

Review of FCA requirements following the introduction of the Consumer Duty

The BSA's Response to the FCA's Call for Input

Restricted
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 Building Societies
Association

1. Introduction

About the BSA

The Building Societies Association (BSA) represents all 42 UK building societies, as well as 7 credit unions. Building societies have total assets of over £515 billion and, together with their subsidiaries, hold residential mortgages of £385 billion, 24% of the total outstanding in the UK. They also hold over £385 billion of retail deposits, accounting for 19% of all such deposits in the UK. Building societies account for 40% of all cash ISA balances. They employ around 51,500 full and part-time staff and operate through approximately 1,300 branches, a 28% share of branches across the UK.

A welcome development

The BSA is delighted to have the opportunity to contribute to the FCA's review of requirements following the implementation of the Consumer Duty. We agree that a thorough review, followed by action to address the findings of that review creates a welcome opportunity to help ensure that FCA regulation remains effective, streamlined and comprehensible, maximising the Duty's benefits.

We have consistently highlighted our concerns about the potential for the introduction of the Consumer Duty to lead to confusion and overlap. For example, in our response to the FCA's first consultation on it, we pointed out that *"the complexity and "overlap" of the FCA's current proposals raise the prospect of confusion for consumers and firms alike"*. We also said that *"if Principles 6 and 7 are retained, then it is imperative that the FCA should ensure there is clarity over when they apply, and when the new Consumer Duty is applied. Simply retaining their application in order to maintain the legal status of Handbook Material is not in our view sufficient justification for not undertaking a root and branch review of existing material to assess its applicability."* We are pleased to see that the FCA are now exploring the potential to take action to simplify things for firms and consumers.

In this response to the FCA's Call for Input, we provide feedback on rules that should be reviewed and the potential benefits of doing so.

As the FCA's work in this area continues, we ***encourage the FCA to allow firms sufficient time and opportunity to consider and provide information to them directly on the likely costs and benefits of any proposals that may be taken forward.***

While this review has been prompted in large part by the Consumer Duty, we are particularly pleased to see that in its Call for Input the FCA is looking more widely. Using this as an opportunity to seek further input to understand whether, where and how current requirements might be simplified through greater reliance on high-level rules, while ensuring consumers continue to be supported and protected is entirely appropriate and very welcome.

2. BSA's Summary Response.

There is scope to make changes that would have a relatively immediate impact in terms of simplification for both firms and consumers.

The majority of our members who provided input are keen that any move to make more sweeping changes is deferred to allow time for the impact of the consumer duty to be fully realised.

In the expectation that the consumer duty will lead to lasting cultural change and overt demonstration of good outcomes being achieved, work should progress to understand what would be needed to move to a world where the mass of guidance, regulation and legislation is much less weighty. Whether that could ultimately be achieved depends on two key things:

BSA Member:
*“Let’s change,
but from an
informed
position”*

- How the industry performs and responds to the requirements of the consumer duty, in the short to medium term, and
- How the FCA chooses to regulate in light of the duty.

If the Consumer Duty achieves the results that were envisaged at its conception, then consumers will be getting good outcomes without the need for radical and potentially costly change. If the FCA in practice acts in a proportionate manner, there ought to be less need to look to a detailed Handbook of rules and guidance to set a more rigid framework to achieve good customer outcomes.

A wide range of views

We have consulted widely with our members in order to respond to this call for input and were met with a correspondingly wide range of views. Some members were extremely supportive of at least exploring, even if not ultimately pursuing, a much less prescriptive regime. Others were more reticent and of the view that the current prescriptive regulatory approach was better than a more judgement based alternative. This was particularly the case for some of our smaller members who derived an element of comfort from the rules/guidance-based approach. Some of those views are driven by:

Concerns centred on, for example:

- The current number of detailed and sometimes duplicating and/or conflicting rules, and their proportionate application,
- The potential cost of change,
- The risk of being perceived as an outlier, and
- The FCA’s (and the FOS’s) ability to regulate effectively and proportionately in a future with less prescription.

