

17 September 2026

Consumer Duty Policy Team
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

Submitted by e-mail to: cp26-23@fca.org.uk

Dear Policy team,

CFA UK letter in response to FCA's CP26/23: Consumer Duty – Scope and Proportionality

We are pleased to respond to this consultation on an important component of the UK regulatory framework for financial services. Answers to the questions are included in Appendix 1, with a few overarching points below, including areas that require further clarity. In addition, we have outlined an alternative approach for your consideration.

PRINCIPLE BASED REGULATION VS. REGULATORY AMBIGUITY

From the outset of the new Consumer Duty, we supported principle-based regulation with a greater focus on expectation setting, clear accountability and good practice signposting rather than prescriptive rules and processes. However, this **has to be balanced with sufficient guidance to avoid regulatory ambiguity**. In particular, the perimeter and scope of regulation have to be clear, with only a minority of cases potentially requiring judgement and interpretation.

Accordingly, we commend the initiative to reduce perimeter and application ambiguity, which **your proposals successfully do on many fronts**, such as:

- Retail business and product clarity;
- Wholesale to wholesale clarity;
- Territorial perimeter clarity;
- Responsibility limited to a firm's own activities; and
- Specific exclusions

We would also like to make two additional points in this context:

- Material and frequent changes to regulation can result in additional resource challenges for firms. Regulators should prioritise certainty and only introduce small changes if the net benefit outweighs the implementation burden for firms.
- Dilution of scope and adoption of proportionality will not be immune to some degree of consumer impact. The risk of compromising consumer interest should be

monitored by the regulator to ensure increased clarity and proportionality is achieved without detriment to retail consumer outcomes.

AREAS THAT REQUIRE FURTHER CLARITY

However, we believe that **the most important area of confusion – the responsibility for Consumer Duty where multiple firms are involved in a value chain – is not adequately resolved** by the proposals.

As highlighted in our response, the application of the Duty to a firm not directly involved with consumers, either through responsibility for the product, distribution or pre- and post-sale service, remains dependent on judgement and the application of concepts such as substantive control, and the change from manufacturer and co-manufacturer to primary and secondary manufacturer which we do not consider to be a significant improvement. In our view, the removal of the concept of material influence also replaces one grey area with another.

The respective roles and responsibilities of a manufacturer vs a distributor should also be more distinctly clarified. For example, that the manufacturer is largely responsible for Duty compliance in product design and target market definition, whereas the distributor has greater responsibility for consumer treatment, outcomes monitoring, and consumer understanding.

The examples presented in chapter 3 do little to help resolve the ambiguity.

We encourage the FCA to provide more definitive clarity in these areas.

AN ALTERNATIVE APPROACH FOR MULTIPLE FIRM MODELS

We outline below a **more simplified alternative approach** that the FCA could consider for its final rules. We would be happy to elaborate on this approach if of interest.

- The Duty would apply only to firms that are defined as “consumer facing”. All other firms in the value chain or distribution chain that support consumer facing firms through services, outsourcing, advice, design, or manufacturing input but do not make decisions in relation to consumer impact, would be outside the scope of the Duty for that activity. This approach would provide a clean perimeter and single point responsibility, without materially diluting investor protection.
- A consumer facing firm would be defined as one that either a) manufactures a product as the responsible primary party, which is available to retail consumers via any channel, b) provides a service pre- or post sale to retail consumers, c) otherwise engages directly with retail consumers, e.g. via communications and marketing, or d) has received delegated decision making authority or discretion in areas that have a consumer impact from another consumer facing firm.

