

StepChange Debt Charity response to FCA consultation CP21/13: A new Consumer Duty

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StepChange Debt Charity London Office
Floor 3, 27 Queen Anne's Gate, London SW1H 9BU
Policy contacts: adam.butler2@stepchange.org and peter.tutton@stepchange.org

About StepChange

StepChange Debt Charity is the largest specialist debt advice charity operating across the UK. In 2021, we helped almost 500,000 people with information and advice on problem debt. We welcome this consultation on the new Consumer Duty.

Introduction

We welcome and strongly support the new Consumer Duty and believe the changes outlined by the FCA will bring positive culture and practice change among financial services providers for the benefit of consumers. The Duty is particularly relevant to an unsecured credit market in which, in recent years, the FCA has repeatedly been forced to intervene to protect consumers against harm.

We welcome the additional clarity provided by the FCA's response to the initial consultation CP21/13 and draft rules and guidance. We particularly welcome the clarity that the new Consumer Principle 'imposes a higher and more exacting standard of conduct' and the embedding of vulnerability and behavioural bias in the proposed rules and guidance.

In our initial consultation response, we noted that the effectiveness of the Consumer Duty will depend greatly on how it is implemented. We see two central risks to the success of the Duty:

- The Duty drives a change in compliance processes, rather than in the culture, product design and conduct that affects consumers
- Failures among firms to meet the standard set by the Duty are not addressed due to low transparency and ineffective monitoring, supervision and enforcement

These risks, if realised, would lead to a situation in which the potential of the Duty is not realised and significant and sometimes market-wide problems causing harm to consumers continue to occur. While we expect the Duty to succeed, these risks are heightened somewhat by the general nature of the Duty and the decisions the FCA has made to exclude 'best interests' from the wording of the Consumer Principle and not to make a Private Right of Action (PROA) available for the Principle.

The Consumer Duty represents a vision for change. To be effective, that change must not only be in rules and guidance but in the way that the FCA monitors, supervises and enforces; otherwise, the detriment-intervention cycle the FCA is seeking to end is likely to continue.

The FCA has given indications in the consultation document of the steps it intends to take to effectively implement, monitor, supervise and enforce the Duty, such as considering 'regular updates on what we are seeing and our views of it to provide further clarity to firms on our expectations' (1.29). However, none of these proposals are specific or concrete commitments; in fact, we do not know how consumers will know whether or how the Duty has affected regulated services.

We would like to see the FCA match finalised rules and guidance with a set of concrete commitments to make sure of the success of the Duty. This should include:

- Sector statements setting out the FCA’s view of key areas of risk to consumers, supported by a sector by sector programme of engagement and guidance to set a clear direction of travel and support implementation among firms.
- Responding to the Woolard Review recommendation that the FCA articulate clear outcomes for the credit market and ‘set out clearly what the market should be achieving at each stage of the consumer journey and lifecycle of a product’.¹ As part of this, the FCA should consider developing sector-specific metrics along the lines of the FCA-mandated general insurance value measures.
- A risk-based programme with a clear timetable for the FCA to review, report on and evaluate implementation of the Duty, including consumer outcomes.

More generally, the Consumer Duty brings into relief the need for a coherent response to financial inclusion aspirations commonly articulated by both government and the FCA. Recent StepChange research highlights that financially vulnerable consumers experience detriment arising from credit products that are not appropriate for them.² The Consumer Duty, if effective, could lead to reduced access to credit for at least some consumers. While experience has shown that a loss of access can be positive because it leaves the consumers affected in a better position than they would have been had they accessed an inappropriate credit product, such changes in market access inevitably raise questions as to how such consumers can smooth lumpy expenditure and meet essential costs.

Without further action, there will be a growing imbalance between the FCA’s appetite to make the credit market safe for consumers and the alternatives available to those who are not served by the market. There are solutions to this challenge, such as the proposal raised in the Woolard Review to ask more of mainstream firms to meet the credit needs of subprime customers, the significant potential to scale up responsible credit models and the role of grants in the social security system.

We would therefore like to see the FCA do more to provide safe alternatives to harmful safety net credit. In the long run, we believe this balance is best served by the government giving the FCA a new financial inclusion objective that gives the regulator the additional powers it needs to promote inclusive lending and work with the government to ensure market insight informs wider public policy.