Optimism centred on, for example:

- The potential benefits for firms and consumers alike of relying more readily on principles to ensure better consumer outcomes,
- The opportunity to conduct business and ensure good customer outcomes without the need for strict compliance with technical requirements, and
- Cost savings (over time) that could be passed on to consumers in the form of even better value, supported by a more unique service proposition for individual firms.
- A regime that might allow more flexibility as changes in technology and channel usage take place over time

A chance to grasp the nettle

Given the range of views expressed by our members, we encourage the FCA to fully consider, over a realistic period of time, a bolder approach to the use of principles and high level rules, tempered by the fact that we have yet to see how the Consumer Duty is embedded across the spectrum of financial services firms.

We see appetite for change which is tangible, but that must be supported by and delivered via a clear timetable of activity and alongside:

- Clear and unambiguous rules,
- Scope for firms to adopt different approaches without fear of being branded “outliers” if they adopt a unique approach and still achieve good consumer outcomes,
- Effective and proportionate supervision and enforcement, and
- A full review of the role and remit of the FOS and of their decision-making.

A phased approach

Our members have told us that timing is everything. We believe that there are steps that the FCA can take now to simplify the regulatory environment. We also believe that there is benefit in not acting too soon.

Given that, we believe that the FCA could and should adopt a phased approach to simplification of the regulatory environment in light of the consumer duty. That approach could look like:

Phase 1 – Quicker Wins: Identify, consult as required on, and then implement changes to or remove rules and guidance which provide little or no value or tangible benefit, or which conflict outright with the requirements of the Consumer Duty. This could extend to include a review of regulatory reports that the FCA may find are not used effectively and which may now be obsolete in light of the duty. We believe that moving forward with identified quick wins (bearing in mind our later comments about cost) could begin at any time and be implemented over a period of up to 2 years, although in some cases a longer period may be necessary.

Phase 2 - Consumer Duty Embedding & Assessment: Allow time for the Consumer Duty to properly embed, assess whether firms have truly embraced and are meeting its requirements and act swiftly and decisively where they are not. In our view, it’s only after this stage, which includes an assessment of how the FOS are interpreting the requirements of the Consumer Duty, that the FCA would be in a position to consider whether wider reliance on principles is achievable. We suggest a period of around 5 years post- 31 July 2024 would allow sufficient time for the consumer duty’s changes to embed and for true change to be evident.

BSA Member:
“We need time to let the dust settle”

Phase 3 – Moving forward with Principles: Depending on what the FCA sees during Phase 2, and potentially alongside it, the FCA could consider and consult more extensively on appetite, ability, benefits and costs of a move to greater reliance on principles, whether for the entire sector, parts of it, or for specific regulated activities. Our members have been unable at this stage in the FCA’s consideration to provide meaningful estimates of costs associated with simplification.

Doing this could allow firms to make effective risk-based decisions around how their businesses are run and the products and services they offer, which would be to the ultimate benefit of consumers. We see this consultation and assessment phase taking time. Potentially up to 10 years from 31 July 2024. There could, however, be scope to compress that timeframe if parts of the work were begun and run alongside Phase 2.

3. Areas to Simplify or Remove

Specific Rules or Guidance

We agree that consideration should be given to simplifying or removing a number of retail conduct rules or guidance and relying instead on requirements under the Consumer Duty. These include provisions contained in BCOBS, MCOB and PROD, and mainly relate to information required to be provided to consumers and to product governance arrangements. We set out some examples below that impact products and services offered by our members.

