

Fair4All Finance response to a new Consumer Duty

July 2021

Introduction

We are supportive of the proposed Consumer Duty and believe it could help create a fairer financial system where more people are able to access fair and affordable products and services that are appropriate to their needs. However, our response sets out several issues which the FCA should consider as it progresses this work

- The Consumer Duty should have an **explicit focus on financial wellbeing**
- Firms will need more **guidance and support to successfully implement the Duty**
- Crucially, the FCA should ensure that the higher standards demanded on firms by the Consumer Duty do not lead to the exclusion of customers in vulnerable circumstances. The introduction of the Duty should be accompanied by **measures to increase provision** to this group; specifically, we recommend the broadening of the proposed 'regulatory nursery' into a **'market development incubator'** to support and enable the development of products and services to people in vulnerable circumstances.

As our priority as an organisation is on improving provision of fair, affordable and appropriate financial products and services to people in vulnerable circumstances, we have focused our response on that and have not provided a response to every question.

About Fair4All Finance

Fair4All Finance is a not for profit organisation founded in early 2019 to improve the financial wellbeing of people in vulnerable circumstances by increasing access to fair, affordable, and appropriate financial products and services. We have three main priority areas:

- Expanding provision of affordable credit through a scaled community finance sector
- Partnering with banks and financial services providers to support the delivery of products and services for customers in vulnerable circumstances
- New product and market development – developing and scaling products and services to address market gaps

You can find our full strategy [here](#).

Response to a new Consumer Duty

The new Consumer Duty has the potential to transform customers' experiences of financial services. We are supportive of an approach that will require firms to put customers at the heart of their business and put their interests first. It marks a significant step up on existing rules to pay due regard to customers' interests and treat them fairly.

By putting customer interests first in all policies and processes, and across the whole product lifecycle, we agree that more firms will 'get it right first time'. Combined with the FCA's proposed new supervisory approach, more consumers will be pre-emptively protected from harm.

We support the Consumer Duty's new focus on outcomes. In the consumer credit market, where most of our work has focused so far, we see huge differences in customer outcomes between community finance providers and high-cost lenders, despite both offering relatively small sum short-term unsecured lending, and often serving similar populations. Shifting focus away from narrow compliance to actual outcomes experienced by customers should be the test of how well markets are working.

The Consumer Duty should have an explicit focus on financial wellbeing

We believe that more clarity should be given to help firms understand what's meant by customers' best interests and good outcomes. Firms should rightly be enabling customers to pursue their financial objectives. However, in many circumstances, behavioural biases, vulnerabilities or even financial hardship and stress mean that people's needs and short-term objectives won't match, causing them to act against their own best interests.

The Duty to act in customers' best interests and deliver good outcomes should have an explicit focus on improving customer financial wellbeing. This should be balanced with the requirement to enable customers to pursue their financial objectives and customers will remain ultimately responsible for their own decisions (where firms have fulfilled their own responsibilities). However, firms delivering good outcomes for customers should also mean acting to improve their financial situation, resilience and wellbeing.

Support for implementing the Consumer Duty

We hope that further proposals and consultations will give firms more clarity and detail on what expectations the Consumer Duty will place on them and how to fulfil them. We recognise that the FCA does not want compliance to be a 'tick-box' exercise, but guidance should be clear about what firms can do to demonstrate they are delivering on the Duty. For example, concepts such as 'reasonableness' and 'good faith' can be interpreted in broadly different ways and statements such as 'we would not expect firms to go beyond what is reasonably expected given the nature of their role and the product or service they offer' would currently leave too much room on what counts as good practice under the Duty and should be expanded on. We note that other regulators and standard setters often provide practice notes or similar to provide practical examples to assist good practice. We believe this can be effective in helping firms to make in implementing principles effectively.

Some sectors will need additional support and guidance to implement the Duty, for example among community finance providers who, whilst already being strong in this area, may have less resource to interpret and embed the new regulations. Areas where additional support and guidance likely are needed include what customer outcomes are expected of lenders and how products and their outcomes should be measured and monitored. The FCA should take care that the Consumer Duty does not place a disproportionate burden on community finance providers that serve excluded customers, often with tight constraints on resource. We would recommend exploring the best practice that already exists in this sector to codify as part of setting requirements.

