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By email: ReviewOfRequirementsCFI@fca.org.uk

Dear Sir/Madam,

Financial Services Consumer Panel response to CFI: Review of FCA requirements following the introduction of the Consumer Duty

The consumer voice is absolutely critical to this review as it is financial services consumers who ultimately stand to benefit from, or be harmed by, any changes to the FCA Handbook.

The Panel therefore welcomes the opportunity to provide input at this early stage. We look forward to continued engagement with the FCA throughout this process, and at key project milestones. In particular, we would appreciate the opportunity to review, and respond to, the FCA's proposed changes to the Handbook before decisions are finalised, given the potential significance for consumers. Further, and given the importance of the consumer voice on this topic, we consider the FCA should establish, at the outset, a clear and enduring strategy for engaging with consumer stakeholders throughout this project.

Given that the questions in the call for input are largely directed at firms, rather than responding to each of the questions posed, our response focuses on a number of overarching and high-level comments regarding the review of the FCA Handbook (the Review).

1. The Review should, at a minimum, maintain the current levels of consumer protection

When undertaking the Review, the FCA should remain focused on its primary statutory objective to protect consumers. It is critical that any amendments, deletions or consolidation of Handbook rules do not lead to unintended consequences nor dilute or reduce consumer protection.

The Panel recommends the FCA should adopt a high threshold for making any substantive changes (other than for simple reorganisation of content) to the Handbook. Further, we consider the FCA should at the outset develop a clear rationale/approach to inform its future decisions regarding whether or not to make any amendments or deletions. The Panel notes that the subheadings in this response (in bold) could form a starting point for such a strategy.

The Panel considers there is a strong case for the FCA to adopt the default position to retain existing principles and rules and only propose changes where there is an obvious and objectively justifiable reason (which is clearly in the consumer interest) to do so.

Where the FCA does propose changes, the Panel would expect that:

- The FCA is clear about the purpose/objective behind the change so there is no dilution in consumer protection. This is because, for example, losing specific requirements will likely be equated by some with a lack of need for, or importance of, those requirements
- Any consolidation of similar rules (such as the possible DISP example on p12 of the CFI) results in a 'levelling up' with the consolidated rules based on the highest common denominator from a consumer protection perspective.
- The FCA is clear in its messaging that it expects clarity and understanding by firms of the principles and rules to facilitate swifter and more effective enforcement when it is needed.
- There is user / stakeholder testing of any changes to ensure that the interpretation and understanding of the pre- and post-change is as intended.
- The requirement that firms include mandatory language regarding the Financial Ombudsman Service in their final response letters to consumer complaints, must be retained. Similarly, mandatory requirements regarding disclosures concerning the Financial Services Compensation Scheme must be retained.
- Any new rules issued by the FCA in the ordinary course of its regulatory duties (such as the anticipated rules relating to capital redress requirements) as well as those rules recently consulted upon and implemented should be shielded from any changes at this time.

Further, the Panel believes that, as part of the Review, the FCA should consider extending the current scope of a consumer's private right of action under the Handbook. At an absolute minimum, and in order to help protect consumers from the most egregious harms, the current private right of action should be closely safeguarded.

2. The Review should enhance consumer outcomes

The Panel considers the driving force for any proposed changes resulting from the Review should be the delivery of better consumer outcomes, which should be direct and measurable.

This includes the delivery of better consumer outcomes at all stages of a consumer's engagement with financial services markets, including their ability to compare products and services, make informed decisions, switch products or providers and (where necessary) pursue redress. Good consumer outcomes also take the form of higher consumer confidence and verifiable value for money.

Further, the Panel notes that simplifying Handbook rules should make it easier for firms to apply them, which should in turn reduce the regulatory burden and associated cost of Handbook compliance. As such, the Panel expects such benefits to be clearly identified in the FCA's specific cost benefit analyses, and passed on to consumers.