Savings

We believe that many of the current requirements (particularly some introduced after the 2015 Cash Savings Market Study) are unnecessarily prescriptive in light of the consumer duty. More particularly:

- **Requirement for a Savings Summary Box – BCOBS 2.2A.1R:** The FCA should consider whether the level of prescribed detail that this rule requires is needed in a Consumer Duty world, as some of the content is elsewhere.
- **Provision of Information requirements – eg BCOBS 4:** In light of the consumer duty, the provisions regarding when, what and how information is provided to consumers should be reviewed. For example, one of our members:
 - Suggested reviewing the need to write to customers on the event of a downward rate change. While they saw the benefits of notifying customers, they pointed out that in their view there was an uneven playing field, as smaller organisations like themselves still send out letters to advise. They pointed out that this is a costly exercise in term of paper and postage used and suggested that this should be revisited from an environmental perspective, as well as re-assessing what is classed as a material change.
 - Said that many of today's requirements are potentially out of date with advances in technology – for example, would notifications via online (website) and branch suffice if their own rate changes are in line with base rate changes?

Mortgages - general

We think it worthy of note that:

- As part of the review of retained EU regulations the FCA and HM Treasury will need to review the Mortgage Credit Directive (MCD) Order which introduced the Consumer Buy to Let (CBTL) regime. This could see CBTL falling under the auspices of MCOB, without the need for a separate set of requirements linked to the MCD. The benefits here could be: only two sets of regulated status, regulated and non-regulated; CBTL forming part of MCOB and not needing to be considered separately, and freedom for a lender to take a view based on individual customers' circumstances.
- It is encouraging that the FCA is also committed to reviewing areas where MCD has introduced additional complexity to MCOB. Given it is now a little over ten years since the introduction of rule changes from the Mortgage Market Review (MMR), we question whether those rules remain fit for purpose, enable innovation and promote competition and whether they have swung too far in terms of excluding people from

accessing home ownership that could genuinely afford it. The FCA should give careful consideration to this and make changes necessary to address any issues.

In relation to MCOB, perhaps the most radical position would be to remove the rulebook completely and rely simply on Consumer Duty. On the face of it this would give firms the opportunity to set their own disclosures, stress testing and affordability models. While this provides most flexibility, we think it likely that firms would (at least for now) remain cautious and seek additional regulatory guidance. In the context of any suggestion of the potential wholesale removal of MCOB, for example, one of our members suggested instead that the FCA should overtly strive to apply it in a manner that is appropriate, proportionate, and (perhaps most importantly) mindful of the impact on both small and large firms. They suggested that an option might be for the FCA to adopt a “hybrid approach, combining principles-based and outcomes-focussed regulation, while maintaining clarity on expectations – particularly around how outcomes should be measured”.

A number of members commented that it would be useful if the FCA could consider adding examples to MCOB, which would help make the handbook relationship with the Duty more easily understood. These could be designed so as to encourage the reader to understand and see how the Consumer Duty interacts with each rule with examples demonstrating how that could operate in practice. Another approach might be to cross reference sections of the handbook with those cross cutting rules or outcomes the handbook chapter represents.

One option worthy of consideration (in due course) might be to remove the requirement for a European Standardised Information Sheet (ESIS) and replace it with something else. Perhaps a Key Facts Illustration (KFI) but allow firms to continue to provide an ESIS until planned system redesign given the system development, complexity of calculations and resource to make this change. In light of members’ comments we do not believe, however, that now is the right time to undertake wholesale change. For example, when we asked members whether it the ESIS is still relevant in its current form, the general consensus was that while something different would be preferred, there was no appetite to move away from the ESIS at this juncture given the cost and time to change. Over the medium term, however, the FCA could review the language used, removing complex legal and financial jargon.

In more general terms, over time and with the embedding of the consumer duty, there is scope to conclude that the FCA does not need the existing, very detailed rules to constrain the route to a good consumer outcome in the mortgage market. Perhaps an area to consider under Phase 2 or Phase 3 described above.

Mortgages - specific

The points below set out areas of MCOB, section by section, that our members have suggested as being worthy of review.