Enabling and protecting provision

The current financial system is designed for people with predictable lives and incomes and far too many already struggle to access fair and affordable financial products and services. Currently,

- 5.6m people have one or more high-cost loans
- One in five adults has less than £100 in savings
- 1 in 4 households in the UK have no insurance at all

Looking at the credit market in particular, we estimate that there are around 11m people who struggle to access fair and affordable credit, including around 5m currently unserved by the credit market at all, denied a vital tool for smoothing incomes, buying essential items and weathering life shocks. With the recent and ongoing market exits by payday, rent-to-own and doorstep lenders, without action the picture is likely to only get worse.

Given this context, the FCA should consider how the Duty will affect the functioning of the whole market, particularly for financially excluded customers. The FCA will need to provide clarity and support for implementation so that firms and investors can participate confidently in the market to serve people in vulnerable circumstances.

We are concerned that, as currently framed, the new Consumer Duty could lead to firms withdrawing from markets and stepping back from serving customers in vulnerable circumstances. The Duty will demand higher standards from firms and require them to evidence that their products and services are providing good outcomes to their target customers. Firms also have an obligation to act so that customers in vulnerable circumstances receive outcomes that are as good as for other customers. Without clarity and support on how to deliver these standards, firms may, rightly or wrongly, conclude that the costs to serve these customers will be prohibitive. Indeed, the simplest option for firms who are unsure whether they can deliver the right outcomes is to withdraw their product and redraw their target market.

The FCA intends the Duty to improve the outcomes that firms deliver for their customers. We recommend the FCA should also consider the outcomes experienced by consumers left behind by firms. We don't believe that allowing more consumers to be excluded from the financial system would be consistent with the FCA's consumer protection objective.

Therefore, while we are supportive of the Consumer Duty, we believe it needs to be accompanied by measures to protect provision, particularly for customers in vulnerable circumstances, so it does not exacerbate financial exclusion in the UK any further. The FCA should look to support and enable firms to adapt their products and maintain provision for underserved customer segments where there is a risk that they might simply exit the market in response to the higher standards of the Consumer Duty.

We would be happy to collaborate on this and will continue to work closely with the FCA to improve access to fair and affordable financial products. Ways to make this work could include:

- The FCA's 2021-22 business plan sets out proposals for a regulatory nursery and a regulatory scalebox to safely oversee newly authorised firms with innovative business models and to provide growing firms with the support and insight they need to scale quickly and sustainably. We believe a specific objective of these services, along with the regulatory sandbox, should be to tackle financial exclusion and address gaps in provision to customers in vulnerable circumstances. In particular, we believe that regulatory nursery should function as a **'market development incubator'** to enable development of services and participation in the market for firms focused on serving excluded customers.
- The FCA should **create best practice guidance for firms** on how to serve customers in vulnerable circumstances and should work to facilitate sharing of best practice by firms that excel in this.
- The FCA should **prioritise implementation of the Woolard Review's proposals** to support sustainable alternatives to high-cost credit, looking at subsidies or investment incentives for community finance providers and working with mainstream commercial lenders to overcome barriers to entering this market.
- The FCA should consider whether firms should be prohibited from drawing their target market in a way that excludes people in vulnerable circumstances, as they are from excluding customers with protected characteristics, as long as the products in question are appropriate for this customer group.
- The FCA could also consider whether certain firms should be required to provide particular products to serve excluded markets, in the same way that the 9 largest banks were required to provide basic bank accounts and develop Open Banking APIs.

- The FCA should **encourage monitoring of customer groups and facilitate transparency over who is underserved**, in order to increase accountability among firms.

Good practice in market exits

Additionally, the FCA should establish good practice for when firms do leave markets, in order to protect customers in vulnerable circumstances. In the case of the non-standard credit market, where many lenders are folding or halting provision, customers should be provided with better information about fair and affordable alternatives. Customers who have come to rely on a high-cost provider who find it has stopped trading may seek out a similar product with similar poor outcomes. Or worse, if they are desperate for money and unaware of alternatives, they may turn to illegal money lending.

