MoneySavingExpert

Response to FCA Consultation: A new Consumer Duty (CP21/36)

MoneySavingExpert (MSE) welcomes the opportunity to respond to this consultation on the FCA's proposed new Consumer Duty.

The concept and contents of the proposed new Consumer Duty are to be broadly welcomed

MSE is broadly positive about the introduction of the FCA's proposed new Consumer Duty and its intentions. The movement towards an outcomes-driven regulatory approach which seeks to create a more consumer-focused playing field is clearly a positive step. It is evident that the FCA is seeking to bring about a significant shift in the way financial retail markets work to generate higher levels of consumer protection.

It is also encouraging to see the FCA present its commitment to a more agile and assertive supervisory approach, which seeks to address and reduce potential harm to consumers more quickly.

The new Consumer Duty presents an opportunity for a step change in how consumers are treated and supported in the realm of financial services, but it must be implemented and supervised in a way that will bring about a genuine culture change, and truly empower consumers to make informed decisions and act in their own interests. That being said, there are still some risks, as explained below.

Unintended negative consequences may still arise, and must be mitigated against

MSE's support for the direction of travel shown in the FCA's latest consultation continues to be coupled with the caveat that such radical changes could bring about unintended consequences for consumers. These will need to be carefully factored into the FCA's approach to implementation and beyond.

In MSE's response to the FCA's initial consultation "CP21/13: A new Consumer Duty", we highlighted a series of key concerns about potential unintended consequences linked with the new Consumer Duty. These were:

- Increased compliance requirements ultimately pushing up costs for consumers;
- Firms using these changes as an opportunity to increase prices; and
- Firms withdrawing from markets, or ignoring new ones in order to avoid compliance risks.

We appreciate that the FCA has responded to some of these concerns in its latest consultation on the new Consumer Duty, and suggested that it does not believe these risks are likely to materialise. The FCA makes it clear that it does not expect the new Consumer Duty to discourage competition between firms in a way that could inadvertently cause harm to consumers. Instead, the FCA proposes that the *nature* of competition may change, but in a manner that encourages innovation and choice for consumers, and that only those products and services which are poor value or poorly designed are likely to be withdrawn from the market – resulting in consumer benefit.

However, while the FCA suggests that the prospect of negative unintended consequences occurring is small – including those outlined by MSE and others – there is of course a chance of these happening, given the far-reaching effects that the Consumer Duty is intended to bring in across financial services, and previous experience suggests these can have significant impact on consumers.

A recent example of such consequences occurring can be seen in the aftermath of FCA reforms to increase overdraft pricing transparency. Banks responded to this by implementing a homogeneous 40% APR, leaving a significant number of consumers worse off. It also saw some banks which were already charging interest rates for overdrafts nearly double their rates. We do have concerns about similar types of impacts happening here.

A further risk could be if consumers were to lose access to some cheaper, non-advised products if firms respond to the Consumer Duty by mandating an increased level of advice or guidance, regardless of consumer needs/sophistication. This must be factored into supervision of the "price and value" outcome outlined in the consultation, to ensure that the Consumer Duty isn't itself leading to price increases, even if indirectly.

The FCA should also be vigilant to firms unfairly passing on general costs from this regulation to consumers, although we recognise that the lack of prescription for how firms supply compliance data to the FCA may mitigate this risk to some extent.

Effective FCA supervision and enforcement are clearly key to the success of the new Consumer Duty, but more detail is needed

The consultation paper does not give a detailed view of the FCA's supervisory plans for firms, noting that this will vary by size and sector. We would therefore welcome further information on this area in order to inform scrutiny, as the success or failure of the policy will depend on how it is supervised and enforced.

Providing worked-through examples is one way that would help to shed further light. Examples of good and poor practice outlined in the draft non-Handbook Guidance for firms demonstrate good intentions. MSE encourages the FCA to build on this and maintain an open dialogue with industry, consumer organisations and wider stakeholders throughout the implementation period and beyond, including regular updates and anonymised case studies where relevant. This aligns with the regulator's commitment to take a bolder approach to communicating expectations to stakeholders, as described in the consultation paper.

Conclusion: the new Consumer Duty is to be welcomed, but must deliver in practice as well as in theory

The proposed Consumer Duty is positive in theory, but has a lot to deliver in practice. As described, it must be implemented, supervised and enforced by the FCA with precision and strength to achieve its objectives, while avoiding, mitigating or responding to risks. It is crucial that firms respond to the spirit of the proposed change as well as the letter for this intervention to be a success, so while MSE is broadly supportive, we must reserve some judgement until more is known about the implementation of the new Consumer Duty – and the consumer outcomes it intends to bring about.

About MoneySavingExpert.com

MoneySavingExpert.com is the UK's biggest consumer website dedicated to saving people money on anything and everything by finding the best deals, beating the system and campaigning for financial justice. Founded by Martin Lewis in 2003, it's based on detailed journalistic research and cutting edge tools, and has one of the UK's top 10 social networking communities. Around 8.2 million people have opted-in to receive the weekly MSE's Money Tips email, and MoneySavingExpert.com has more than 13.5 million unique monthly site users who visit more than 23.5 million times a month, including the MSE Forum, which has more than 2 million registered users.

In the event of any queries, please contact the campaigns team: campaigns@moneysavingexpert.com