Response to consultation questions

Q1: Do you have any comments on the proposed scope of the Consumer Duty?

We agree with the FCA’s proposed approach and have no further comment at this time.

Q2: Do you have any comments on the proposed application of the Consumer Duty through the distribution chain and on the related draft rules and non-Handbook guidance?

We agree with the FCA’s proposed approach.

¹ Financial Conduct Authority (2021) *The Woolard Review - A review of change and innovation in the unsecured credit market*, p. 11

² StepChange Debt Charity (2022) [Falling behind to keep up: the credit safety net and problem debt](#)

The consultation document uses credit reference agencies (CRAs) as an example in which a firm would have more limited obligations because its activity is more remote from customers (2.13). We do not think it is the FCA's intention to minimise the responsibilities of CRAs under the Duty; however, we would welcome clarification that the significance of a firm's impact on consumer outcomes is also a guiding principle in interpreting the extent and nature of a firm's obligations. In the unsecured credit market, CRAs have a crucial role in meeting the aims of the Duty: their responsibilities are different due to their remote relationship to customers (except when providing customers with products directly) rather than more limited. We would hope the FCA will ensure that it is clear all firms that affect consumer outcomes have significant obligations and that, given their influence and concentrated market position, CRAs must put the Duty at the centre of their culture and business models. We note the present Credit Information Market Study provides a further opportunity to review regulation of CRAs in light of the objectives of the Consumer Duty.

Q3: Do you have any comments on the proposed application of the Consumer Duty to existing products and services, and on the related draft rules and non-Handbook guidance?

Q4: Are there any obstacles that would prevent firms from following our proposed approach to applying the Consumer Duty to existing products and services?

We agree with the FCA's proposed approach and have no further comment at this time.

Q5: Do you have any comments on the proposed Consumer Principle and the related draft rules and non-Handbook guidance?

We noted in our response to the initial consultation on the Consumer Duty that the FCA's commitment to requiring firms to evidence how they have pursued good outcomes in the best interests of customers will be crucial in the success of the Duty, regardless of the specific wording of the Consumer Principle. Nevertheless, we also raised concerns about wording for the Consumer Principle that refers solely to delivering good outcomes because this risks encouraging a narrow interpretation by some firms, for example monitoring outcomes at one point in time rather than recognising the inherently long-term nature of good outcomes. We are concerned that the proposed wording could too easily reinforce practices in the unsecured credit market that conflate the short-term outcome of providing access to credit with a good outcome.

To deliver good outcomes, firms must consider the broader implications arising from their relationship with their customers, especially where constrained choices leave consumers vulnerable to exploitation. There is a risk that the proposed wording leads firms to interpret the Duty through the outcomes they currently seek to deliver.

The decision to exclude 'best interest' from the Consumer Principle wording makes it important that the FCA's support and direction to firms in implementing the Duty is sufficiently strong for firms to look further and deeper in their relationship with their customers than they are required to do in their current relationships with customers. For example, a customer who accesses a loan and makes all repayments would, at a superficial level, appear to have met their financial objectives and experienced a good 'product outcome'. If that customer experiences financial difficulty in order to

maintain repayments, the outcome for the customer is not, in fact, a good one. StepChange's recent *Falling behind to keep up report* illustrated situations in which consumers seek credit to meet rational short-term financial objectives but compound financial difficulty and are left in a worse position than if they had not accessed credit.³ We welcome the FCA's steer that the new Principle sets a 'higher and more exacting standard of conduct' than existing principles: it should also make clear that delivering good outcomes should not usually be interpreted solely or narrowly as accessing a product and firms must show how they have considered outcomes arising from the interaction between their product and the characteristics of their customers.

We have also commented on draft rules that the relationship between the Consumer Principle and the cross-cutting rules and four outcomes is not articulated clearly: it is not sufficiently clear that these components of the Duty are mediated by the Principle itself ('act to deliver good outcomes'). We note, for example, that the concept of 'fair value' in the pricing and value outcome is not a substitute for scrutiny of the relationship between price and good outcomes. We think this is an important point to help ensure firms' response to the Duty is not driven by process-based compliance. We would therefore find it helpful for the FCA to set out in rules or non-handbook guidance a tone-setting message that, in considering the cross-cutting rules and outcomes, firms should have regard to the Consumer Principle itself.