- All non-consumer facing firms would naturally remain subject to the broader regulatory framework such as PROD and SYSC. Such firms will be aware of the Duty obligations of their consumer facing client firm and will likely support the latter's compliance by adopting processes and reporting that are appropriate for the service or activity provided to the consumer facing firm. It can be left to the consumer facing firm's judgement as to how it may or may not require other firms to support its compliance with the Duty as it is the party ultimately responsible.
- Further, within consumer facing distribution chains, it should be recognised that for some products the manufacturer has little control over distribution and in those instances the duty should correctly reflect the role of each firm, to remove ambiguity, establish single clear responsibility and reduce duplication.
- The above approach is unlikely to impose new requirements, as consumer facing firms already observe the Duty, and look to supporting firms to provide services appropriate to the needs of the end (retail) client. The simplification benefit comes from removal of ambiguity and duplicate regulatory compliance by supporting firms, and clarification of roles and responsibilities across the value chain.

We hope our comments are useful and would be grateful for the opportunity to meet and discuss our feedback.

Yours sincerely,

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With thanks for their contributions to our volunteers: Nick Evans-Rakowski, CFA and the oversight of CFA UK's Ethics & Professionalism Steering Committee.

APPENDIX 1

RESPONSES TO QUESTIONS

Chapter 2

Question 1: How could we avoid additional costs for firms where sectoral rules have a different territorial scope to the Duty in the future?

The **clarification of UK centric scope of the Duty is a step in the right direction**. Aligning the scope of sectoral rules, in particular COBS, should remain on the agenda for the FCA to review.

Meanwhile, we do not expect material additional cost for firms as the sectoral rules already apply and are more precise compared to the principles of the Duty.

Question 2: Do you agree with our proposal to limit the Duty's territorial scope in relation to the usual residence of retail customers? Do you have any comments on our approach to defining the usual residence of retail customers?

We have not conducted an analysis of overlap or contradiction with various existing regimes for different purposes that may use different definitions, such as other regulation, tax, residency etc., or the regime in other countries in relation to the same consumer where the Duty would be disappplied.

We recognise that full alignment may be impractical and therefore feel that the proposal to use usual residence as the yardstick to define a UK consumer for the Duty is reasonable. As mentioned in our response to Q1, as the Duty is principle based the impact of not having perfect alignment could be limited.

However, for consistency of financial services regulation by the FCA, **this principle should at the least be applied uniformly by the FCA in its regulatory framework**, or modified to ensure consistency.

Question 3: Are there other requirements we should consider to avoid the risk that products or services intended only for sale outside the UK, and so not subject to the Duty, are sold to customers usually resident in the UK?

The **proposals to mitigate this risk appear to be too flexible**. For example, they rely on a firm finding out post facto that it has distributed a non-UK product to a UK consumer and as a consequence reviewing its distribution strategy. The regulatory obligation to comply with the territorial scope of the Duty should be made clear upfront and firms expected to evidence upfront compliance.

Question 4: Do you agree with our proposals to continue to apply the Duty to some business where customers are usually resident outside of the UK?

Question 5: Are there any other consumers, products or services where the Duty should still apply outside the UK?

Question 6: Do you have any comments on our proposed changes to the ‘Application outside the UK’ section of Chapter 2 of the non-Handbook guidance?

The proposals appear to be reasonable.

One aspect that may require further clarification as to **regulatory expectation with regard to consumers that change their usual residence**.

For example:

- A consumer was sold a product when resident outside the UK but moves to being usually resident in the UK while still holding the product
- A consumer was sold a product when resident in the UK but moves to not being usually resident in the UK

Chapter 3

Question 7: Do you have any comments on the proposed application provisions and whether they will help with understanding the scope of the Duty?

Question 8: Do you have any comments on the proposed approach to defining ‘retail market business’?

Question 9: Do you have any comments on our proposed changes to the ‘product’ definition?

The provisions relating to clarity on retail market business, product definition, wholesale to wholesale business models, and specific Duty exclusions are helpful and appear to achieve the objective of removing perimeter and scope ambiguity.

However, the key area of confusion has been in relation to the role of other parties in a distribution chain, and we feel that **the proposals do not sufficiently remove the need for judgement** and remain open to interpretation.

