

Chartered Banker Institute Response to FCA Consultation Paper 21/13: A new Consumer Duty

We welcome this opportunity to engage with the FCA in this important discussion. In developing our response, we have considered how our members, as responsible, professional practitioners might help achieve the stated intention outlined in para 2.25 of CP21/13 described as wanting firms to:

[...]act in good faith, to avoid causing harm, to empower consumers by placing them in a position where they are able to make effective decisions, so that consumers can take responsibility for their actions and decisions.'

Whilst we agree that there is a clear need to improve outcomes for consumers, we have to conclude that the proposed package of measures is unlikely to result in the desired outcomes. In our response¹ to the Discussion paper on this issue (FCA DP18/5), we highlighted the fact that for both consumer and practitioner, there needs to be greater clarity in the expectations placed upon the individuals within firms if they are to be able to interpret and apply them. We believe that these proposals would add to those layers and make it ever more complex for both those working in the sector as well as their customers to understand. There is also a concern that further regulation will create a floor, rather than raise standards.

When seeking to improve outcomes, encourage competition and generally raise standards within the sector, we believe that the FCA already has at its disposal tools that can address areas of potential harm in a more direct, time and cost effective way; thematic reviews to identify and expose examples of good and bad practice, existing Principles which could be tightened to provide specific emphasis on expected behaviours, and greater use of its enforcement powers. This activity is supported by the ongoing work of professional bodies across the sector, such as ours, to instil ethical, responsible and sustainable behaviours at the individual actor level.

In response to the final question posed in this consultation, we are concerned that even with the best endeavours of the sector, implementing a new duty could take several years to properly implement and perhaps longer to properly embed. Although the paper reads very well, there is a sense that perfection may become the enemy of the good. Where there is specific perceived harm timely action is required. With a brief consultation period after such a long wait, and a tight timeline towards expected implementation, there is also much uncertainty about the detail, and the possibility that too many aspects are open to further debate, and a strong chance that respondents will be split 50/50 on the options. Furthermore, this is progressing in a regulatory landscape – already criticised for inducing regulation fatigue – where a new regulatory framework is under discussion, there is the promise of a significant Handbook review, and there are to be “culture audits” from next Spring (2022). In addition, this work does not appear to link with the solid work done in 2019/20 by the FCA on Purpose in the sector², nor with ongoing initiatives to ensure increased awareness on ensuring the sector and its customers are engaged in sustainable financial practices.

We believe more immediate change is required and has the potential to be achieved through use of the existing tools at the FCA’s disposal, including but not limited to, tightening the wording of existing Principles. In doing so, this could assist both practitioner and consumer, without the need for

¹ CBI Response to DP18/5: https://www.charteredbanker.com/resource_listing/knowledge-hub-listing/chartered-banker-institute-s-response-to-fca-discussion-paper-18-5-.html

² FCA: DP20/1 Transforming culture in financial services, Driving purposeful cultures <https://www.fca.org.uk/publication/discussion/dp20-1.pdf>

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interpretation by compliance experts, to understand the intertwined rules and layers of regulation which have been designed to provide enhanced consumer protection. We fear that these proposals would add to those layers, making it ever more complex for both those working in the sector as well as their customers to understand, not to mention present opportunities for further subjectivity. Specific thematic reviews could look at areas of most immediate harm. As stated in the paper itself, significant positive change has come from the successful use of this instrument in recent times. Such focus is more likely to provide an impetus for bad actors: the vast majority of practitioners in the sector do not turn up to work to do harm – those that do will not heed a new consumer duty.

In their application, the professional codes of conduct of bodies such as those comprising the Chartered Body Alliance, not only compel individuals to do the best for their customers and society, but they also hold them accountable to each other in upholding the highest standards of ethical professionalism, regardless of organisation or location. The expectations we place on our members remind them of the societal purpose of their role; individually, as part of their organisations, beyond this as part of this wider community of finance professionals and ultimately members of society themselves. It is perhaps this aspect which requires far greater attention when considering the desired outcomes of the discussion around consumer duty.

