

Credit Services Association

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

1. Background

- 1.1 The Credit Services Association (CSA) is the only national trade association in the UK for organisations active in the debt collection and purchase industry. The CSA, which has a history dating back to 1906, has over 250 member companies which employ almost 11,000 people. The membership also comprises specialist tracing agencies, in-house collection departments of large banks and utility companies and law firms.
- 1.2 The clients of CSA members include major financial institutions (such as banks and building societies), credit grantors, government departments and local authorities, utility companies and mail order businesses.
- 1.3 At any one time, the CSA's members hold up to £20 billion of consumer debt for collection, across more than 20 million accounts. CSA members also hold nearly £4 billion in commercial debts across over 1.5 million commercial accounts.
- 1.4 As the voice of the collections industry, our vision is to build confidence in debt collection by making the entire process clear, easy to understand and less stressful for all those involved. Further information on the CSA can be found at: <http://www.csa-uk.com>.
- 1.5 The functions performed by CSA members are vital to the operation of the various sectors in which they operate. Unpaid debts cause damage to lenders / suppliers and to borrowers by adding costs to the system which result in higher prices for credit or goods/services. Serious problems with unpaid debt may also lead to restrictions in the availability of credit, particularly to consumers who may otherwise find it difficult to obtain cost-effective credit and therefore have a detrimental impact on the overall growth of the economy.

2. Feedback

- 2.1 The FCA review of its rulebook is welcome and we support efforts to simplify requirements and remove duplication in the wake of the Consumer Duty.
- 2.2 Firms have spent many years equipping themselves to meet the requirements of the current rulebook, so some caution should be exercised in the review, to ensure that changes or removals do not create unnecessary uncertainty or require firms to carry out costly gap analyses.
- 2.3 There are some areas of the rulebook where clarity or simplification may be warranted, and we have outlined some of our thoughts on this below. In some cases, this is because there are other laws or regulations that already serve the same purpose as the rule, rendering the rule unnecessary. In others, a revision to language will help provide clarity.
- 2.4 The biggest conflict for consumer credit firms between the Consumer Duty and other requirements comes from the statutory notice provisions in the Consumer Credit Act 1974 (CCA).
- 2.5 We appreciate that reform is not in the hands of the FCA, but given the incompatibility between the aims of the Duty and the onerous requirements of the CCA, we would encourage the FCA to press the Treasury on reform as a matter of urgency.

- 2.6 We would also note that the changing role of the Financial Ombudsman Service (FOS) from complaint adjudicator to quasi-regulator is a particular challenge for firms, with FOS effectively setting regulation itself in many instances, making it even more difficult for firms to be confident in their compliance with the Handbook.
- 2.7 We would suggest that amends are made to DISP to ensure that the FCA remains the regulation-setting entity and the FOS focuses on investigating individual complaints, as was originally intended with its creation.
- 2.8 Beyond these issues, what would truly be beneficial to firms is providing greater guidance on expectations under the Duty. Firms, especially SMEs, rely on the certainty of the Handbook to know that they have correctly understood what is expected of them. As they move into a regime with less certainty, it is incumbent on the regulator to ensure that all firms have clear guidance on what it wants to see, especially where there are areas of particular uncertainty (e.g. the conflict between the CCA statutory notice provisions and the consumer understanding outcome requirements).

CCA reform

- 2.9 The need for CCA reform is far from a new subject, with the FCA itself having reached the same conclusion in its 2019 report¹ to Treasury on the retained provisions of the Act.
- 2.10 In 2022, with no further progress since the FCA report to Treasury, the CSA released a policy paper² reiterating the case for reform.
- 2.11 In the years since the FCA published its final report to Treasury, there remains little-to-no progress.
- 2.12 There were some revisions to the Default Notice requirements, a tacit acknowledgement by government that the provisions were no longer appropriate, but these changes did not resolve the inherent problems in the statutory provisions.
- 2.13 While there are elements of the CCA that are burdensome and disproportionate, and which we would like to see reformed, one of the key drivers of the demand for reform is that current requirements are causing consumer harm. For example, customers that are repaying their debts must still be sent statutory notices in the prescribed format and with the prescribed content, which often leads to confusion and anxiety around whether they are in fact paying down their debt.
- 2.14 The new government acknowledges the unsuitability of the current CCA, noting in its consultation³ on the regulation of the Buy Now Pay Later (BNPL) sector, “...some of the features of the CCA which are not suitable for BNPL may also not be achieving the best possible consumer outcomes for other credit products.”
- 2.15 The introduction of the Consumer Duty (the Duty) has made the need for reform even more urgent, with firms conflicted between meeting the requirements of the CCA and the Duty.

¹ [Review of retained provisions of the Consumer Credit Act: Final report | FCA](#)

² [modernising-consumer-protect.pdf \(ymaws.com\)](#)

³ [Regulation of Buy-Now, Pay-Later: consultation on draft legislation \(October 2024\) - GOV.UK](#)

While the FCA has stated it does not expect the Duty to supersede firms' legal obligations and it has put forward 'sticking plaster' solutions such as layering communications alongside statutory notices, neither approach is consistent with the aims of the Duty. The Consumer Duty requires firms to deliver good outcomes for customers, but neither the provisions in the CCA nor the interim solutions put forward achieve this.