Instead, these market exits should be a point of opportunity to direct customers in need to more affordable options, such as community finance providers. It should be relatively simple for lenders in this situation to contact their customers and make them aware of local alternatives or point them towards aggregator sites. We worked with Provident Financial after they withdrew from doorstep lending earlier this year to signpost their customers towards community finance providers. To support lenders taking this sort of action and to give even more targeted support to customers, lenders would benefit from more clarity on what signposting and referrals to alternative credit provision is allowed.

However, currently good practice such as this is entirely up to the lender. The FCA should look at whether firms' responsibilities should be extended to consider the outcomes of the customers being left behind by their withdrawal of provision from the market, particularly for customers who would otherwise be excluded. We'd like to work with the FCA to see what more can be done in this area, based on our experience working with lenders leaving the non-standard credit market.

Equality and diversity

The new Consumer Duty will require firms to act to deliver good outcomes for all their customers. Firms will have to satisfy and evidence that differences in outcomes between different consumer groups are not a result of them failing to follow the Consumer Duty – particularly where groups share protected characteristics (as defined in the Equality Act 2010) may be disadvantaged.

We already know that people from different ethnic backgrounds do experience different outcomes when it comes to financial services

- Fraud victims from minority ethnic groups are more than twice as likely not to get their money returned compared to White fraud victims
- 60% of Asian and 63% of Black households have no savings, compared to 33% of White households
- Black African, Black Caribbean and Bangladeshi groups are 4x, 3.5x and 2.5x more likely to be denied a loan respectively compared to White groups

We appreciate that the reasons for these differences in outcomes will have a number of root causes, but the situation should not be accepted and more needs to be done to understand their causes. We expect that many firms will have more to do to address these inequalities.

This is why we're launching [new research](#) into how ethnicity influences access to financial products and services. It will enable the development of well-designed and effective solutions to inequalities and will show financial services providers how they can be more inclusive of people from Black, Asian and minority ethnic backgrounds.

One of the barriers that firms will face in understanding the differences in outcomes between different consumer groups with protected characteristics is that many firms do not monitor this information. We recognise this is a difficult area for firms and many are concerned about data protection regulations and do

not want to overreach by asking intrusive or unreasonable questions. Our research should help to set out an appropriate approach to this, but as above, the FCA should also provide more detailed guidance on how outcomes should be monitored and facilitate firms collecting data in an appropriate way.

Responses to specific questions

Q3: Do you agree or have any comments about our intention to apply the Consumer Duty to firms' dealings with retail clients as defined in the FCA Handbook? In the context of regulated activities, are there any other consumers to whom the Duty should relate?

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?

It's right that all retail clients will benefit from these proposals and that the Duty should apply to all firms across the retail distribution chain. If you are influencing consumer outcomes you should be following the Consumer Duty.

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?

Between the two options we'd prefer option 2, 'A firm must act in the best interests of retail clients', which would achieve the FCA's aim for firms to put consumers at the heart of their business, and confirm that ultimately firms' behaviour must be decided by what is right for the customer. However, the Duty should also focus firms on the real outcomes and impact that their actions will have on their customers.

So we'd suggest an alternative wording that could combine elements from both options, 'A firm must act in the best interests of retail clients in order to deliver good client outcomes'. This would ensure that firms are driven by what is right for their customer while still emphasising a focus on outcomes, and would help to define what is meant by good outcomes.

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?

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

As a rule, consumers should be supported to achieve their financial objectives. As it says in the consultation paper, customers understand their own circumstances and financial needs and objectives. However, customers' needs and objectives don't always match. Behavioural biases, vulnerabilities or even financial hardship and stress can cause people to act against their own best interests. For example, a person hit by an urgent income shock may seek out the first source of credit they can find, even where there are alternative options that would give them a better outcome.

The FCA should be clear how this rule interacts with the duty to act in the customer's best interests or to deliver good outcomes. The rule for firms to avoid harm will prevent them taking action in cases where a customer's objectives are clearly harmful to them. But firms would benefit from more guidance on how to strike a balance between delivering what customers want and what will give them good outcomes in cases where these conflict.