More specifically, section 2A.1.8 of the draft rules ('Purpose') would benefit from a recognition that customers require protection because they have characteristics of vulnerability or face constrained choices that make them vulnerable to exploitation. In relation to vulnerability particularly, this would be consistent with the inclusion of responsibilities to consider characteristics of vulnerability throughout the rules (and we note cognitive and behavioural biases are already mentioned here). Vulnerability and constrained choice are fundamental drivers of consumer detriment; understanding this is central to ensuring that firms look further and deeper into their relationships with their customers and outcomes than they currently do.

Q6: Do you agree with our proposal to disapply Principles 6 & 7 where the Consumer Duty applies?

We agree with the FCA's proposals. It remains important that in any subsequent guidance the FCA continues to reiterate, as it has set out clearly in the draft rules and guidance, that the Consumer Duty sets a higher and more exacting standard and there should be no reduction in consumer protection as a result of these changes.

Q7: Do you agree with our proposal to retain Handbook and non-Handbook material related to Principles 6 and 7 should remain relevant to firms considering their obligations under the Consumer Duty?

We agree with the FCA's proposals and have no further comment at this time.

³ StepChange Debt Charity (2022)

Q8: Do you have any comments on our proposed cross-cutting rules and the related draft rules and non-Handbook guidance?

At section 2A.2.3 ('Examples of where a firm is not acting in good faith would include:') we suggest adding 'exploiting characteristics of vulnerability' to paragraph (c). Vulnerability is a central driver of susceptibility to exploitation and should be highlighted as such to ensure a clear and comprehensive definition of acting in good faith.

The wording of 2A.2.9 (1) appears to risk undermining the purpose of the Duty and the cross-cutting rule to avoid causing foreseeable harm by implying customers accept risks by selecting a product where a firm reasonably believes a customer accepts those risks. It could mean, for example, ineffective disclosure being used to argue that customers that experience poor outcomes were aware of the characteristics of a product. The wording here could be amended or supplemented to ensure that the rule does not undermine the Consumer Principle or wider obligations under the Duty, such as those concerning behavioural bias and characteristics of vulnerability, which are designed to require firms to think objectively about risks to specific groups of customers.

We would like to see the handbook guidance on enabling customers to meet their financial objectives (2A.2.10) developed to address the relationship between marketing and information, financial objectives and good outcomes. Firms' marketing and framing of products affects consumers' financial objectives (for example, banks offer consolidation loans that are marketed through information about struggling with debt). This can bring into conflict a consumer's immediate financial objectives and financial objectives that can reasonably be argued to be in their best interests.

StepChange's recent *Falling behind to keep up* highlights the potential of automatic credit limit increases to lead to harm for customers in financial difficulty. One StepChange advice client explained simply how the incentives and perceptions of firms and customers can be different: 'As long as I paid each month, [credit card firms] kept upping the limit rather than asking why my cards were full and if I was struggling.' The data gathered through a national survey for the report suggested that firms are as, or more likely to, increase the limit of customers who are in difficulty as those who are not. This does not seem an appropriately designed approach for products like high-cost or 'credit builder' cards that are more likely to be used by those experiencing, or at risk of, financial difficulty.

While language in the handbook guidance speaks to firms' general obligations not to exploit consumers' lack of information, behavioural bias or characteristics of vulnerability, it is unclear how those obligations interact with firms' obligations under the cross-cutting rule to enable customers to meet their financial objectives.

Some of the issues raised here reinforce why we believe sector-specific guidance on the Consumer Duty is essential. The draft rules articulating that firms are not responsible for risks they reasonably believe customers understood appear designed to speak to investment products and the customers who use them, but appears unhelpful in the context of high-cost credit and another (typically more financially vulnerable) group of customers. There are indications the breadth of application of the draft rules and guidance could undermine effective sector-specific application. We have sought to

highlight where careful drafting is needed. However, firms have a history of interpreting rules differently to the regulator's expectations and have incentives that have, as the FCA has recognised, in the past led to culture on practice that has diverted from the regulator's expectations. In addition to addressing language in the rules that may frustrate the intent of the Duty, sector-specific guidance and engagement is essential to set clear expectations and drive meaningful change.

Q9: Do you have any comments on our proposed requirements under the products and services outcome and the related draft rules and non-Handbook guidance?