- 2.16 There is little more industry can do in terms of pressing the government for reform, whereas the FCA can make the case more directly to Treasury. In its consultation on regulating BNPL, the government affirms its commitment to reforming the CCA, so there is an appetite for this message.
- 2.17 In terms of reform of the statutory notice provisions, we are not necessarily advocating for unfettered flexibility, as a degree of certainty can aid firms' compliance. However, in order for firms to be able to ensure 'consumer understanding', there is a clear need for change.
- 2.18 We believe that revising the language of prescribed notices to focus on communicating the key information, with an element of flexibility afforded to firms in the presentation and delivery of that information, would be helpful.
- 2.19 In order for firms to be confident in adopting a more flexible approach, the sanctions for non-compliance must be more proportionate. Penalising firms by disentitling them to interest, or by requiring extensive remediation before an agreement can be enforced, where a firm has made a fairly inconsequential error or omission in providing the prescribed content is entirely disproportionate and no longer appropriate.
- 2.20 Firms do not wish to omit key information – and with the 'consumer understanding' and 'consumer support' outcomes under the Duty, they are in any event required to provide key information to a consumer. But firms should not face excessive penalties where the information / prescribed content omitted is of little consequence to the circumstances at hand – especially if that information is demonstrably communicated effectively elsewhere.
- 2.21 The sanctions in the CCA are not simply disproportionate; they can become incredibly complex to actually implement effectively, leading to the perverse scenario where, for example, firms face escalating remediation requirements because they have not calculated a disentitlement period correctly.

Financial Ombudsman Service (FOS)

- 2.22 In recent years, the FOS has become effectively a quasi-regulator, interpreting far-reaching regulatory matters seemingly without any recourse to or consultation with the FCA, and with no meaningful route of appeal for firms beyond judicial review, a costly option with narrow eligibility.
- 2.23 The Consumer Duty puts more onus on firms to take action that delivers good outcomes, rather than prescribing precisely how firms should achieve that. This leaves the FOS even more scope to make decisions of wider significance, essentially subjecting firms to two regulatory regimes.
- 2.24 Not only does this create additional uncertainty for firms, it opens the sector up to all manner of claims management activity.

- 2.25 The FOS is not under the same obligations as the FCA to consider aspects such as competition, international competitiveness or market integrity when making decisions. Nevertheless, it has in recent times begun to make decisions that have an impact in these areas. In the absence of a duty to consider these factors in its decisions, where the FOS is confronted with decisions that will have significant wider market impact (for firms, for consumers, for markets), there must be a more immediate process that involves consultation with the FCA. As the regulator, it is best-placed to assess the interpretation and any wider implications across the market and can, where necessary, lay the requisite regulatory groundwork for the decision, to avoid circumstances where regulation is having to catch up with FOS regulatory interpretation.
- 2.26 We think it would be sensible to enhance the Wider Implications Framework to ensure that such significant decisions are genuinely considered before any complaint conclusions are reached. Further, including firms and / or representatives in these discussions, to ensure that the wider implications are truly understood, would make sense.
- 2.27 At a minimum, some form of appeal to far-reaching FOS decisions must be available to firms. As FOS has moved into such a significant role in the regulatory ecosystem, it is essential that firms have an option other than judicial review where it is making such far-reaching decisions.

Income and expenditure

- 2.28 We acknowledge the FCA is not seeking comments on rules soon to be in force. But we remain of the view that the new requirement, which will be set out in CONC 7.3.7AG (4), to provide a customer with a copy of their income and expenditure information is an unnecessary change.
- 2.29 Firstly, data protection law already entitles an individual to request a copy of their personal data, which is likely to include information they have supplied to a firm about their income and expenditure.
- 2.30 Secondly, we would imagine that the FCA would find a refusal to provide this information inconsistent with the 'consumer support' outcome under the Consumer Duty.
- 2.31 Finally, the actual scale of demand for this information is – at least anecdotally – minimal. The usefulness of one firm's income and expenditure information to another firm is entirely contingent on both gathering similar data when considering income and expenditure; where that is not the case, where there are slight differences or nuances, it provides little further assistance.
- 2.32 With limited onward use for the information, and both the Duty and data protection law entitling consumers to obtain the information where they require it, we believe the provision in the Handbook is unnecessary and serves only to introduce an additional burden on firms with little-to-no apparent consumer benefit.

Statute barred

- 2.33 CONC 7.15.4R and CONC 7.15.5G state that a firm cannot attempt to recover a statute barred agreement where the firm has not been in contact with the customer during the limitation period.

- 2.34 However, it is unclear what precisely is meant by 'in contact' in the context of this rule. The most logical interpretation of this rule is that it is intended to ensure that firms proactively attempt to communicate an outstanding balance to a customer.
- 2.35 There is some scope for misinterpretation. We would therefore welcome clarity that the expectation of this rule is for firms to make ordinary efforts to communicate with the customer, e.g. regular contact attempts; issuing statutory notices; documenting their attempts to make contact and to alert the customer to their outstanding balance.

Complaint data publication – notification to the FCA

- 2.36 DISP 1.10A.4R requires a firm to immediately confirm to the FCA when it has published complaints data on its website and that this data *"accurately reflects the report submitted to the FCA"*.
- 2.37 It is unclear why the FCA mandates that immediate notification be provided by email, which seems to be an unnecessary administrative task.
- 2.38 On the basis that the FCA requires firms to confirm that the data is published on its website and reflects that reported to the FCA, this presumably could be achieved more simply by incorporating this as a question / request for confirmation into the report submission.

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