- MCOB 2 should be reviewed to address the current overlap with PRIN and SYSC, (except for MCOB 2.7A E- Commerce and MCOB 2.8 Record keeping, 2.9 Restriction on marketing or providing an optional product for which a fee is payable).
- MCOB 2A could be reconsidered in its entirety as elements within are covered elsewhere, most prominently MCOB 2A.1 – Remuneration. Our members felt that this could be removed as Remuneration practices are covered by Consumer Duty.

- MCOB 3A on Financial promotions requirements could be simplified so that generic provisions are captured in one place for all fin proms and the lower level only addresses product specifics.
- The Fair, Clear and Not misleading rules and MCOB 3A.3 covering other general requirements for financial promotions, are potentially superfluous against PRIN2A expectations. As firms are more likely to rely on CD cross cutting rules and principles in terms of communications and financial promotions, it could be appropriate to only retain product specific requirements within MCOB. For example, where the product or communication type requires specific information to provide clarity and consistency to customers, as covered in wider sub-sections of MCOB 3A.
- More generally, it would be helpful for chapters sharing commonality to be removed and held within one universal handbook, such as financial promotions. The highly prescriptive nature of the chapters on regulatory disclosure and their interaction with the Distance Marketing Directive could be revisited with a view to simplification, particularly given the Consumer Duty customer understanding overarching requirements. The chapters on separate MCD disclosures could also helpfully be rolled into the general MCOB requirements, to have a one stop source, as opposed to needing to juggle different chapters covering the same subject matter. There is also guidance, such as 12.4.1D, which would be well served by a Plain English review (see our wider comments below on Plain English).
- MCOB 3B which deals with provision of general information could be removed in terms of appropriateness and necessity considering PRIN2A, particularly Consumer Understanding and Support.
- MCOB 4 & 4A could be refined by challenging the appropriateness of each section in terms of value add. However, from a proportionality perspective, considering the customer benefits of consistency and the protections offered by MCOB 4, our members acknowledge that the section overwhelmingly feels relevant. There would actually be concerns that removing or oversimplifying this section could result in too much flexibility or subjectivity, potentially creating an interpretational risk. We would seek to avoid the ambiguity derived from flexibility where the customer benefits from the prescriptive nature of the Regulation.
- MCOB 4.5 Distance sales disclosure requirements could be reviewed in line with Consumer Duty, as there may be more appropriate ways to tell the customer the details than just over the telephone.
- MCOB 4.6 which covers Cooling-Off Periods should be re-evaluated to consider if these periods align with UK consumer behaviour and expectations.
- MCOB 5 and 5A could be combined and aligned to prevent duplication and contradiction.
- MCOB 6 and 6A provide necessary clarity and prescription to communications that are critical to the mortgage customer journey and supporting customer understanding. A much more detailed review of these sections would be warranted under the Smarter Regulation Initiative to ensure that balanced changes are progressed that support customer understanding and industry consistency. However, they could be combined and aligned to have one source of information requirements in terms of Mortgage Offers, although we appreciate that balancing the need for more flexibility with these sections to support customer understanding, with the need to maintain clarity and consistency may be challenging.
- MCOB 7, 7A and 7B are potentially ambiguous in terms of communication requirements for variations under MCOB 7.6. It may be too complex to prompt a review of contract variations and information requirements via this CFI but we do feel that the handbook

may potentially be falling behind the industry in terms of progression, innovation and digital customer journeys.