In section 2A.3.4R of the rules, we would like to see the language developed to make clear that firms must take account of the potential vulnerability of customers in a target market in their design of products and services. As the FCA's guidance on vulnerability makes clear, all customers are potentially vulnerable. This insight is particularly relevant to credit products targeted at groups of consumers more likely to experience vulnerabilities such as financial difficulty or ill-health.

A specific good practice example is given beneath paragraph 5.44 of the non-handbook guidance of a consumer credit firm that withdrew late payment fees because a high proportion of customers were missing payments. We recognise the intent of the example, but this seems to be a somewhat limited case study of an appropriate response by a firm. If a high proportion of customers are missing payments, that suggests a high proportion of its customers are at risk of financial difficulty. In other words, this seems to be a clear example in which a firm must interrogate more deeply how it has considered the characteristics of consumers in its target market and their needs, as well as its product design, communications and service, to meet the Consumer Duty. Simply withdrawing missed payment fees is no assurance that the firm is not still causing foreseeable harm to its customers.

Q10: Do you have any comments on our proposed requirements under the price and value outcome and the related draft rules and non-Handbook guidance?

The proposed guidance does not yet address sufficiently directly how this outcome should be interpreted in the credit market. The price consumers pay for a credit product affects outcomes, but there is little to indicate that firms will be asked to consider the relationship between price, 'fair value' and outcomes. The guidance asks firms to consider their prices in relation to market rates, but bad markets offer poor value so market rates are not a good indication of fair value or good outcomes. The need for market-wide FCA interventions in high-cost credit demonstrates this point. In high-cost credit particularly, there is a risk firms overweight value and underweight poor outcomes because consumers do not have (or are assumed not to have) access to alternative products.

These concerns could be addressed by handbook rules or guidance that require firms to consider the relationship between price and consumer outcomes (in the list of matters manufacturers should consider in their assessment of fair value in section 2A.4.7). Past FCA guidance on fair pricing in financial services did not fully address fair value in the context of credit. The FCA recently intervened in the rent-to-own market because 'a highly vulnerable group of consumers are paying too much for

household goods'.⁴ While we note the FCA is not seeking to set or control prices through this outcome, it has in the past done so to address pricing problems justified by aims central to the intent of the Consumer Duty. If one of the FCA's aims is to prevent the need for future market interventions to address pricing problems in credit, there is a strong need for clearer rules and non-handbook guidance on this outcome.

On a specific point of clarity, we would welcome guidance from the FCA as soon as possible of its expectations for the price and value outcome in the context of free debt advice. StepChange clients do not pay for advice, which is funded indirectly via a variety of funding streams. However, clients do invest time and effort accessing StepChange's service and that service has a value to those clients. It would be helpful to understand more about if and how organisations like StepChange should interpret and apply this outcome.

Q11: Do you have any comments on our proposed requirements under the consumer understanding outcome and the related draft rules and non-Handbook guidance?

We would welcome development of the guidance for the Consumer Principle and this outcome focusing on the interaction between communications and decision-making, particularly in the context of mobile apps and online tools. The digitisation of credit has created a new intersection of data, marketing, communications and consumer decision-making. Consumers are, in this new context, subject to specific vulnerabilities and potential exploitation. The references to behavioural bias in the draft rules are welcome and speak to this issue. However, there seem to be important firm practice and conduct issues that sit at the intersection of data, marketing, product design and communications that are insufficiently addressed.

With reference to 2A.5.2R (c), the relationship between communications and supporting customers to make decisions that are 'effective, timely and properly informed' would benefit from elaboration in the context of good outcomes. A firms' view of an effective decision and that of a customer may not be the same. There appears to be no definition of an effective decision and no reference to outcomes in the non-handbook guidance on 'Equipping customers to make effective decisions (7.11). We would therefore suggest additional wording to define an effective decision and make clear an effective decision will usually be one that enables customers to achieve good outcomes.

As example in the non-handbook guidance beneath paragraph 7.12 points to the importance of more detailed sector-specific guidance. The example briefly notes that in the past banks encouraged consumers to focus on the daily cost of an overdraft (which appeared small) rather than the significant cumulative cost of borrowing and that this is unlikely to be acting in good faith towards consumers or giving them the right information to make properly informed decisions. In the credit card market (and among other retail revolving credit products), firms continue to encourage customers to focus on low monthly payments and minimise, or fail to communicate in a way that can be understood to customers, the total cost of borrowing. The Consumer Duty (and this good practice

⁴ Financial Conduct Authority (2018) *CP18/35: Rent-to-own and alternatives to high-cost credit – feedback on CP18/12 and consultation on a price cap*

example) clearly has implications for such practices; however, the guidance is unclear as to what these may be.