Question 10: Do you agree with the changes we are proposing to clarify the scope and obligations for firms in a distribution chain?

Question 11: Do you agree with our proposed approach to clarifying application where a firm is subject to the Duty but doesn’t have a role in relation to one or more of the four Duty outcomes?

Question 12: Do you agree with our proposals for updating our rules on material influence?

Question 13: Do you have any comments on our proposed approach to classifying which firms are manufacturers for the purposes of the Duty?

We feel that the clarity required is still missing in relation to other firms in the distribution chain and complex arrangements, specifically in respect of funds.

Simply introducing a new definition of secondary manufacturer and replacing material influence with concepts such as remote / limited role, or limited impact or no clear connection is **not particularly useful in removing ambiguity**.

The nature of the funds industry and some products (such as ETFs) mean that the manufacturer may have limited influence or control over the distribution beyond confirming the target market and supplying associated information and material. We recommend that the FCA clarifies the expectations in such circumstances – for example by recognising the final distributor has greater responsibility than may be the case for other products.

The use of the term outsourcing as distinct from secondary manufacturing could also be a source of confusion as it is often hard to differentiate between the two roles.

To underscore these points, we refer to your illustrations that aim to provide clarity:

- **Page 21 example (firms manufacturing an MPS)**

When firm B's product is used without firm B's input, it is stated that firm B is outside the Duty but if it provides "input" it is within scope: this is confusing because if the fund produced by firm B was in any case designed for retail consumers, regardless of distribution avenue the Duty should apply to firm B in so far as product manufacture is concerned. The differentiating concept of input is also too vague in this context.

- **Page 23 example (firms contributing to a structured product)**

Firm B is deemed within scope if it "contributes to the design and operation" even though substantive control is with firm A and the provision of the option to be used within the structured product is sourced from wholesale-to-wholesale arrangements (outside the Duty scope). We find this determination of application of the Duty to firm B to be too judgemental.

- **Page 25 example (payments)**

The example reverts to determining the extent of role and influence and does not provide incremental clarity to the current understanding.

Question 14: Should we consider making similar changes to the rules in DISC and PROD?

We do not view this as a priority action as these rules apply to a wider range of firms including those outside the scope of the Duty.

We however **suggest a review in due course** and industry feedback on further scope for efficiencies and de-duplication.

Question 15: Do you have any comments on how the new approach to classifying manufacturers should apply to existing products and services?

We agree that the process of assessing the impact of changes and implementing them, not just within firms but across secondary manufacturers and distribution chains will take time. On the other hand, having two regimes running in parallel will also not be efficient or reduce confusion.

We accordingly suggest:

- A 1 year adoption period from finalisation of the approach to the introduction of the changes
- A further 1 year for existing arrangements to comply with or align with the changes

We take the opportunity to note that material changes to the regulatory framework, regardless of their aim to reduce complexity and cost, can result in additional change management and resource challenges for firms. Regulators should therefore prioritise regulatory certainty and be convinced of the net benefit of a change, for example by not introducing a small simplification if it incurs a disproportionate implementation burden for firms.

Question 16: Do you have any comments about our proposed approach under the Duty to outsourcing arrangements in relation to the manufacture of a product or service?

The proposals with regard to outsourcing provide little additional clarity as it remains based on an assessment of respective responsibilities and case by case application. A clear distinction between outsourcing and secondary manufacturing is also difficult to make in all cases in practice.

We suggest considering combining secondary manufacturers and outsourcing under the same category for determination of the scope of the Duty as the yardsticks proposed such as substantive control as well as the benefit of documenting respective roles and responsibilities are common features.

Question 17: Do you agree with our proposed exclusions for activities that fall out of scope of the Duty? Should we make any changes to them, either to broaden them or to limit their availability for certain activities (and, if so, why)?

Question 18: Are there any other activities where we should consider exclusions on a similar basis?