- MCOB 10 and 10A requirements on the illustrative 'APRC 2' could be revisited in terms of whether they still achieves their intended purpose. The Benchmark rate used for APRC 2 relies on a set calculation. However, with lower rates in the last 20 years, our members are seeing the benchmark rate decreasing and the APRC 2 therefore giving little insight to the consequences of rate increasing. Flexibility to use different calculations, potentially ones from the historic KFI, could better support how firms inform customers about the impact on their mortgage and payments if rates rose.
- MCOB 11 & 11A should be revisited in light of industry, economical and technological advancements to ensure relevance. Income sources, assessments, outgoings and firms' ability to view and check this data have progressed in recent years. Further, the rules on responsible lending should be reassessed to ensure that they are not limiting. The two separate sections could be combined and refined to prevent confusion or contradiction too.
- MCOB 11 may not always align with how firms are expected to support customers who have exceptional circumstances or who are vulnerable due to financial control or domestic/financial abuse. There could be more flexibility or greater clarity on exceptional circumstances. Again, the use of appropriate examples could help with this.
- In relation to MCOB 13, members expressed differing views. Some felt that PS24/2 has helped progress in terms of broader expectations of support for customers likely to or experiencing financial difficulty. Flexibility to do the right thing for customers in these scenarios is critical and the breadth and tailored approaches somewhat support this. Other members suggested that areas such as disclosures and financial promotions could easily be adapted to allow for a more consumer-centric approach. They referenced Chapters such as MCOB 13 in relation to customers who may be vulnerable or at heightened risk of experiencing poor outcomes, and felt that these should remain subject to a directive and rules-based approach, to ensure conformity, particularly from the perspective of ensuring cases can move through the courts in an orderly and universally understood manner.
- Durable Medium – Member said they would welcome a review of the definition of durable medium to reflect technological advances. It is worth aligning the requirement with environmental considerations, e.g. – encouraging paperless options.
- Reflection periods are frequently a point of challenge in customer journeys, especially variations. Some of our members told us that the reflection period can sometimes not be understood or used as intended. Some of our members have suggested that customers are not generally aware that they are 'waiving their rights to reflect' if they accept the offer, they are more focussed on the outcome and expediting timelines than using the 7 days to reflect.

Other Areas

- **PROD** – Many PROD rules are very similar (in some cases identical) to Consumer Duty requirements. As an example, both require firms to ensure products are designed to meet the needs of the target market. Areas of obvious overlap like this should be identified and removed.
- **Plain English:** The FCA could review the Handbook of Rules and Guidance (the "Handbook") from a plain English perspective. The FCA should engage with an

appropriate third party to ensure that rules are understandable and unambiguous and that unnecessary complexity is removed.

- **TCF vs Consumer Duty:** Areas of overlap and duplication should be identified and addressed. For example, Principle 6 outcomes overlaps with Consumer Duty. Where TCF provisions have been superseded by Consumer Duty, they should be removed/limited to areas and/or firms to which they do apply.
- **Allowing firms' scope to adopt a different approach depending on platform or means of engagement with consumers:** Members pointed out, for example, that:
 - a. In relation to savings products there can be issues with the visibility and/or prominence of the Summary Box when using mobile Apps.
 - b. It would be helpful to have scope to use more sustainable channels where that might be appropriate, citing problems where a firm is required to correspond using paper and there is, as some aspects of BCOBS require, a 14 day rule and 30 day notice periods.

Benefits, Costs & Consumer Impact

As mentioned above, in contemplating changes at this stage, our members' overwhelming response was that now is not the time for sweeping change.

In relation to costs and benefits:

- Quite apart from organisational fatigue over the amount of regulatory change, most expressed concern at the cost of further changes – both monetary and from a practical implementation perspective.
- As previously stated, a number derived comfort from the fact that where they are complying with specific and unambiguous rules, there is a standard to be met, it's clear what that standard is and there is little or no scope for (from a compliance team's perspective) business areas to challenge complying with a particular requirement.
- Some of our larger members felt that smaller members may tend more towards seeking to rely on more prescriptive rules, and our feedback from members suggests that to be the case.

From a consumer perspective, our members told us that:

- They would like time to embed consumer duty and understand how any changes in approach are benefitting their members.
- Ensuring that information is communicated clearly to customers and through a medium appropriate to channel and the particular customer's circumstances would be helpful both to them and consumers.
- Change now could prove confusing for some consumers, depending on its extent.

