



connecting the future

Review of FCA requirements following the
introduction of the Consumer Duty

Call for input

Financial Conduct Authority
July 2024

Response from
The Payments Association
October 2024

Introduction

The Payments Association welcomes the opportunity to contribute to the FCA Call for Input “*Review of FCA requirements following the introduction of the Consumer Duty*”.

The community’s response contained in this paper reflects views expressed by our members and industry experts recommended by them who have been interviewed. As The Payment Association’s membership includes a wide range of companies from across the payments value chain, and diverse viewpoints across all job roles, this response cannot and does not claim to fully represent the views of all members.

We are grateful to the contributors to this response, which has been drafted by Riccardo Tordera, our Director of Policy & Government Relations and Robert Courtneidge, Advisor to the Board. We would also like to express our thanks to the FCA for their continuing openness in these discussions. We hope it advances our collective efforts to ensure that the UK’s payments industry continues to be progressive, world-leading, and secure, and effective at serving the needs of everyone who pays and gets paid.

Tony Craddock
Director General
The Payments Association

Members' "responses to the questions" set out in the consultation:

The section numbering below corresponds to the numbering of the 'questions for respondents' in this paper.

1. **Could any of our retail conduct rules or guidance be usefully simplified or removed by relying on requirements under the Consumer Duty? Please tell us:**
 - a. **which rules or guidance (e.g. Handbook chapters, or non-Handbook guidance) you consider cover similar ground to Duty requirements, or are otherwise overly detailed or prescriptive, or arguably redundant in light of other materials, and why**

Our members noted potential overlaps between existing rules and Consumer Duty requirements:

- The cross-cutting obligations under PRIN 2A.2. There was confusion over why both are needed when firms could focus directly on outcomes, simplifying compliance;
- The interaction between the Consumer Duty rules and other areas such as financial crime obligations set out in the Financial Crime Guide and Financial Crime Thematic Reviews guide, as this overlap can cause significant resource duplication and customer confusion; and
- Challenges with consumer and non-consumer customer portfolio overlap, where applying Consumer Duty to non-retail customers created unnecessary regulatory complexity, or treating these customer groups differently would lead to burdens on firms.

- b. your thinking on the likely benefits including, for example, any estimate on compliance cost savings**

Our members indicated that simplification could lead to significant compliance cost reductions:

- Providing the same evidence for multiple regulatory obligations is inefficient. For example, simplifying cross-cutting rules could reduce the volume of management information) required, which would cut costs;
- Smaller firms, in particular, reported that the current complexity adds resource intensity, as they must comply with overlapping regulations while managing limited staff. Simplifying detailed expectations could ease the burden on smaller firms; and
- The cost of compliance with Consumer Duty remains a significant factor, particularly for firms with mixed retail and non-retail customers. Simplifying these obligations could alleviate some of these costs.

- c. what the impact could be on consumers or consumer protection, or other relevant considerations**

Simplification could enhance efficiency and reduce costs, but the challenge lies in maintaining consumer protection through balanced regulation:

- A simplified regulatory framework could benefit consumers by increasing clarity on what they should expect from firms. Simpler rules would enable firms to focus more effectively on delivering good consumer outcomes rather than on procedural compliance; but
- Some concerns remain that overly simplified rules could lead to inconsistencies in consumer protection or leave too much open to interpretation. The key would be

striking a balance between high-level principles and enough detail to ensure consumer protection is not compromised.

2. Is there a lack of clarity on how requirements under the Duty and other FCA rules interact? Please tell us where this issue arises (...)

Our members felt there was a significant lack of clarity on how requirements under the Consumer Duty and other FCA rules interact, leading to confusion for many firms. In particular:

- **Overlap with other regulations:** for example, confusion around how the Consumer Duty interacts with financial crime obligations, with firms unsure about which obligation takes precedence in certain situations;
- **Complexity in mixed business portfolios:** members with mixed customer portfolios (retail and non-retail) reported extra compliance burdens and regulatory overlap, adding unnecessary complexity and cost when applying the Consumer Duty across all clients;
- **Regulatory overlap and redundancy:** some members felt that having to produce the same evidence for both the cross-cutting rules and outcomes under Consumer Duty would lead to inefficiency and confusion;
- **Interaction with consumer complaints:** members reported specific confusion concerning the process for handling customer complaints, particularly in cases of fraud, where firms were unsure whether to prioritise the Consumer Duty obligations or other complaint-handling regulations.