Question 19: Do you have any comments on our proposed changes to Chapters 2 and 6 of the non-Handbook guidance?

The approach of clarifying specific exclusions where possible is very helpful as these will help address large sections of ambiguity across the industry.

The current list of exclusions appears to be logical, but the key point we would like to make is that the list not being exhaustive upfront is less of a concern as the FCA should view it as open to additions and review on an ongoing basis.

One specific area that has arisen in the sector is the application of the Duty to wholesale advisers, which would benefit from specific FCA in or out of scope clarity, as it sits within the large and growing pensions sector:

- Firm A is an adviser to a DC Master Trust B. The regulator for B is the TPR, but firm A is FCA regulated. If firm A has no discretion or decision-making authority and is an adviser to a wholesale client B, should it fall within the scope of the Duty due to the end consumers of Trust B being retail consumers? Could it be simpler to exclude all wholesale-wholesale advisers who have no decision-making role?

Chapter 4

Question 20: Do you agree with our proposals to clarify firms' roles and responsibilities across the distribution chain? If not, please explain why, and any other options we should consider.

We support the clarity that a firm is responsible for compliance of only its own activities and the concept of reasonable reliance on other firms.

With regard to broader clarity across the distribution chain, please also see our earlier comments, the need to reflect the nature of the products, and the alternative approach summarised in the cover letter.

Question 21: Do you agree with our proposals to better reflect how firms support for consumers in vulnerable circumstances will differ depending on their role in distribution chains? If not, please explain why, and any other options we should consider.

We agree with the proposals as they are proportionate to the role of a firm and its proximity and impact on vulnerable consumers. The examples that illustrate information or concern sharing and escalation are useful and provide practical perspectives.

We would encourage the FCA to **consider further reviewing support for vulnerable customers** and in particular whether firms are focusing efforts on supporting the most vulnerable to ensure resources are appropriately targeted.

Question 22: Do you agree with our proposals to better reflect a reasonable approach to information gathering and sharing to monitor outcomes under the Duty? If not, please explain why, and any other options we should consider.
Question 23: Do you agree with our proposals to clarify our expectation that board or governing body reporting should be proportionate to the firm's circumstances, including its actual role in influencing retail customer outcomes? If not, please explain why, and any other options we should consider.

We agree with the proposals, which are proportionate to the role of a firm and its access to data, and are focussed on appropriate targeted information gathering to assess consumer impact, rather than volume-oriented data collection.

Sharing and escalation of meaningful decision useful information, especially if concerns arise, should be doubly emphasised as a regulatory expectation.

Chapter 5

Question 24: Are there specific areas where further clarification would help firms avoid unnecessary duplication in practice? If so, what form of additional guidance can we give firms to improve the clarity of our expectations?

Question 25: Do you consider that there are specific areas or activities where you consider we should disapply the PROD 3 product governance rules and rely instead on the standards set by the Duty? If so, what are these areas, and what would be the impact on firms' processes, costs and customer outcomes?

Question 26: Do our proposed changes to the non-Handbook guidance provide sufficient clarity for firms? If not, what further clarification is needed to help firms reduce unnecessary duplication or uncertainty in practice?

We believe that the guidance provides sufficient clarity and welcome the continued ability to rely upon similar approaches in PROD.

Where there are overlaps in the requirements, outcome monitoring, data gathering etc., **it should be clearly stated that duplicative processes and evidence are not required** by the FCA for compliance under both PROD and the Duty. This will allow firms discretion in their operating and governance models while also ensuring compliance.

Chapter 6

Question 27: Do you agree with our proposed approach to making the technical clarifications in this chapter?

Question 28: Do you agree with our proposal to clarify that the exclusion in relation to instruments where the minimum investment is £50,000 applies per investment and per end investor?

Question 29: Are there any other minor or technical changes that would help improve the clarity or operation of the Duty?

We do not have specific comments in relation to this chapter and support the broad thrust of the proposals.

APPENDIX II

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