

Question 1 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?

Consumer harms could include:

- Misleading information or information that is either too complex or has taken too long to collate, which prevents the client from making a timely effective decision.
- Advice given in isolation, for example a lump sum inheritance being invested without consideration for debt, mortgage payments, risk profile or short- and long-term aspirations.
- Suppliers and providers not making information accessible which impacts the client, such as clear dialogue and comparisons on fund performance and fee structures in order to make the price and value clear so the client can make decisions about using an advisor.

Question 2 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 high-level principle that a firm should act in the best interests can be difficult for firms to assure. However, although best interests may seem more difficult to evidence we would argue that with a robust and repeatable advice process placing client aspirations and needs at the forefront makes this easy to demonstrate. Similarly, the CISI Code of Conduct makes reference to this in the principle of Client Focus: To put the interest of clients and customers first by treating them fairly, being a good steward of their interests, never seeking personal advantage from confidential information received and utilising client data only for a defined purpose.

Client aspirations and ensuring that long-term goals and short-term needs can be met are vital and the cross-cutting rules seek to address this important issue. The four outcomes, Communications, Products and Service, Customer Service, Price and Value are in many ways all essential elements of the firm-client relationship. In particular, the relationship between these outcomes being positive and the clients' financial wellbeing highlight the importance of these outcomes. Expectations of firms do need to be clear however this should not be interpreted as a minimum standard for firms to achieve and the FCA should encourage and expect firms to do more than the minimum in these key areas.

Questions 3 and 4

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?

AND

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?

The CISI fully supports the consumer duty approach to the whole advisory chain including providers, platforms and advisers, as opposed to just the firm who deals with the client. The financial crisis still has an impact on the public perception of financial services and the rebuilding of trust in this sector needs to continue. With the full advisory chain falling within the scope of the consumer duty it makes everyone accountable, so the focus on behaviour and conduct should continue and work alongside the consumer duty. Similarly, the CISI Code of Conduct refers to Respect for Market Participants: To treat all counterparties and business partners with respect, to observe proper standards of market

integrity, good practice, conduct and confidentiality required to maintain the highest level of mutual trust.

Question 5 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?

The CISI prefers option 2:

‘A firm must act in the best interests of retail clients’

‘Best interest’ aligns with the CISI Code of Conduct which states: Client Focus - To put the interests of clients and customers first by treating them fairly, being a good steward of their interests, never seeking personal advantage from confidential information received and utilising client data only for a defined purpose.

‘Best interest’ is already a familiar concept in some FCA Handbooks. It is easier to measure ‘best interest’ than a ‘good outcome’. ‘Good’ is subjective, what some people perceive as good may well differ from what others perceive as good. Also, a ‘good’ outcome might not be satisfactory enough for the consumer.

We ran a poll for CISI members to state their preferred option, which was overwhelmingly Option 2:

Option 1: A firm must act to deliver good outcomes for retail clients = **566 votes**

Option 2: A firm must act in the best interests of retail clients = **2030 votes**

Question 6 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 do agree that these are the right areas of focus for Cross-Cutting Rules.

In addition, we believe that firms should also ‘treat customers fairly at all times’, making sure that they are not disadvantaged due to their specific circumstances, which may include vulnerability. This aligns with the CISI’s Code of Conduct: ‘Personal Accountability - To strive to uphold the highest levels of personal and professional standards at all times’.

Question 7 Do you agree with these early-stage indications of what the Cross-cutting Rules should require?

Please refer to our answer to question 6, where we have recommended an additional point to be added to the Cross-Cutting Rules.

Question 8 To what extent would these proposals, in conjunction with our Vulnerability Guidance, enhance firms’ focus on appropriate levels of care for vulnerable consumers?

The CISI welcomes any new guidance for firms and practitioners that will enhance a firms focus on appropriate and relevant levels of care for vulnerable customers. These levels of care may change over time, but it will be important to the consumer that each FCA regulated firm has a responsibility to identify and allow/cater and respond to any vulnerability their customer has at any particular time. We do not believe that the Consumer Duty should simply become an extension of Treating Customers Fairly. The CISI Code of Conduct also reflect this through the principle of Client Focus: To

put the interest of clients and customers first by treating them fairly, being a good steward of their interests, never seeking personal advantage from confidential information received and utilising client data only for a defined purpose.

Question 11 What are your views on the extent to which these proposals, as a whole, would advance the FCA's consumer protection and competition objectives?

We believe that the proposals would significantly advance the FCA's consumer protection and competition objectives. This is due to the increased scope covering more of the advice chain and the defined guidelines.

However, the monitoring of such rules is key and would need to reflect the variety of firms affected by the consumer duty proposals. Consumers need to have the ability to assess the price of advice and ongoing planning so that they can judge on its merit and value. This will, in turn, contribute to the competitive market objective.