(...) and your views on how it could be addressed. For example, would guidance on the interaction be helpful?

Our members feel that it could be addressed in the following ways,

- **Guidance on interaction:** clearer guidance from the FCA would be beneficial. A more visual or simplified communication format, such as flowcharts or practical examples, could help firms better understand how different rules and obligations interact;
- **Streamlining rules:** some members advocated for a simplification of the rules by either focusing only on outcomes or providing clearer, more prescriptive guidelines to reduce ambiguity;
- **FCA engagement:** more proactive FCA guidance would be welcome with clear examples of how the Consumer Duty should be implemented alongside other regulations. But it is essential to ensure that any new clarifications are practical, easy to understand, and address the specific overlaps firms are experiencing.

3. Are there other areas in our rules or guidance, beyond those with an overlap with the Duty, where we should consider simplification or removal? Please tell us:

a. which rules or guidance (e.g. Handbook chapters, or non-Handbook guidance) we should review, and why

- We would ask you to simplify guidance related to cross-cutting rules and outcomes under Consumer Duty. Members suggested that instead of maintaining both cross-cutting rules and outcomes, simplifying the structure to focus solely on outcomes could reduce redundancy and complexity. This approach would allow firms to avoid duplicating evidence for compliance with both sets of regulations;
- Regulatory requirements for firms with mixed retail and non-retail portfolios. Firms operating in this space find it costly and burdensome to comply with regulations

designed primarily for retail clients. Simplifying these rules or excluding non-retail customers from the scope of certain obligations would be welcome;

- Financial crime obligations and how they overlap with the Consumer Duty. The complexity of adhering to both sets of rules simultaneously often results in unnecessary duplication of effort and additional unnecessary cost.

b. your thinking on the likely benefits including, for example, any estimate on compliance cost savings

- Reducing duplicative regulatory requirements could save time and resources. For instance, aligning the Consumer Duty's outcomes with cross-cutting rules would streamline evidence collection and reduce the volume of management information firms need to produce.
- Smaller firms, in particular, noted that regulatory overlap adds complexity and administrative costs, as they often lack the resources to efficiently handle multiple layers of compliance. Simplification could ease this burden and lead to better resource allocation.

c. what the impact could be on consumer protection, or other relevant considerations

- While simplification could reduce costs and increase operational efficiency for firms, there is a concern that this might weaken consumer protection. If rules are overly simplified or too high-level, firms may interpret them inconsistently, which could compromise consumer outcomes. Therefore, any efforts to streamline guidance must strike a balance between reducing complexity and ensuring robust consumer protection. Clear guidance from the FCA on how firms can still meet their obligations under a simplified framework would be essential to avoid unintended negative impacts on consumers.

4. Do you agree that work towards simplifying our retail conduct rules can help us meet all our objectives, including the secondary objective? Please explain why or why not.

Yes, our members agree that simplifying retail conduct rules can help meet the FCA's objectives, including the secondary objective.

However, while simplification is broadly beneficial, care should be taken to avoid reducing clarity or weakening consumer protections. The challenge is ensuring that simplification enhances rather than diminishes regulatory effectiveness.

Key reasons for agreement:

- **Efficiency for firms:** simplifying rules could reduce administrative burdens on firms, because overlapping rules, like those under cross-cutting regulations, complicate compliance and create inefficiency. By streamlining these rules, firms can better allocate resources, thus reducing compliance costs and increasing operational efficiency, and allocate more resources to satisfying consumer needs.
- **Improved consumer understanding:** simpler rules would help consumers better understand their rights and expectations. This not only aids consumer protection but also ensures that consumers engage more effectively with financial services. The focus on clarity and reducing redundancy can help consumers make more informed decisions and be less likely to become victims of scams.