At the heart of the intended outcomes is increased trust that the products and services expected are those enjoyed by the customer, and this requires mutual understanding. The paper rightly raises concerns about the ongoing asymmetry of information. As stated in the CISI's response to the Call for Input on Consumer Investment (Dec 2020), it is difficult balancing the requirements of meeting disclosure requirements with keeping information brief, so that consumers do not feel overwhelmed. Whilst beyond the FCA's immediate remit, consumer education and consumer understanding must be a key element if the FCA's objective of a higher level of consumer protection in retail financial markets is to be achieved.

We support the objective of firms and their practitioners 'doing the right thing' and this circles back to the FCA's work on Purpose and Culture. A professional culture – one focused on individuals demonstrating integrity and honesty, on having the professional expertise to act with skill and diligence and treating customers fairly – is the culture all stakeholders want to see. We believe we can achieve this with firms, regulators and professional bodies working together.

Specific Responses

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?

For the most part our members are already committed through our professional codes of conduct, to ‘do the right thing’ for their customers. As we stated in our response to DP18/5, we agree that something within the existing framework is not working and consumers remain concerned about the asymmetry of power in their relationship with the financial services sector and there remains mistrust, particularly as provider/customer relationships become more transactional than ever before.

One of the key challenges to introducing the Duty is addressing the asymmetry of information. Whilst we do not suggest that improving financial literacy and education is the role of the regulator, the work on Purpose also highlighted that it does not uniquely fall to firms. Both practitioners and customers want to hold meaningful conversations about money and financial goals.

However, there is no avoiding what we have previously referred to as the ‘small a’ versus ‘big A’ advice issue. Meaningful and valued conversations about money are difficult without advice, but cost and regulation get in the way for both consumer and practitioner. Acting as reliable custodians and helping everyone with their money places a professional duty on the retail sector, similar to that of doctors for their patients, and lawyers for their clients, where the asymmetry of information can place the customer, patient or client at a disadvantage.

We do not believe that the proposed new package of measures as a Consumer Duty will remedy this. We believe consumers and their representatives are calling for better enforcement of the existing rules and principles. Individuals within the sector are looking for clarity in what ‘doing the right thing looks like’ and would need clear guidance, building on our own and other similar bodies’ professional standards work (please see Institute background below), which could be supported and enforced by the FCA, to build an audit trail to meet the requirements of the new consumer duty . In our experience, this is best reflected in case studies and worked examples.

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?

Viewed within the context of this consultation, the framework reads well. However, when alongside the existing framework, it creates a complicated regulatory landscape, and one in which compliance experts rather than consumers will see the most immediate benefit. We believe greater benefit would be achieved from providing practitioners with examples of good and bad practice. We are in no doubt that the consultation will in itself have alerted firms to consider their own practices and perhaps already begin to implement changes, for example, by drawing their attention to the types of behaviours identified as “sludge practices”.

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?

If adopted, we would agree with the approach proposed. As noted in our general comments, use of, for example, thematic reviews could help to identify any consumers who may have been missed out.

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?

If adopted, we are supportive of the proposed approach to extend the scope to the full regulated product/service chain and not to only those with a direct relationship with the consumer.

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?

For each option we can envisage pros and cons. ‘Best Interests’ has a very specific legal context which could easily lead to confusion or raise expectations. ‘Good outcomes’ could be considered overly subjective and would require additional guidance if not to be left open to interpretation.

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?

We have taken Q6 and 7 together. Again we refer to our response to DP18/5 where one recommendation was that TCF be reviewed. There is a danger in developing yet another set of rules without first having looked closely at what needs to change in the existing framework. We had also stated that the increased layering makes it almost impossible for practitioners, who are not compliance experts, to cut through all that applies in order to understand what is expected of them. This also leaves room for interpretation and a lack of consistency. We stand by both of our previous comments in this respect. We would like to see TCF reviewed and call for a simple document which pulls together all the explicit and implicit requirements under the existing framework, in a single easily readable and referenced document. Simple guidance, that is easy to understand and can reference the relevant regulations, without the need for interpretation via compliance specialists or external consultants, is far more likely to be actioned at the level of individual actor.

Q8: To what extent would these proposals, in conjunction with our Vulnerability Guidance, enhance firms’ focus on appropriate levels of care for vulnerable consumers?

There is concern that in reviewing provision, certain segments will be considered too problematic to service and therefore an unintended consequence will be the potential reduction in accessibility for some.