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'd hope that these proposals improve levels of care for customers in vulnerable circumstances. The FCA's vulnerability guidance states that firms should achieve outcomes for customers in vulnerable circumstances that are as good as for other customers. The Consumer Duty's welcome shift towards firms

focusing on outcomes should help embed an approach to customers in vulnerable circumstances that means real improvements in outcomes, rather than a tick box approach to compliance.

A key question the FCA should consider is what exists to stop firms drawing their target market in a way that excludes people with certain vulnerabilities. Firms' responsibilities under the Equality Act mean that vulnerabilities such as health and disability would not be excluded in this way, and the consultation paper states that firms should be able to evidence that different outcomes experienced by people with protected characteristics are compatible with following the Duty. However, many of the vulnerabilities identified by the FCA, such as low financial resilience, low savings, overindebtedness, poor financial capability, are not protected in this way. Customers experiencing these vulnerable circumstances may be deemed too difficult to serve and cut out from firms' target markets altogether.

The FCA should also look at the framing they have used to introduce the new Consumer Duty, that the essence of the Duty is for firms to put themselves in their customers' shoes and to ask themselves questions such as 'would I be happy to be treated in the way my firm treats its customers?', or 'would I recommend my firm's products and services to my friends and family?'. It's fair to say that the average financial services worker will have different experiences of vulnerability than many of their customers. The FCA's vulnerability guidance had a good focus on taking customers in vulnerable customers into account at all stages of a product lifecycle and suggested how firms can use an inclusive design approach. Firms should understand what their customers really need and act accordingly – however, framing around imagining how they would themselves like to be treated is unlikely to help them understand all the needs of customers in vulnerable circumstances.

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?

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?

The Consumer Duty is a step up on the standards set by Principles 6 & 7. The FCA is best placed to determine how it should interact with or supersede them. It should ensure that no protection is lost for consumers and that rules are as clear as possible for firms. We also recommend that Handbook language and structure is made as easy to follow and understand as possible, applying plain English guidelines.

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

Q14: What impact do you think the proposals would have on consumer outcomes in this area?

The Communications outcome has a good focus on consumers' actual understanding and the actions taken in response to firm communications, rather than promoting a tick-box exercise in compliance. To achieve this outcome, firms should communicate using plain English, recognising the challenges many UK adults face with literacy and numeracy. In the consumer credit market, firms should provide customers with tools to understand the costs of loan repayment over different time periods, including comparison of the total cost of the loan.

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

Q16: What impact do you think the proposals would have on consumer outcomes in this area?

It's right that products and services are properly designed for the needs of customers, but as stated above, we are concerned that the Consumer Duty as currently framed could allow firms to draw the target markets for their products and service in a way that excludes certain groups of customers. The FCA should consider how it will enable firms to define inclusive target markets and work to deliver good outcomes for all their customers.

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

Q20: What impact do you think the proposals would have on consumer outcomes in this area?

We support measures to get fair value for consumers. In the credit market, too many customers on low incomes or in financially vulnerable circumstances have had to pay huge amounts for credit and have faced expensive fees and charges from high-cost lenders. A new Duty ought to prevent excesses like this happening again.

However, this outcome will not help consumers who the market does not serve. Firms will still be able to justify prices based on risk and customers who don't have other options may be forced to use high-cost credit. The FCA should therefore prioritise implementing recommendations from the Woolard Review in order to help develop a sustainable market for alternatives to high-cost credit.

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

Q22: To what extent would a future decision to provide, or not provide, a PROA for breaches of the Consumer Duty have an influence on your answers to the other questions in this consultation?

In principle, we would support the introduction of a PROA in order to give consumers more protection and focus the minds of firms on their responsibilities to their customers. However, we would want the FCA to weigh up the risk that this will put firms off serving customers in vulnerable circumstances, and consider how they will mitigate for this.

In either case we support the introduction of a new Consumer Duty that improves outcomes for consumers and protects them from financial exclusion.