Q12: Do you have any comments on our proposed requirements under the consumer support outcome and the related draft rules and non-Handbook guidance?

This outcome is particularly relevant to support for consumer credit customers in financial difficulty, but there is little elaboration of its potential application in that context. We note the FCA's ongoing work on borrowers in financial difficulty and hope that workstream is an opportunity to bring together the aims of the Consumer Duty with outstanding challenges in early intervention and support for those struggling to keep up with credit repayments.

This example speaks to issues linked to aftersales and product lifetime support for consumers where the non-handbook guidance is comparatively under-developed. Given the importance of these issues to customer outcomes, particularly among those who have characteristic of vulnerability, this seems to be a critical area of focus for the Consumer Duty and one to which the non-handbook guidance does not yet sufficiently address.

Q13: Do you think the draft rules and related non-Handbook guidance do enough to ensure firms consider the diverse needs of consumers?

Q14: Do you have views on the desirability of the further potential changes outlined in paragraph 11.19?

With regard to the proposals in paragraph 11.19, more should be done to articulate the significance of equalities obligations and the important insights arising into the diverse needs of consumers from this perspective. There is some recognition of diverse needs in the draft rules (for example in 'Application and purpose') but these do not appear to be linked to protected characteristics. The embedded concept of vulnerability is useful in foregrounding issues of diversity, but not all equalities responsibilities should be considered or can be met through the prism of vulnerability.

We noted in our response to the FCA's final consultation on guidance for firms on the fair treatment of vulnerable customers that there is more work to do to elaborate on how protected characteristics interact with, and may compound, vulnerability in the context of financial services. For example, customers in these groups may be less open about their problems with advisers if they have faced discrimination in the past, which may be detrimental to those with low capability or resilience. The finalised guidance makes limited reference to diversity and equalities duties, and does so only in the context of age and disabilities (except to recap equalities duties in the appendix).

We welcome the FCA's memorandum of understanding with the Equality and Human Rights Commission. We would now like to see further work to improve understanding as to how protected characteristics interact with vulnerability to provide firms with the tools and insight needed to apply the Consumer Duty (and the wider rulebook) effectively to meet the needs of diverse consumers.

There appears to be some inconsistency in the rules and non-handbook and the FCA's *Guidance for firms on the fair treatment of vulnerable customers*. The vulnerability guidance states that 'All customers are at risk of becoming vulnerable' (2.5). This insight into the dynamic nature of

vulnerability does not carry fully into the Consumer Duty, where consumers are framed as having, or not having, characteristics of vulnerability. Vulnerability is a relational concept: the Consumer Duty approach should demand that firms consider situations in which consumers are vulnerable, for example following a change of circumstances (such as the emergence of illness or disability, or the loss of employment or income), and apply those situations to their products and services. The draft rules seem to insufficiently challenge firms to scrutinise their approach against the social model of vulnerability at the heart of the FCA's existing vulnerability guidance.

It is important firms take account of the likelihood that their customers will experience changes of circumstances, and that their products may well affect those changes of circumstances, in ways that create risks of vulnerability. This is particularly relevant to the credit market, where products can both compound existing vulnerabilities through adverse affects on health and themselves be a cause of vulnerability by creating financial difficulty.

We welcome the clear message in the rules that firms should not design products in ways that adversely affect customers with characteristics of vulnerability (2A.3.4 (5)(ii)). However, as drafted, the rules and non-handbook guidance do not do enough to reinforce that meeting the needs of vulnerable customers means understanding potential vulnerabilities and considering these risks in the design of products, services and communications, and the delivery of support.

We welcome the close integration of the Consumer Duty and the existing vulnerability guidance but would like to see the rules and non-handbook guidance more closely reflect the latter's framing of vulnerability. We would particularly welcome amendments to language in the rules and/or a tone-setting addition to the non-handbook guidance to reinforce that firms must consider potential vulnerability among their customers and target market.

Q15: Do you agree with our proposal not to attach a private right of action to any aspects of the Consumer Duty at this time?