We were one of many bodies that earlier in the year called for the FCA to have a duty of regard to financial inclusion and would reiterate that here.

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?

Please see our comments to Q5.

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?

Please refer to our comments to Q5.

Q11: What are your views on the extent to which these proposals, as a whole, would advance the FCA’s consumer protection and competition objectives?

As outlined in our general comments, we believe there are alternative approaches to improve outcomes for consumers. Raising the issues of concern will no doubt have provided firms with some understanding of areas of their practice which should be attended to. Sharing examples of best practice has the potential to improve competition via improved customer focus in areas of particular harm. Ultimately, we believe that the ongoing work to transform organisational culture across the sector, embedding responsible, sustainable and ethical professionalism will have more immediate impact. Representatives of the FCA once stated that culture could not be measured. We have and

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continue to challenge this stance and together with our colleagues across the Chartered Body Alliance have regularly provided examples of the difference that can be made through our work.

Q12: Do you agree that what we have proposed amounts to a duty of care? If not, what further measures would be needed? Do you think it should be labelled as a duty of care, and might there be upsides or downsides in doing so?

We do not believe that what is proposed can or should be labelled as a duty of care. Use of the term could be considered misleading if not carrying the same legal meaning as might be expected.

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

An alternative approach might be to tighten the wording of Principle 7. As we have previously commented, the phrase ‘paying due regard’ could be much improved upon with requirements to act in the best interests of consumers or to take reasonable steps to ensure that communications are clear, fair, and not misleading.

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

Output from the FCA led work on Purpose highlighted the desire by both product/service provider and consumer to be able to have meaningful conversations. We feel there is another opportunity here to consider how to make it possible to allow these conversations to take place.

We feel it pertinent here to reflect on the need for improved consumer financial literacy. Whist this is outside the FCA’s remit, there is also an open question, raised during the Purpose work, about whose responsibility it is. As stated in the CISI’s response to the Call for Input on Consumer Investment (Dec 2020), it is difficult balancing the requirements of meeting disclosure requirements with keeping information brief, so that consumers do not feel overwhelmed. To improve consumer communication and understanding requires a better understanding on the part of the wider public of the key financial products that will support them and their families throughout their lives. Education should start as early as primary level in schools and continue throughout secondary education so everyone has a basic understanding of key everyday products, e.g. current accounts, savings (ISAs), mortgages, pensions, insurances, etc.

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?

We have taken Q15 and Q16 together in this response.

There is an increasing move to more transactional relationships. This will make it difficult for firms and the individuals working within them to truly understand the best interests of consumers or what a good outcome might be, particularly over the lifespan of the relationship.

See also our comments on financial literacy above in response to Q 14.

Q17: What are your views on our proposals for the Customer Service outcome?

Q18: What impact do you think the proposals would have on consumer outcomes in this area?

Taking Q17 and 18 together, whilst we support the intent in extending the focus across the distribution chain, the requirements set out in the proposals will pose significant challenge. It is unclear how some parts of the chain will be able to get the required feedback information. This will require changes in contracts and data sharing arrangements which could result, even with best endeavours, in longer implementation times and additional costs in meeting the requirements.

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?

Taking Q19 and 20 together, we are not best placed to comment in detail on this proposal, other than to raise concerns about the basis upon which what is reasonable will be established. To investigate and fully assess the audit trails implementation and enforcement is likely to require the FCA to have specific powers as a price regulator.

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

This is a difficult legal area and one which we feel others are better qualified to discuss.

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?

None.

Q23: To what extent would your firm's existing culture, policies and processes enable it to meet the proposed requirements? What changes do you envisage needing to make, and do you have an early indication of the scale of costs involved?

N/A

Q24: [If you have indicated a likely need to make changes] Which elements of the Consumer Duty are most likely to necessitate changes in culture, policies or processes?

N/A – However, we would comment that an important factor in achieving better outcomes and fairer treatment for consumers, society and the environment is ensuring that societal purpose and ethical culture are internalised within the individual actors working in the sector. Sadly, there will always be bad apples and a broad approach is unlikely to change their behaviours.