- **Alignment with objectives:** simplifying rules helps firms focus more on delivering outcomes, which directly aligns with the FCA's primary goal of promoting good customer outcomes. Furthermore, this supports the secondary objective of promoting effective competition by reducing unnecessary regulatory burdens, making it easier for firms to operate competitively and invest in new and better products and services.

5. In which circumstances do you think it is appropriate to rely on:

a. high-level rules under the Consumer Duty

- **Flexibility and interpretation:** our members felt high-level rules were preferred in situations where firms need flexibility. This would allow firms to interpret them in a way that suits their specific business models and unique customer circumstances. This flexibility is especially useful for firms with diverse or specialised products and services, where detailed rules might become too restrictive or irrelevant;
- **Subjectivity and innovation:** a high-level approach helps in cases where subjective judgment is necessary. For instance, when assessing customer needs and outcomes, firms can use their discretion to ensure they are meeting the standards without being overly constrained by prescriptive rules;
- **Examples/use cases:** high-level rules should be complemented with practical examples or use cases to guide firms, especially when the interpretation of these rules can vary across firms.

b. more detailed rules

- **For larger firms or risky areas:** more detailed rules are beneficial for larger firms or in areas with greater risks, such as financial crime, where strict compliance is critical. Detailed rules provide clear guidelines and reduce ambiguity in compliance.
- **For consistency across the industry:** more detailed rules are preferred in situations where consistency across the industry is essential. This ensures that all firms adhere to the same standards, especially in customer-facing processes where uniformity can prevent harm or confusion.

c. a hybrid approach with both high-level and detailed rules?

- **Balancing flexibility and structure:** a hybrid approach is favoured for situations where firms need a balance between flexibility and clear guidelines. High-level rules could set the overarching principles, while more detailed rules provide the necessary structure to guide firms in implementation;
- **Tailored guidance for complex areas:** a hybrid approach is useful for addressing complex issues, where firms might need specific, detailed guidance in certain areas (e.g., customer protection, vulnerable customers) while relying on high-level principles for more general decision-making;
- **Cost and burden on firms:** a hybrid approach could help reduce the regulatory burden on smaller firms, as they could focus on adhering to high-level principles.

6. What do you see as the main costs and benefits of making changes to the FCA Handbook by simplifying or removing detailed expectations of firms?

Our members feel that the main costs and benefits are as follows:

Costs:

- **Ambiguity and inconsistency:** a key concern is that simplifying the Handbook by removing detailed expectations could lead to ambiguity, making it harder for firms to

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know whether they are fully compliant. This can lead to inconsistent interpretations of the rules across firms, creating challenges in ensuring consistent customer protection;

- **Increased risk of non-compliance:** without detailed guidance, firms might face a higher risk of non-compliance, as they may struggle to interpret high-level principles accurately increasing their risk of enforcement actions by the FCA;
- **Cost of transition and training:** shifting from detailed rules to a more principles-based approach would involve upfront costs, including training staff and revising internal processes to align with the new framework. Firms would need to re-educate their teams on how to apply high-level rules effectively, which could be costly and time-consuming in the short term; and
- **Cost of management information:** many firms spend significant time interpreting the Duty and building / adapting management information to demonstrate compliance; however, they are unsure if their efforts are meeting the mark and resource is being wasted
- **Varying impact on different firms:** while simplification would likely benefit smaller firms by reducing compliance costs, larger firms might find the lack of detailed rules challenging. Larger firms, which operate complex, multi-layered systems, might struggle with high-level principles that lack specificity, and they could incur higher costs to create internal systems that interpret and apply these principles consistently.

