

MONEY
ADVICE TRUST

BUSINESS
DEBTLINE

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DEBTLINE

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Consultation Response:

FCA Review of FCA requirements following the introduction of the Consumer Duty Call for Input

Response by the Money Advice Trust

Date: October 2024

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Introduction

About the Money Advice Trust

The Money Advice Trust is a charity founded in 1991 to help people across the UK tackle their debts and manage their money with confidence.

The Trust's main activities are giving advice, supporting advisers and improving the UK's money and debt environment.

In 2023, our National Debtline and Business Debtline advisers provided help to 127,390 people by phone, webchat and our digital advice tool with 2.38 million visits to our advice websites. In addition to these frontline services, our Wiseradviser service provides training to free-to-client advice organisations across the UK and in 2023 we delivered this free training to 800 organisations.

We use the intelligence and insight gained from these activities to improve the UK's money and debt environment by contributing to policy developments and public debate around these issues.

Find out more at www.moneyadvicetrust.org.

Public disclosure

Please note that we consent to public disclosure of this response.

Introductory comment

We have responded to this consultation on the review of FCA requirements by way of a set of high-level points in a statement response which we have set out below.

We have therefore not responded to the individual questions in the consultation paper.

Our response

We see the consumer duty as the overriding gold standard of practice for authorised firms which sits on top of the handbook rules to ensure good consumer outcomes.

As a debt advice charity, we can only comment on the areas of FCA rules that affect our clients most such as MCOB and CONC. As our clients are amongst the most vulnerable groups that would be affected by any changes, we feel it is vital that their interests are protected.

We believe it vital that any changes to the FCA handbook and the CCA must be made only when it is certain that the appropriate degree of consumer protection has been maintained. We would strongly suggest that any changes are brought in with extreme caution and made incrementally to ensure these protections are maintained.

- ✓ Whilst we accept the need to align the rule book to the consumer duty, we believe that it is too early to judge the effect of the consumer duty on good consumer outcomes at this point. We therefore do not support the initiation of a wholesale reform of or removal of any of the detailed rules in the FCA handbook.
- ✓ We can envisage the possibility of duplication in some of the rules or sections that have become redundant due to other legislative or rule changes over the years. However, we would suggest these should be limited in scope at this point. We would also caution that there may be an asymmetry of capacity between larger firms and consumer groups to review rules on a wholesale level. The FCA should therefore be particularly focused on protecting consumer rights in any review.
- ✓ We are concerned by – and do not agree – with the argument that the consumer duty renders other protections under the FCA rules and the CCA unnecessary and impacts upon firm innovation and removing barriers to growth objectives. We would suggest that this is not the case. The consumer duty, in itself, does not protect individual consumers as it is an overarching set of principles.
- ✓ Moving away from prescription due to the belief that all lenders and firms in the consumer credit market will behave well and follow the consumer duty and best practice is a significant risk, and one we think the FCA should not take.
- ✓ In our view, the consumer duty is not a substitute for these rights and protections in the CCA and FCA rules. Whilst we fully support the consumer duty, it does not provide a remedy for an individual faced, for example, with a court claim for repossession of their house or car. The FCA may decide to take supervision or enforcement action against a firm they feel has acted unfairly, but this will be after a series of complaints or concerns raised by individuals or consumer bodies, and will only deal with harms retrospectively. The same applies to the individual right to complain to the Financial Ombudsman Service which may result in a complaint being upheld plus an element of compensation paid out, but this can be many months after the event.

- ✓ The consumer duty does not have any element of automatic penalties for any failures by firms to abide by FCA rules and does not have the same effect as Consumer Credit Act 1974 (CCA) protections. There is no element of consumer redress and no court protection for individual consumer credit agreements under the consumer duty.
- ✓ We are concerned that consumer protection rules in areas such as MCOB and CONC may be in scope. However, there is an ongoing review of the CCA by HM Treasury which will no doubt take an extensive time to come up with legislative proposals for change. We would expect any changes to the CCA to have an impact on the CONC and MCOB rules in particular. It would seem premature to look at reducing the protections in MCOB and CONC at this point. It would be better in our opinion, to look at what needs to be changed as a result of the CCA review.
- ✓ We would also note that the FCA has been working on a review of CONC 8 for some time. We are still awaiting further consultation on this review. Again, any discussion on changes to the CONC rules should not pre-empt this review. We would also point out that this review covers one section of the CONC rules only. To give detailed and thoughtful consideration of the reform of other sections of CONC would be likely to take many years.
- ✓ We would like to see an emphasis on **strengthening** detailed rules to ensure greater consumer protection rather than removing rules. This review should not restrict the FCA from developing new rules and prescriptive guidance when needed. An emphasis on deregulation could have a stifling effect on the FCA taking the necessary steps to ensure good consumer outcomes.
- ✓ The FCA can act to improve the ways in which lenders provide goods and services under the consumer duty, and influence lender behaviour in a sector. This could lead to improved consumer outcomes across customers of a specific lender or sector. This does not achieve the same level of protection as the individual rules and CCA rights.
- ✓ We have seen many cases where the FCA has acted to put in place new rules or take enforcement action against a sector it deems to not have been treating customers fairly, such as payday lending, the home credit sector and rent to own. This will typically take place some years down the line after individual consumers and consumer bodies have raised their concerns with the FCA. This means that any redress for consumers takes place retrospectively if at all and must by necessity take a broad-brush approach. This does nothing to relieve the detriment suffered by an individual consumer at the time their lender treated them unfairly or took action in court that led to a loss of home, or vehicle.
- ✓ The ability of the FCA to take supervision or enforcement action against a particular firm under the consumer duty is limited by the resources available. This cannot be relied upon to be an adequate substitute for detailed rules or the individual rights under the CCA.

- ✓ It is also worth considering how the Financial Ombudsman treats complaints in relation to the consumer duty and whether this would be sufficient on its own as guidance. We would suggest it is easier for the Ombudsman to consider whether particular CONC rules and guidance have been broken, when looking at a complaint rather than good outcomes under the consumer duty. We are doubtful if individual rulings by the Ombudsman or Ombudsman guidance will be treated in the same way as caselaw in a court case either.
- ✓ We would agree that strengthening guidance and good practice examples within the consumer duty and handbook rules would be beneficial. We believe that this allows the consumer duty to be embedded throughout the regulatory framework and should strengthen and enhance both and improve outcomes for consumers.

For more information on our response, please contact:

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