StepChange argued in favour of introducing a private right of action linked to the Consumer Duty principle in our response to the initial consultation and we remain of this view. A rationale offered for this decision ('allowing the industry adequate time to embed the Consumer Duty, without the prospect of private action being brought') appears questionable since some deterrent effect is inevitably necessary to balance adequate time to embed the Duty with the need for progress in addressing the problems that have given rise to the necessity for the Duty. We also note there are other options open the FCA such as staggering the introduction of a PROA. We have some concern that this decision will send mixed messages from the FCA about its expectations for implementation. Without a PROA, options for consumers to hold firms accountable are diminished, compounding an imbalance between industry and consumers when problems of culture and conduct arise. We have elsewhere in this response set out the steps we would like the FCA to take to achieve effective implementation.

We are also concerned that this decision means that it would not be possible for the FCA to implement industry-wide consumer redress schemes under section 404 FSMA in relation to the Consumer Principle (or, in these circumstances, for the FSCS to pay compensation for breaches of

the Consumer Duty when firms fail). We would welcome clarification as to how the FCA will address these gaps.

Q16: Do you have any comments on our proposed implementation timetable?

As a free debt advice provider, StepChange witnesses the harm and detriment done to consumers through culture and conduct failures among regulated firms, particularly in areas of the credit market. We would therefore like to see the Consumer Duty lead to sustainable change to address these problems among firms that pose the highest risk to consumers as soon as possible.

Implementing the Consumer Duty will be a significant undertaking for StepChange at a time when the organisation is continuing to embed the Breathing Space scheme, preparing for the pending introduction of Statutory Debt Repayment Plans and adapting to a new Money and Pensions Service commissioning model in England. In StepChange's response to the initial Consumer Duty consultation, we proposed an implementation period of 18-24 months. Implementing the Duty in the proposed nine-month period will therefore be challenging. The time and resource costs of implementation will involve trade-offs with other priorities that also have benefits to advice clients.

StepChange will need to manage the implementation process carefully to meet the FCA's expectations, make the most of the opportunity the Duty presents and continue to manage the organisation's resources in the best interests of clients. With this in mind, we need to perform further analysis to determine the scale of change that will be required to be compliant with the Duty.

Should the FCA confirm its proposed timetable, support and engagement for the debt advice sector will be essential to manage the transition to the benefit of consumers. We would particularly welcome:

- Further sector guidance on how expectations will have moved forward from those set by the TCF principle and outcomes.
- An understanding of the types of questions FCA supervisors may ask of regulated firms from April 2023.
- Clarity as to what steps and actions the FCA expects firms to have taken in the implementation period, and what steps and actions will be considered (as the FCA notes in the consultation document) part of the iterative process of implementing the Duty beyond that date.

Q17: Do you have any comments on our proposed approach to monitoring the Consumer Duty and the related draft rules and non-Handbook guidance?

We strongly agree with the FCA's aspiration that the Consumer Duty reduces the extent to which consumers suffer harm in the first place, with firms doing more to consider consumer needs and to take action to guard against problems, and, as a result, less need for the FCA to intervene. Examples in which firms have not met the FCA's expectations in the past show that monitoring is central to ensuring the Consumer Duty meets that aspiration.

At present, we are encouraged by the FCA's commitment to embed the Duty through a new approach to authorisation, supervision and enforcement. However, the general and complex nature

of the Duty and the prospect of fewer market reviews leads to a concern that problems the Duty is designed to address could persist with a lower likelihood of ad hoc intervention by the FCA.

The consultation document raises the possibility of periodic publications and guidance from the FCA (1.29). As we have highlighted, we would like to see the FCA:

- Prepare sector statements setting out the FCA's view of key areas of risk to consumers, supported by a sector by sector programme of engagement and guidance to set a clear direction of travel and support implementation among firms.
- A clear timetable for the FCA to review, report on and evaluate implementation of the Duty, including consumer outcomes.