3. The FCA must be extremely alert to the risk of unintended consumer consequences

The Panel urges the FCA to be extremely vigilant to, and take extreme care to guard against, the risk of unintended consequences. Such risks could arise in a variety of ways, for example by:

- Failing to consider the perspective of those stakeholders that do not generally have a voice in regulatory change; Handbook users can and do include consumers and small firms. Their views may vary considerably from the regulators, larger firms, industry groups, legal and consulting firms that generally provide input into changes such as this.
- Removing prescriptive information requirements, or product/service design requirements. While this may facilitate innovation, such a move is likely to inhibit a consumer's ability to shop around.
- Removing or amending rules, without being clear about the purpose behind the change, may make consumer claims to the FOS or the FSCS more difficult to pursue. Similarly, a change may imply that the current rules should be interpreted in a particular way, which may also hinder consumer claims. This impact may be more acute for redress claims in progress at the time of the transition to a new handbook.
- Simplification or streamlining of the Handbook. The elimination of existing text, or the introduction of new text, may create legal

uncertainty, posing risks to interpretation and understanding, effective regulatory enforcement and individual consumer redress.

Further, given the size and complexity of the Handbook we recognise that the Review will take time. During this period the FCA should take the necessary steps to ensure they do not create any loopholes or ambiguities in the existing rules that might be exploited to the detriment of consumers. For example, by indicating that certain rules do not need to be followed, or that certain protections are not currently in place.

The FCA must also ensure that other FCA projects, which may be developing policies which rely upon current rules are fully aware of any proposed changes and can adapt their new policies appropriately.

4. The FCA Handbook needs both principles and prescriptive rules

In the Panel's view, effective consumer protection – and therefore the Handbook - requires both principles and rules, as each have their own strengths in the financial eco-system. Principles and prescriptive rules should complement and support each other, for example with rules providing a minimum standard and principles providing the context of high ethical standards of behaviour as well as room for innovation and flexibility for the future.

The Panel notes that the principles associated with the accountability / Senior Managers and Certification Regime, as well as the addition of the Code of Conduct, led to some change in the culture and conduct of regulated firms and individuals, but there is still more work to be done in this area to lead to improved outcomes for consumers. The Panel has been very supportive of the FCA's work on the Consumer Duty and believe that it provides a valuable overarching framework for all rules applying to firms' conduct, setting high level expectations for good practice. The FCA must ensure that it is implemented in accordance with its intent and changes to the Handbook should enhance not diminish this. It is important to recognise that compliance with the letter of the law in the Handbook may not be enough; principles also support the enforcement of the broader spirit of the law: whatever changes are made to the Handbook, the Panel expects rigorous, robust and effective supervision and enforcement by the FCA.

However, prescriptive rules also have advantages. For example, they can be clearer to understand and easier to measure/enforce than principles. They can also promote standardisation and facilitate comparability and shopping around by consumers. Further, the Panel is aware that many consumer protection organisations, such as debt advice agencies and

ombudsmen, may rely on wording of specific rules to resolve individual consumer problems.

Principles and rules should both contribute to positive consumer outcomes, and should not be viewed simply as process to be followed or boxes to be ticked. The Handbook should make this abundantly clear.

5. Any changes should improve ease of use, knowledge and understanding

The Handbook should set clear, consistent expectations of firms. This benefits all stakeholders, for example:

- It makes it easier for firms to (a) identify applicable rules; (b) understand how to implement them, and (c) achieve best practice in line with the Consumer Duty and other regulatory principles.
- It makes it easier for consumers to understand if they have suffered harm as a result of firms breaking the rules and therefore if they have a right to pursue redress and remediation;
- It facilitates efficient regulatory supervision by the FCA, as well as swift and effective enforcement where this is required.

In summary, the Handbook should make clear the behaviours that firms should adopt and actions that firms should deliver to meet the high standards that are expected by consumers and the FCA.

However, in the Panel's view, the organic evolution of the Handbook over time has led to new content being 'added on' to existing content, making it difficult to find relevant information, understand the FCA's current priorities, practically implement rules or deliver effective enforcement.

And whilst parts of the Handbook have evolved to be more accessible by non-experts, there are still areas that use jargon and reference to laws and regulations that are not clear and easily understood by the non-expert reader.