Benefits:

- **Flexibility and adaptability:** simplifying the FCA Handbook would allow firms more flexibility to interpret and apply rules based on their specific business models, customer needs, and market conditions. This adaptability is particularly important for smaller firms or those offering specialised products and services. Our members emphasised that high-level rules would enable them to tailor their approach, helping them serve their customers more effectively without being constrained by rigid expectations;
- **Reduced regulatory burden:** removing detailed, prescriptive rules could reduce the time and cost associated with compliance, particularly for smaller firms. Our members reported that managing compliance under the current framework is resource-intensive, involving significant investment in data collection, reporting, and proving adherence to specific guidelines. A simplified approach could reduce these operational costs;
- **Encouraging innovation:** simpler, more principle-based regulation can foster innovation, as firms would be less restricted by specific rules. Members mentioned that prescriptive rules can stifle innovation and make it harder for them to introduce new, customer-centric products and services. Simplification would provide them with the freedom to design and implement creative solutions that still align with consumer protection goals; and
- **Improved customer outcomes:** with fewer prescriptive rules, firms can focus more on ensuring good customer outcomes rather than just ticking regulatory boxes. The flexibility to use high-level principles would allow firms to better align their products and services with the real needs of their customers.

Simplifying or removing detailed expectations from the FCA Handbook offers firms greater flexibility, reduced compliance costs, and enhanced innovation capability. But it could introduce risks of ambiguity, inconsistent application, and increased compliance challenges, especially for larger firms. Therefore, the trade-off between flexibility and regulatory clarity must be carefully considered to ensure that firms can still achieve the desired consumer protection outcomes.

7. Where do you see high-level or detailed expectations having differing costs or benefits for different types or sizes of firm?

We believe that the costs and benefits of high-level or detailed expectations differ depending on the type and size of firms in several key ways:

High-level expectations

Benefits for smaller firms:

- **Flexibility and adaptability:** High-level expectations offer smaller firms greater flexibility to tailor their compliance efforts to their specific business models and resources. As smaller firms often lack the capacity to manage a highly detailed compliance framework, the flexibility of high-level rules allows them to focus on broader principles. These firms may have fewer resources to dedicate to compliance, and high-level rules allow them to allocate resources more efficiently by focusing on customer outcomes rather than ticking off every compliance box;
- **Lower immediate Costs:** Smaller firms can benefit from the reduced administrative burden e.g. producing management information that comes with high-level expectations. They may not need to invest as heavily in legal, compliance, and technical teams to ensure adherence to specific, detailed rules. This can lead to lower upfront compliance costs.

Costs for smaller firms:

- **Uncertainty and risk:** While high-level rules offer flexibility, smaller firms sometimes face challenges interpreting them correctly. Without clear guidance, these firms may inadvertently misinterpret the requirements, leading to potential compliance risks. This could result in the need for external consultancy support, which adds to the cost. Our members expressed concern that the lack of prescriptive rules can leave them uncertain whether they are meeting FCA expectations, leading to possible enforcement risks down the line.

Benefits for larger Firms:

- **Strategic fdecision-making:** Larger firms often have more resources, including legal and compliance teams, to interpret high-level rules effectively. This allows them to use the flexibility of high-level rules to make strategic decisions on how best to serve their customer base while maintaining compliance. High-level rules provide room for innovation, which can be advantageous for larger firms with more complex operations that need the flexibility to design bespoke solutions for their diverse customer segments.

Costs for larger firms:

- **Internal complexity:** Larger firms may struggle with the ambiguity of high-level rules due to the scale and complexity of their operations. Without detailed rules, they need to create internal frameworks and processes to ensure consistent interpretation across various departments, regions, or products. This can be costly and time-consuming, leading to higher operational expenses to ensure uniform compliance.

Detailed expectations

Benefits for smaller firms:

- **Clear guidance:** Detailed expectations provide smaller firms with clear, step-by-step guidance, reducing the need for interpretation. This helps smaller firms, which may lack extensive legal or compliance teams, to follow the rules with confidence, ensuring they remain compliant; Guidance too on demonstrating adherence would be welcome so that resource focussed on producing management information is relevant.
- **Reduction of risk:** For smaller firms that may have less experience or fewer resources for navigating regulatory frameworks, detailed rules reduce the risk of making mistakes. Detailed rules serve as a clear blueprint for meeting FCA expectations, which can be reassuring for firms with limited compliance expertise.