4. Other Considerations

We have a number of other comments that we believe the FCA should consider as part of any further work associated with what is contemplated by this Call for Input, and which could be used as principles for future regulation as well as this review.

Simplicity to create strength

Simpler rules can be just as strong, and arguably stronger as they reduce the risk of misunderstandings. Proportionality and simplification should not be viewed as de-regulatory or watering down.

The PRA's flagship simplification project is under the banner of "strong and simple." The BSA is strongly supportive of the philosophy that simpler rules aren't weaker or de-regulatory. In fact they can be stronger by focussing on what really matters with clarity. We would urge the FCA to adopt that focus in any future activity, and what this means in practice, for example, is that we have welcomed the removal of superfluous requirements that have been proven to add little value, such as Pillar 3 reporting disclosures.

The benefits of diversity

Diversity of business models is good for financial stability and competition and therefore is in the FCA's own interests. We encourage the FCA to design its policies with this in mind from the outset.

Proportionality

We stress the need to tailor requirements for smaller firms and mutuals. It's not enough to say 'implement these rules proportionately.' The rules themselves need to be fewer in number, different in nature or calibration or less onerous in practical terms.

The FCA should refrain from pointing firms to rules that weren't designed for them, no matter how informally. This is particularly relevant to credit unions where we see the regulators referring them to banking standards as so-called 'best practice' where the opposite may be the case. Consultants have a role to play here too in defining best practice with proportionality in mind.

Brexit

The PRA and FCA should streamline and clarify their rules more generally for all firms. Outside of the EU, the UK has autonomy to write unambiguous, UK-centric rules. It should seize the opportunity rather than live with the status quo. They should 'Plain English' the rulebooks. If firms need a legal opinion to interpret the rules then the rules themselves are not clear enough.

Wider Regulatory Family/Approach/Legislation

There are a number of areas worthy of careful consideration:

- The impact of a less prescriptive regime on the role of the FOS and its decisions. In a different environment would they effectively become the rule makers? A number of our members have already expressed growing concern about any "shift in FOS's approach and the potential influence their decisions could have as a de facto policy maker."

- The role of the PSR. For example, could/should its activities be absorbed by the FCA?
- Reform of outdated legislation such as the Credit Unions Act, and Consumer Credit Act, while acknowledging that this is out-with the FCA's direct remit.
- Industry-owned guidance. Should this continue to exist? For example (and without seeking to add to the Handbook as opposed to streamlining it), the AER Code could realistically be something created and owned by the FCA.
- Legal risk and consequential impact on length and complexity of terms and conditions. Would a more principles-based approach replace regulatory risk for legal and FOS risk?

A nod to the future

Some areas to consider include:

- The journey to Net Zero. Could this be used as an opportunity to proactively look at what might be needed in future and to embed that in the Handbook.
- Use of AI. Can some future proofing be done to cater for this in business, or can the FCA use it to help with simplification?
- Test and Learn. Could all or part of the building society or credit union sectors, or a higher risk one, be used as a sandbox for a different approach?
- FCA Capability: Resource and capability at regulator to adapt to a less prescriptive regime (at all levels, rather than add levels of bureaucracy)

5. Conclusion

The FCA has an opportunity over time to simplify the regulatory environment. That will take time and effort from regulators, legislators and firms alike. We welcome the start of this dialogue, and look forward to engaging further on simplification in the future.

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The Building Societies Association (BSA) is the voice of the UK's building societies and also represents a number of credit unions.

We fulfil two key roles. We provide our members with information to help them run their businesses. We also represent their interests to audiences including the Financial Conduct Authority, Prudential Regulation Authority and other regulators, the Government and Parliament, the Bank of England, the media and other opinion formers, and the general public.

Our building society members have total assets of over £507 billion, and account for 23% of the UK mortgage market and 19% of the UK cash savings market. Within this, societies account for 40% of all cash ISA balances.