Q25: To what extent would the Consumer Duty bring benefits for consumers, individual firms, markets, or for the retail financial services industry as a whole?

As we have mentioned throughout, we believe the FCA has alternatives within its existing framework to identify areas of specific harm and to tighten existing Principles to address broader concerns. There is also a concern that, if adopted, given FCA resources and the need to invest significantly to ensure its teams have the technical knowledge and understanding to effectively monitor and supervise the implementation of a new duty.

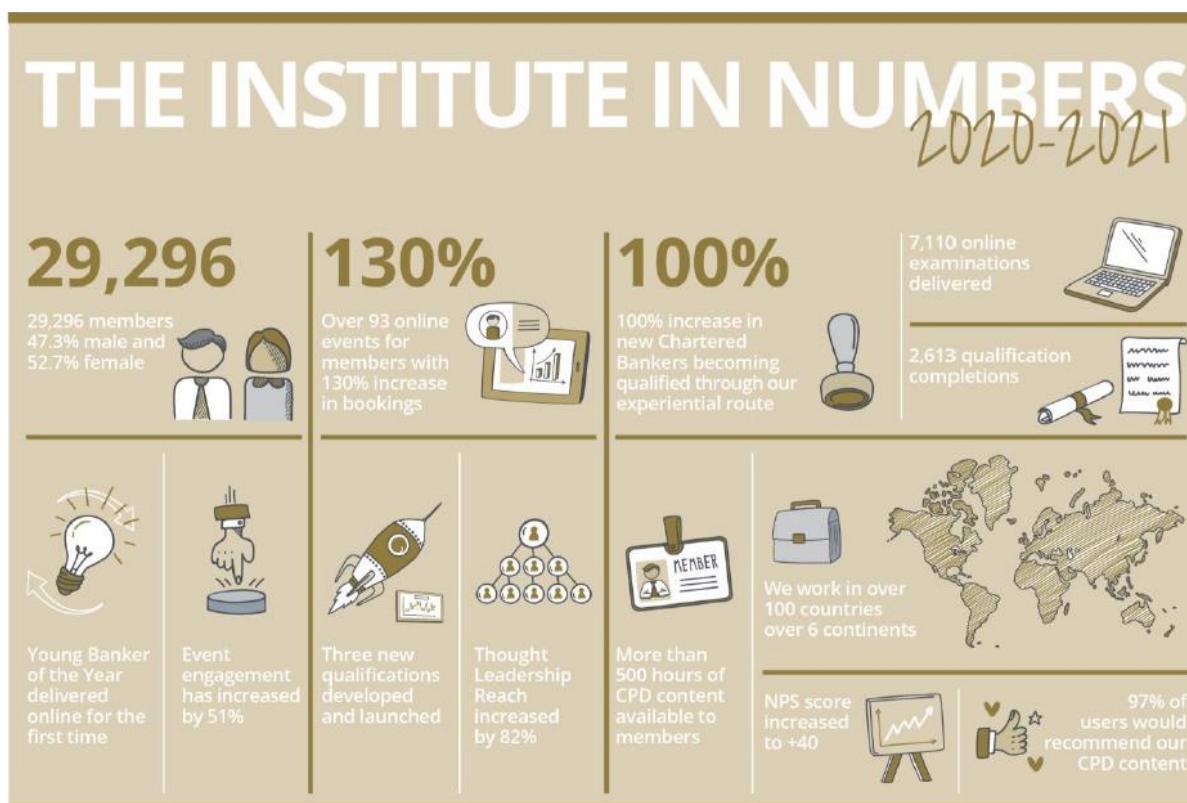
Q26: What unintended consequences might arise from the introduction of a Consumer Duty?

Please see our response to Q8 above. In addition, we highlight the need for removing complexity and in developing simpler documentation to allow individuals to understand fully, and directly what is expected of them without the requirement to reference a raft of interconnected rules. Case studies provided by the FCA identifying good and poor practice have been particularly effective in helping everyone move towards the desired aims of better outcomes and equally helps consumers and their representatives benchmark the service they are receiving.

Q27: What are your views on the amount of time that would be needed to implement a Consumer Duty following finalisation of the rules? Are there any aspects that would require a longer lead-time?

As stated in our general comments, we are concerned that action has been needed for some time but that these proposals will take time to develop, refine and implement.