Question 12 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?

Yes, we do agree that what the FCA has proposed amounts to a duty of care, as it is expanding its existing rules and principles to ensure firms provide a higher level of consumer protection consistently which will enable consumers to get good outcomes, meaning that consumers always get products and services that are fit for purpose, that represent fair value and are clearly communicated and understandable.

This will help consumers to make better choices and be confident that they will receive good customer service.

There is a risk that imposing on financial services firms a formal Duty of Care might lead to smaller firms struggling to comply or investing large amounts of money to ensure compliance.

Question 13 and 14

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

AND

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

The CISI supports any guidance given or requirement of firms to be as transparent as possible and to communicate in a clear and concise way, in the most appropriate timeframe. We recognise that providing information alone is often not enough for consumers to make informed assessments, particularly if they have an identified vulnerability. We support the FCA's goal to ensure that consumers can make informed decisions whatever their situation. With regards to testing, we understand this might be difficult for some firms to measure and show impact so guidance from the FCA on how they propose firms do this would be useful.

Alongside the other four outcomes the FCA are proposing, we can see that by extending principle 7 (requiring a firm to pay due regard to the information needs of clients and communication in a clear, fair way that doesn't mislead), it will greatly enhance the duty of care given to a consumer to make informed decisions. This also aligns with the guidance provided by the CISI when considering the right course of action, assessing whether the steps are Clear, Informed, Straightforward and Impartial (CISI)

Questions 15 and 16

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

AND

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

We believe that, on balance, the proposal for the products and services outcome would result in a positive impact for consumer outcomes.

However, one key area for consideration is the impact on vulnerable customers. In sections 4.40 E the proposal notes that '[i]t is not our intention that this requirement would lead firms to exclude particular groups such as those who might be vulnerable and whose needs a product might meet'.

It is our view that there is potential for the exclusion of vulnerable customers to arise as an unintended consequence of the proposals. If firms believe that the requirement to demonstrate that products are specifically designed to meet the needs of vulnerable customers is onerous, are overly costly, or that there are additional or disproportionate risks to including vulnerable customers within their target market, then this could result in their unintended exclusion. This risk potentially increases with more complex products where the proposal notes that 'target markets would need to be defined in more detail'. We believe that firms will need further guidance, including examples, from the FCA about how they can ensure that this does not occur. The CISI Code of Conduct asks members to be Aware of Capabilities: To decline to act on any matter about which you are not competent or qualified unless you have access to such advice or assistance to carry out the work in a professional manner, taking into account the nature of the individual mandates given by your customers and counterparties.

Questions 17 and 18

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

AND

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

We agree that the proposals for the Customer Service outcome should positively contribute to them realising the benefits of products and services and acting in their interests without undue hindrance.

There is also a risk that this requirement could disproportionately impact smaller firms who may not have the resources to implement processes or conduct regular review / monitoring in the same way as larger firms.

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

We agree with points 5.12 and 5.13 that firms might become risk averse if a PROA is introduced and that this may result in harming consumers and having a financial impact on small organisations as their costs may increase. There is also a risk that the interpretation and enforcement of the Consumer Duty Principles is left to the courts to decide, rather than the FCA, without allowing sufficient time for firms to deliver the FCA's intended outcomes and fully embed the principles.

As per our answer to questions 15 and 16, there is also the risk that some consumers are inadvertently excluded from products and services if firms take the view that there is an increased risk of PROAs from particular consumers. This would ultimately harm consumer outcomes.

22. 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?

We believe that our answers to the other questions are not impacted by the decision to provide or not to provide a PROA.

25. To what extent would the Consumer Duty bring benefits for consumers, individual firms, markets, or for the retail financial services industry as a w

The answer to Q25 is a joint submission from the Chartered Institute for Securities & Investment and the Chartered Banker Institute:

In their application, the professional codes of conduct of bodies, such as those comprising the Chartered Body Alliance, not only compel individuals to doing the best for their customers and society, 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.

Education is also a common theme when discussing issues arising from the 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. We believe that this will also be a key element in supporting the FCA's objective of a higher level of consumer protection in retail financial markets.

This coupled with 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.

26. What unintended consequences might arise from the introduction of a Consumer Duty?

An enhanced level of care might result in some customers being unintentionally excluded as a result, for example, vulnerable customers or customers who don't fit the criteria.

Firms will also need further guidance on how to implement this in practice. More specifically, it might be more difficult or disproportionately costly for smaller businesses to comply with the new rules and possibly to identify vulnerable clients. Firms will have to be prepared to provide evidence of such compliance to the FCA if required. The cost of implementing the change for some firms, particularly the smaller ones, could potentially have an impact on their profit and hence viability.