Costs for smaller firms:

- **Higher compliance costs:** Detailed expectations can lead to higher compliance costs for smaller firms, as they may need to hire additional staff, invest in new technologies, or work with external consultants to meet the specific regulatory requirements. The administrative burden of collecting data, reporting, and documenting compliance can also be overwhelming for these firms;
- **Inflexibility:** Smaller firms might find detailed rules too rigid for their business models, limiting their ability to innovate or respond to unique customer needs. The detailed requirements can constrain them and prevent them from focusing on delivering customer outcomes in a more tailored manner.

Benefits for larger firms:

- **Operational consistency:** For larger firms with more complex operations, detailed expectations can ensure consistency across different parts of the organisation. Detailed rules provide a uniform framework for compliance, which is easier to apply across multiple departments, products, and regions, ensuring that all parts of the business meet regulatory expectations;
- **Compliance certainty:** Larger firms benefit from the clarity that detailed rules provide. Since these firms often face higher scrutiny, having clear, prescriptive rules helps them avoid compliance risks and potential enforcement actions. Detailed expectations also reduce the need for interpretive judgment, which can vary across a large organisation.

Costs for larger firms:

- **Administrative overhead:** While detailed rules provide clarity, they also generate significant administrative overhead for larger firms. These organisations must invest heavily in compliance monitoring, data collection, and reporting systems, which can be costly to implement and maintain. The complexity of adhering to detailed rules can become burdensome for large firms that have multiple products and services to monitor;
- **Increased complexity for cross-border firms:** For firms that operate internationally, detailed UK-specific rules may conflict with or add complexity to their global compliance frameworks. These firms must manage not only UK regulations but also the requirements of other areas, which can increase operational and legal costs.

Conclusion

- **Smaller firms** benefit from the flexibility of high-level expectations but may struggle with the ambiguity and risk associated with interpreting them. Detailed rules provide clarity but come at a higher cost and can restrict their ability to innovate.
- **Larger firms** appreciate the clarity and consistency offered by detailed expectations, though they face higher administrative costs and operational challenges in managing complex, multi-layered compliance requirements. High-level rules offer them strategic flexibility but introduce the challenge of ensuring consistent interpretation across large organisations.

Ultimately, the costs and benefits of high-level versus detailed expectations vary depending on the size and operational complexity of the firm, with both approaches presenting advantages and challenges depending on the firm's resources and compliance capacity.

About The Payments Association

The Payments Association is for payments institutions, big & small. We help our members navigate a complex regulatory environment and facilitate profitable business partnerships.

Our purpose is to empower the most influential community in payments, where the connections, collaboration and learning shape an industry that works for all.

We operate as an independent representative for the industry and its interests, and drive collaboration within the payments sector in order to bring about meaningful change and innovation. We work closely with industry stakeholders such as the Bank of England, the FCA, HM Treasury, the Payment Systems Regulator, Pay.UK, UK Finance and Innovate Finance.

Through our comprehensive programme of activities for members and with guidance from an independent Advisory Board of leading payments CEOs, we facilitate the connections and build the bridges that join the ecosystem together and make it stronger.

These activities include a programme of monthly digital and face-to-face events including our annual conference PAY360 and PAY360 Awards dinner, CEO round tables and training activities.

We run seven stakeholder working Project groups: Inclusion, Regulator, Financial Crime, Cross-Border, Digital Currencies, ESG and Open Banking. The volunteers within these groups represent the collective view of The Payments Association members at industry-critical moments and work together to drive innovation in these areas.

We also conduct exclusive industry research which is made available to our members through our Insights knowledge base. These include monthly whitepapers, insightful interviews and tips from the industry's most successful CEOs. We also undertake policy development and government relations activities aiming at informing and influencing important stakeholders to enable a prosperous, impactful and secure payments ecosystem.

See www.thepaymentsassociation.org for more information.

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