Annex 1 - About us



Institute Background

1. The Chartered Banker Institute ("the Institute") is the world's oldest and largest professional body for bankers in the UK, with over 30,000 members in over 100 different countries and nearly 1,000 financial institutions worldwide. Founded in 1875 and established by Royal Charter, our aim is to enhance and sustain professionalism in banking that responsible and sustainable banking is built on.
2. Our work also supports the work of regulators and banks to enhance and sustain a culture of customer-focused, ethical professionalism in banking. We are committed to promoting professional standards for bankers, providing professional qualifications for retail, commercial and private bankers in the UK and overseas, and offering professional membership to qualified individuals. We are the only professional body in the world able to confer the status of Chartered Banker to suitably qualified individuals.
3. As evidence of our growing influence with regulators and policy makers, the Institute's CEO Simon Thompson sat on H.M. Treasury's "Financial Services Skills Taskforce" (FSST) and the Financial Conduct Authority's (FCA) "Purpose in Financial Services Working Group" over the course of 2019. This culminated in the publishing of a Final Report by the FSST in early 2020 and an FCA essay series on purpose, featuring an Institute and Chartered Body Alliance essay.
4. We support numerous routes in helping individuals achieve professional qualifications and professional membership to ensure bankers at each stage of their career, develop and sustain

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the skills and knowledge required of a modern, reflective practitioner. Our professional qualifications are recognised globally, and we provide approved regulatory qualifications. All of our qualifications can be studied fully online. We also work with others, including many major banks, to accredit internal training and development programmes aligned to the Institute's professional and qualifications standards.

5. The Institute takes its role in supporting the transition to a more sustainable and socially just world very seriously, and in 2019 was very proud to become one of the UK's first supporters of the UNEP FI's Principles for Responsible Banking [PRB]. The Green Finance Certificate™ was launched by the Chartered Banker Institute in 2018 as the first global, benchmark qualification for the growing Green Finance sector. Updated for 2020, the Certificate in Green and Sustainable Finance now encompasses broader aspects of sustainability, aligned with the UN Sustainable Development Goals, although the focus remains on "green". 6. In 2011, we established the Chartered Banker Professional Standards Board (CB:PSB), the largest professionalism programme in modern banking. The CB:PSB Foundation Standard was met and revalidated over a million times between 2013 and 2017. Following the Institute receiving a new Royal Charter in December 2018, fully recognising our position as the UK's professional body for bankers, we transitioned the Chartered Banker Professional Standards Board (CB:PSB) into the Chartered Banker Institute in June 2019, under a new 'Corporate Chartered' approach. The new Corporate Chartered framework recognises firms which invest in the professionalism of their people and brings standards together with professional qualifications, CPD, peer networking and membership to provide seamless professional progression.
6. Internationally, the Institute's impact and influence is growing, with partnerships with professional bodies in Australia, the Bahamas, Hong Kong, India, Ireland, Malaysia, Malta, New Zealand and Pakistan. We are now proud to have both student and professionally qualified members in over 100 countries across the globe, all of whom share a commitment to the Chartered Banker Code of Professional Conduct.
7. In 2017, we formed the Chartered Body Alliance (ourselves along with the Chartered Institute for Securities and Investments (CISI) and the Chartered Insurance Institute (CII), with a joint membership of almost 200,000, representing an important development in the re-professionalisation of individuals working across all financial services. The purpose of this Alliance is for the member bodies to work together to promote increased professionalism in financial services, for the public good, and to provide a united voice on standards for financial services. In June 2021, we launched our first, joint qualification, the Certificate in Climate Risk, which aims to lead the upskilling of finance and risk professionals globally in this key area.
8. In 1989, the Institute established the *Young Banker of the Year* competition, and this continues to be the highlight of the Institute's annual event calendar. The competition seeks to highlight the contribution of one individual with the potential to lead positive, customer-focused change, as judged by a distinguished panel of industry figures, chaired by the Lord Mayor of London, and plays an important role in promoting a revitalised banking profession by recognising the qualities of young bankers, who through their ideas and actions can help to improve the reputation of the industry.
9. See www.charteredbanker.com for more information on the Institute and its activities.