Duty and other FCA rules interact? Please tell us where this issue arises and your views on how it could be addressed. For example, would guidance on the interaction be helpful?

In paragraph 3.3 of the paper, FCA suggests producing sector level guidance on this interaction. We think this would be useful in ensuring the general principles and rules are applied effectively in different product areas. FCA has provided some useful case studies to help elaborate on what is expected: however these may not be substitutes for rules, and often we note that insurance-based examples

tend to focus on products like home and motor cover, where FCA data is most plentiful, but which provide little relevance to other insurance products.

Question 3: Are there other areas in our rules or guidance, beyond those with an overlap with the Duty, where we should consider simplification or removal?

Covered in response to Q1.

In addition we note that an overhaul of the rulebook navigation as part of this exercise would be valuable. For example, finding your way round the rulebook is often problematic, given the need to cross-reference different sections, and as some links do not work. The rules pages are set out in a non-logical way: for example, the scope of a section is set out at the end, rather than the beginning.

We also note the increasing use by FCA of Dear CEO letters (and similar), to re-state and reinforce existing rules and guidance. These are not always provided in an accessible form, and are difficult for small firms to monitor. Since the inception of the Consumer Duty, FCA has continued the tradition of elaborating the base principles and rules with non-rulebook content. We would prefer to see the informal guidance produced in Dear CEO letters to be adopted in a more formal format.

FCA now publishes data on general insurance value measures once or twice a year. Whilst this data has proved fruitful in highlighting anomalies and potential discretions against the Consumer Duty, the standardised approach, which is intended to make comparisons between products does not, we consider, offer valuable data to consumers. For example, someone buying motor insurance will not find it useful to compare claims data on private medical insurance. We consider that this work should be reviewed, to consider how it might provide more valuable information.

Question 4: Do you agree that work towards simplifying our retail conduct rules can help us meet all our objectives, including the secondary objective? Please explain why or why not.

We agree that this will help in delivering consistency and clarity in the rulebook, which in turn will add to consumer protection.

It is worth noting that the Consumer Duty comes in a long line of consumer protection initiatives, which have had mixed effectiveness. To illustrate, despite the prominence given to Treating Customers Fairly in the past, it is noticeable that it has yielded a relatively small number of successful enforcement actions. In most cases, FCA has had to rely on detailed rules to demonstrate that the actions of a firm have been non-compliant to the extent needed to take forward an enforcement

successfully. The Consumer Duty remains untried in this respect and this may be a reason to be cautious about how much the current/ underpinning rules can and should be dismantled.

Question 5: In which circumstances do you think it is appropriate to rely on: a. high-level rules under the Consumer Duty b. more detailed rules c. a hybrid approach with both high-level and detailed rules?

It is apparent from the way FCA is harnessing the Consumer Duty to undertake thematic reviews and market studies, and to take action on emerging issues, that the Consumer Duty is fuelling a different regulatory view on how retail consumer markets operate. This in turn is leading to new rules, that sit alongside and emphasise how firms should interpret the Consumer Duty.

Left as a set of principles alone, there is a risk that the Consumer Duty drives excessive caution in firms, or changes the structure of regulation. For example, the value and price outcomes run the risk of FCA becoming a price regulator, unless rules are maintained in addition to describe the limits of the Duty, and to ensure supervision remains in scope.

We remain concerned about the way the Financial Ombudsman interprets the Consumer Duty outcomes, and that it avoids retrospectivity. Simplification creates new opportunities for FOS to extrapolate the intention of high-level rules, creating new risks to firms. We also note that whilst the Private Right of Action (PROA) has not been taken forward within the Consumer Duty, FCA has not formerly withdrawn the concept. We do not consider the PROA to be appropriate, and it would be very damaging: to UK firms and the competitiveness of the UK economy compared to other European jurisdictions. The inference in paragraph 4.11 that less rules means the PROA may be introduced to accompany the Consumer Duty would not be well-received by firms.

Similarly, the range of concerns expressed by industry and politicians about the proposed changes to FCA's enforcement guide illustrate the danger for FCA of taking forward principles beyond their natural extension, and in proposing action which has not been properly tested. The benefit of a hybrid approach, with detailed rules in support of principles is that it becomes easier to quantify an impact assessment, with a clearer estimate of costs, and a realistic approach to assessing benefits.

Question 6: What do you see as the main costs and benefits of making changes to the FCA Handbook by simplifying or removing detailed expectations of firms?

Potentially, simplifying the rulebook will reduce costs to firms, especially if action is taken to reduce overlap. These savings may be offset by higher costs for a firm

that concludes it needs to set its own standards or take external advice on the best way to interpret high-level rules.

We think there would be benefit in the FCA considering the unintended consequences of moving too much towards an outcomes based regulatory approach. Smaller firms might not necessarily have the expertise to interpret how they might comply with regulatory requirements in all cases. This might lead them to incur costly legal advice, or perhaps to avoid innovating out of fear of getting it wrong, whilst larger firms might exploit their scale to set high standards of best practice that a small firm might not achieve. Taken together, these factors would be likely to reduce competition.

Question 7: Where do you see high-level or detailed expectations having differing costs or benefits for different types or sizes of firm?

We consider that larger firms will be able to invest more in compliance solutions, especially where they deploy machine learning, compared to smaller firms. As the paper sets out (paragraph 4.10), we would also expect mutuals might be placed at a disadvantage, where they lack internal resources to support a focus on high-level rules. We also anticipate new firms may find it less easy to understand what is expected of them.