

Submitted via a standardised online [form](#)

FCA
CP21/13 – A New Consumer Duty

14 July 2021

We are pleased to submit our response to CP21/13.

Please note that we have only answered those questions where we wish to respond.

Key Messages

- We recognise there are consumer harms, but we question whether these harms could in fact be addressed under the existing FCA Principles and rules, without the need to introduce a new Consumer Duty.
- We support the proposed structure of a Consumer Principle, Cross-cutting Rules and outcomes, but await the underlying rules and guidance.
- We consider that the FCA needs to be much clearer in defining where the manufacturers' responsibilities end and the distributors' begin.
- We consider the FCA has to provide a much clearer vision of what the gaps are between the standard of behaviours expected under the existing principles 6 and 7 and the new Consumer Duty.
- We do not favour the Consumer Duty conferring a PROA.

Detailed Response

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?

We recognise there are consumer harms. We question whether these harms could in fact be addressed under the existing FCA Principles and rules, without the need to introduce a new Consumer Duty. Clearer expectations from the FCA of what it expects from firms, and more robust enforcement, could help to close the gap and mitigate this.

The Society of Pension Professionals
Kemp House, 152 – 160 City Road, London EC1V 2NX T: 020 7353 1688
E: info@the-spp.co.uk www.the-spp.co.uk

A company limited by guarantee. Registered in England and Wales No. 3095982

NOTICE

You may not take any statement in this document as expressing the view of The Society of Pension Professionals or of any organisation, which the maker of the statement represents. Whilst every effort is made to ensure that this document is accurate, you may not assume that any part, or all, of it is accurate or complete. This document is provided for information only. You may not rely on any part, or all, of this document in deciding whether to take any action or to refrain from action. You may not use this document in part or in whole, or reproduce any statement it contains, without the prior consent of The Society of Pension Professionals.

No liability (other than any liability which cannot be excluded by law) arising from your failure to comply with this Notice rests with The Society of Pension Professionals or with any individual or organisation referred to in this document. Liability is not excluded for personal injury or death resulting from The Society of Pension Professionals' (or any other party's) negligence, for fraud or for any matter which it would be illegal to exclude, or to attempt to exclude, liability.

Q2: 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 proposed structure appears sensible. We agree that a single, new Consumer Principle, would not suffice so can support the framework put forward that would enhance understanding of how to meet it.

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?

We agree that if a Consumer Duty is introduced, it should apply to retail clients as those most in need of regulatory protection.

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 agree that the broader distribution chain should be taken into account, but where there is only an indirect customer relationship, reasonable foreseeability should be taken into account in applying the Consumer Duty. We can also agree with the principle of the Consumer Duty applying to manufacturers but believe the FCA needs to be much clearer in defining where the manufacturers' responsibilities end and the distributors begin.

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?

Of the two proposed formulations for the Consumer Principle, we favour Option 1. We consider that this aligns better with the FCA's increased focus on outcomes, which is a central part of the proposal. We are not clear that Option 2 focused on acting in the best interests of retail clients is significantly different from current provisions, and we are doubtful that it would lead to the step change that the FCA is looking for.

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 broadly agree but await the underlying rules and guidance before drawing any firm conclusions. We are not sure that the "act in good faith" behaviour adds much, as firms would already expect to be acting in good faith, and also there is a risk of confusion with general legal concepts of acting in good faith.

We welcome embedding a concept of reasonableness in the Consumer Duty but would also suggest it should be embedded in the wording of the Consumer Principle itself.

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

Yes, notwithstanding our comments relating to "act in good faith" 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 support the emphasis on protecting vulnerable consumers, particularly in view of the Covid pandemic.

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?

We consider there is scope for confusion by retaining Principles 6 and 7, and overlapping provisions. For example, Principle 6 also has 6 outcomes. We are not clear what "disapply" means in this context and urge the FCA to provide more clarity about what this would actually look like in practice. While we understand that there will be more information provided in the second consultation, the FCA has to provide a much clearer vision of what the gaps are between the standard of behaviours expected under the existing principles and the new Duty.

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?

There is clearly helpful guidance and various enforcement cases on Principles 6 and 7. We can see there may be value in retaining these, but again we are concerned about clarity and overlap.

We do not think it is an acceptable position for the FCA to make no commitment to reviewing the existing Handbook. Fundamentally, the final outcome proposed will introduce more rules and guidance to an already very complex Handbook. There has to come a point where the FCA commits to removing superfluous, duplicative material from the Handbook. We believe the introduction of the new Duty present an opportunity to do so.

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

We do not favour the Consumer Duty conferring a PROA. This will lead to increased litigation, and spurious claims from claims management firms. We believe that the Financial Ombudsman Service (FOS) provide the right, consumer-friendly, course of action for redress.

Q26: What unintended consequences might arise from the introduction of a Consumer Duty?

We are concerned that there is an increased risk of consumers using the Consumer Duty as a private litigation tool, encouraged by claims management firms. This would be unfortunate.

Response ends

Introduction to The Society of Pension Professionals (SPP)

SPP is the representative body for the wide range of providers of advice and services to pension schemes, trustees and employers. The breadth of our membership profile is a unique strength for the SPP and includes actuaries, lawyers, investment managers, administrators, professional trustees, covenant assessors, consultants and specialists providing a very wide range of services relating to pension arrangements.

We do not represent any particular type of pension provision nor any one interest-body or group. Our ethos is that better outcomes are achieved for all our stakeholders and pension scheme members when the regulatory framework is clear, practical to operate, and promotes value and trust.



Many thousands of individuals and pension funds use the services of one or more of the SPP's members, including the overwhelming majority of the 500 largest UK pension funds. The SPP's membership collectively employs some 15,000 people providing pension-related advice and services.