We would also welcome a response as part of the Consumer Duty to the Woolard Review recommendation that the FCA articulate clear outcomes for the credit market and 'set out clearly what the market should be achieving at each stage of the consumer journey and lifecycle of a product'.⁵

As part of this, the FCA should consider developing credit-specific metrics along the lines of the FCA-mandated general insurance value measures. The draft rules require firms to monitor specific outcomes such as whether products meet the needs of customers, whether products provide fair value and whether customers receive the support they need (2A.8.6R). We would like the FCA to consider whether this requirement can be usefully supported by agreed metrics and periodic public reporting by the FCA. We are not proposing a single set of FCA-mandated metrics to monitor the Duty: we agree firms must also do so using their own information. However, we note the example of the general insurance value measures and believe that similar types of measures can usefully be developed for consumer credit firms to provide insight into customer outcomes.

Q18: Do you have any comments on our proposal to amend the individual conduct rules in COCON and the related draft rule and non-Handbook guidance?

We agree with the FCA's proposals and have no further comment at this time.

Q19: Do you have any comments on our cost benefit analysis?

We have no comment at this time.

Q20: Do you have any other comments on the draft non-Handbook guidance?

As we have noted elsewhere in this response, we believe more detailed sector-specific guidance is needed to support the Consumer Duty. The FCA raises the possibility of 'more regular updates on what we are seeing and our views of it to provide further clarity to firms on our expectations' (1.29). We strongly support this proposal, which would be a means of providing additional clarity in a timely manner.

⁵ Financial Conduct Authority (2021) *The Woolard Review - A review of change and innovation in the unsecured credit market*, p. 11

The FCA notes that its aim in providing the present draft guidance is to ‘make it easier for consumers to know what they should expect and for firms to understand what we are looking for and to apply the approach to their own business models’ (1.27).

From a consumer perspective, the FCA has articulated in guidance for regulated firms some things that consumers should expect to be different as a result of the Duty; for example, communications that are clearer and more understandable, and that firms will use consumer insights to increasingly tailor products and services to meet consumer needs. However, what the FCA has done so far has not indicated in an appropriate format for consumers themselves what they should expect to be different as a result of the Duty, and how they will know this has happened.

For firms, many areas of the Consumer Duty require elaboration in order to be interpreted and applied in the context of specific markets and products. Obligations articulated at different levels of the Duty may come into conflict (or appear to do so). For example, it is not necessarily obvious what ‘the reasonable expectations of customers’ means in the context of consumer behavioural bias and vulnerability.

While recognising that the Consumer Duty is general in nature and it will not be possible or desirable to harmonise every aspect of its application, there is scope to address such questions without the risk of excessive prescription. Insufficient guidance and support risks an excessively long period of adjustment in which benefits to consumers are diluted by low standards of compliance and inconsistency among firms and, as we have noted, the need for continued intervention from the FCA.

Q21: Can you suggest any other examples you consider would be useful to include in the draft non-Handbook guidance?

We would like to see the non-handbook guidance more directly address financial difficulty. This is central to protecting consumers against harm, but the application of the Duty to situations in which financial difficulty is germane is not developed in the guidance.

StepChange recently published the report *Falling behind to keep up*, which set out how a significant group of vulnerable consumers struggling to keep up with essentials experience harm linked to credit products. For some subprime products we found that as many as one third of customers report being unable to keep up with credit repayments without experiencing difficulties such as using credit to repay credit, hardship or falling behind on bills. Such customers are overwhelmingly likely to report that credit is having a negative impact on their health, relationships or work.

The Consumer Duty speaks directly to problems of conduct, product design and service:

- Firms market and offer credit products to financially vulnerable consumers for which those products are inappropriate
- Creditworthiness and affordability checks are insufficiently robust to prevent unaffordable lending to financially vulnerable consumers
- Products such as subprime and ‘credit builder’ cards are poorly designed for customers experiencing financial difficulty, leading to unaffordable balances and expensive long-term term debt

- Firms do not effectively identify and successfully engage customers in financial difficulty, leading to late-stage intervention once difficulties have escalated

Applying the Consumer Principle and supporting rules to these problems should lead to more careful and responsible conduct, design and service choices that reduce detriment in the credit market.

Put simply, if the Consumer Duty is successful, fewer financially vulnerable consumers should be left in a worse position having used regulated credit products than if they had not done so.

In this response, we have called for sector statements setting out the FCA's view of key issues in specific regulated markets. We would welcome both further development of the non-handbook guidance to relate the Consumer Duty to financial difficulty among those using regulated products, and sector-specific guidance for consumer credit highlighting areas in which consumers are particularly vulnerable to poor outcomes.