The Panel is therefore supportive of changes intended to facilitate ease of use, navigation and readability of the Handbook, particularly where there are no other substantive changes and careful consideration has been given to the risk of unintended consequences. We have provided some specific suggestions in this regard in Annex 1.

6. Strategy for consumer engagement; effective engagement with consumer stakeholders should take place at the outset and throughout the Review

Given that, ultimately, it is consumers that stand to benefit from, or be harmed by, any changes to the FCA Handbook, the Panel considers it imperative that consumer stakeholders are consulted at the beginning and regularly throughout the Review; and that the FCA facilitates effective two-way engagement with consumer organisations, which are often resource-constrained.

As noted above, the Panel considers the FCA should establish at the outset a clear and enduring strategy for engaging with consumer stakeholders throughout this project; the Panel expects the FCA to be transparent throughout as to the nature and extent of views and input it receives from consumer stakeholders and how it incorporates the consumer voice into its approach. As a minimum, the Panel expects to see this reported in its consultation documents and feedback statements.

In particular, specific input from consumer representatives should be sought by the FCA where it is proposing material changes, or potentially material changes likely to affect consumer outcomes. This includes both where changes may have a direct impact on consumer outcomes, as well as where the impact maybe felt by consumers more indirectly (which may, in the round, be just as important).

Recognising the likely significance of those changes and the likely limited resources of the consumer stakeholders, it is critical the FCA builds in appropriate engagement methods and timescales for such consultation.

More generally, the Panel urges the FCA to ensure that it engages proactively with a diverse range of consumer stakeholders at key stages of this project, to ensure that the needs, experiences and concerns of all consumers – including those in vulnerable circumstances - are taken into account.

The Panel looks forward to ongoing collaboration with the FCA throughout the Review and would welcome the opportunity to respond to industry proposals – to ensure balance between firm and consumer interests.

Yours sincerely,

Helen Charlton

Chair, Financial Services Consumer Panel

Annex 1

Some initial Panel suggestions to help improve ease of use, knowledge and understanding of the Handbook:

Structure and layout

Objective: to make it quicker and easier to find relevant content, helping firms to apply the rules and consumers to understand their rights

Restructure the handbook to:

- Clarify, up front, the chapters that any regulated firm or individual must know.
- Make it easier to find related content – e.g. group certain topics together and remove the need to jump between separate sections to get a full understanding of a single issue.
- Reorganise content to prioritise and explain statutory objectives (especially content related to consumer protection). For example, because of the order of numbering, Principle 5, Market conduct, currently appears to have higher priority than Principle 12, which is the Consumer Duty.
- Move all sector specific chapters to one (later) section, with links to objectives and principles (and any other priority, e.g., code of conduct)
- Make better use of links between sections to highlight related content

Provide context

Objective: to encourage compliance and the delivery of good consumer outcomes by explaining why the rules are important and how they link with principles

- Explain the "why" reasons behind content in a chapter, by either referencing the statutory objectives, the principles, and / or the key role that consumers play. In other words, making sure the spirit of the rules is clear (while also making it clear that this spirit also needs to be adhered to)
- Provide or give links to case studies, examples of adherence etc.

Simplify and sense check wording

Objective: to enhance understanding of the rules

- Revise the glossary to include definitions that are based on non-expert language and are easy to understand; using footnotes only to reference associated law or regulations. For example, the glossary definition of "consumer" includes 90 lines of text, references multiple directives and acts, and includes links to those and to other relevant glossary terms. This is nearly impossible for a non-expert to navigate.
- Understanding of key terms should be tested with relevant stakeholders, e.g. consumer groups and small firms.

- Eliminate overly complicated jargon and terminology and / or make sure that relevant terminology in common use is referred to as part of the definition. For example, what is commonly known as “equity release” falls within the regulatory definition of a “home reversion plan”.
- Make it clear that the term "consumer" applies to individuals and SMEs, and that SMEs includes charities, associations, and any organisation that might want or need financial services