StepChange Debt Charity – Written evidence (SCG0071)

During the first evidence session on 15th January I was asked by both Lord Grabiner and Lord Hill of Oareford to provide some written comments on the FCA consumer duty and the application of this by the FCA. The request can be summarised into two broad questions:

- Is there an argument for the consumer duty being overseen by a different regulator?
- Could I forward on any critique of the way the FCA has implemented the consumer duty.

Background: Why StepChange Debt Charity supports the FCA consumer duty

I would like to start by highlighting that StepChange is both a charity *and* an FCA authorised firm. Debt counselling and debt adjustment (both elements of the debt advice and debt solutions we support people with) are regulated activities within the FSMA regime.

Supporting the consumer duty as an FCA authorised firm
As an FCA authorised debt advice and solutions provider we support the FCA consumer duty because it helps us to help financially and otherwise vulnerable people with problem debt. It gives us a powerful framework to think about our clients' needs and the things we can do to improve to help we can offer them.

The consumer duty also creates the basis for a common language between firms; setting expectations and commitments about good practice and good customer outcomes across the financial services sector. This helps encourage partnership working between financial services firms and charities like StepChange; and this helps our clients to get support they need from financial services firms. There is an opportunity here for a virtuous cycle that results in a fairer, more trusted and stronger financial services market.

Supporting the consumer duty as a debt advice charity and consumer policy

As a Charity we work towards reducing the harm that problem debt causes for people across the UK. As a debt advice provider we see the harm that problem debt causes every day. Debt harms peoples' mental and physical health. It damages their family relationships. It impairs peoples' performance at work and makes it difficult for people to find work or stay in work. Debt can lead to homelessness and extreme hardship. This creates 'external' social and economic costs.
In 2014 we estimated the social costs flowing from 3 million people with serious debt problems to be £8.3 billion.[1] That cost is likely higher now,

not least because we estimated 4.3 million (8% UK adults) were facing serious debt problems in September 2024.[2]

For many years we have seen how growth and innovation in financial services can cause or worsen debt problems for UK households. For instance, the unsustainable consumer credit boom in the 2000's, sub-prime mortgage lending in the lead up to the financial crisis and subsequent recession; the rapid expansion of harmful payday lending, and payment protection insurance that didn't protect people against debt.

Here we note previous research, summarised in a recent House of Commons research briefing,[3] highlights that while higher levels of household debt can boost economic growth in the short term, in the longer term this increases the risk of financial crisis and can deepen and lengthen recessions.

In the particular case of consumer credit, the consequences of poor financial regulation and economic shocks fall hardest on financially vulnerable households with low financial resilience. If the government's growth strategy is to reach down to those households who have been 'left behind', calls for broad deregulation of financial services, including the consumer duty, are not obviously a good way forward.

We fully understand the important role financial services can play in stimulating and supporting broad economic growth. We also understand the need for financial services to innovate and grow in a way that meets consumers' needs. Financial services regulation has to work with that aim. As an FSA authorised charity trying to meet the needs of financially vulnerable consumers we understand that feel that tension just as much as big city firms, perhaps more.

There is always a need for proportionate, effective regulation. Not necessarily more, not necessarily less. The consumer duty was designed to halt the stream of financial service market failures resulting in widespread consumer detriment. It does this by putting more emphasis on firms to better understand their customers' needs and circumstances and look harder at where products and services might create foreseeable harm. Prevention being better than cure.

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[1] StepChange Debt Charity (2014): *Cutting the cost of problem debt.* https://www.stepchange.org/Portals/0/documents/media/reports/8_billion_challenge.pdf

[2] Figures from YouGov Plc. Total sample size was 2,211 adults. Fieldwork was undertaken between 9th - 10th September 2024. The survey was carried out online. The figures have been weighted and are representative of all UK adults (aged 18+). ONS mid-year population estimate for 2022 estimates there are 53,646,829 adults aged 18+ in the UK.

[3] House of Commons Library. Research briefing (2025). *Household debt: statistics and impact on economy.* https://researchbriefings.files.parliament.uk/documents/CBP-7584/CBP-7584.pdf

If this new approach runs into a hesitant and overly cautious compliance culture in financial service firms, then the FCA should support firms to work through this. The consumer duty needs time and ongoing development to do its work.

Consumer confidence and well-functioning markets

The FCA's *Financial Lives* 2022 survey found under half (46%) of adults had confidence in the UK financial services industry, and only 36% 'agreed that most financial firms are honest and transparent in the way they treat them'.[4] The FCA notes that 'achieving good outcomes for consumers through the Consumer Duty will help build trust, confidence and participation in financial services – a benefit to business, the economy and productivity.' We would agree.

This appears to have direct relevance to the question of how to encourage more people to invest in financial products that improve returns on their savings and perhaps contribute to growth. The FCA *Financial Lives* survey highlights high levels of trust among the small proportion of people who take regulated financial advice – around 8% in the 12 months before the survey. Respondents cited FCA regulation as a key factor in their trust and confidence in financial advice.

However the FCA found a much larger group - nearly 15 million (28%) UK adults - who had a likely need for regulated financial advice but not taken it. Low trust among this group is a possible barrier to seeking advice. It seems unlikely that a step back from the consumer duty will make people in this group more comfortable and confident about both seeking financial advice and exposure to investment risk.

Here we note that the FCA's consumer duty approach is being considered by other market regulators. The energy market regulator Ofgem recently published its intention to raise standards in the domestic energy sector through a consumer duty type approach.[5] It is instructive that Ofgem called this initiative *Consumer Confidence*, reflecting perhaps the loss of faith from households pushed into hardship and energy debt by sky-high bills. The common theme here is that markets work better with confident consumers, and that confidence is in some measure dependent on good regulatory oversight.

Compliance culture as a barrier

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[4] Financial Conduct authority (2023). Financial Lives 2022: Key findings from the FCA's Financial Lives
May 2022 survey. https://www.fca.org.uk/publication/financial-lives/financial-lives-survey-2022-key-findings.pdf

[5] Ofgem (2024). *Consumer Confidence: A step up in standards.*
https://www.ofgem.gov.uk/sites/default/files/2024-09/OFG2266%20Consumers%20Confidence.pdf

The HM Treasury and FCA Advice/Guidance Boundary Review (AGBR) found another barrier to consumers engaging with financial services. The policy paper noted that FCA regulated firms 'want to provide greater support to consumers but are hesitant to do so'.[6] The policy paper states that 'this is due to an overly cautious interpretation of the current regulatory framework, and because they are concerned about the regulatory requirements that apply if they provide a personal recommendation'.

A proposed solution arising from the AGBR is a new 'targeted support' regulated activity, which allows firms to suggest a course of action specifically designed to meet the needs of a targeted segment of consumers ('people like you'). This aims to address firms' 'hesitancy' in a way that might give a route to supported decision making for more people. However the move away from personal recommendations creates new potential consumer protection risks if the 'targeted support' is not very well designed and well matched to target consumers' needs. Gaining confidence of those consumers currently not taking financial advice is likely to require an approach that has a very strong focus on good consumer outcomes and avoids any inherent designed-in foreseeable harm. That is what the consumer duty has been designed to deliver.

Could the consumer duty be overseen by a different regulator?

In a 2021 speech to the building Society Association, the then FCA Chair Charles Randell noted that his favourite movie was Groundhog Day – 'I could happily watch it over and over again'.[7] The point served to highlight the FCA's determination to change its approach in order to produce better outcomes'.

From our perspective as consumer advocates, Groundhog Day was the failure of FCA principles and rules to prevent financial products and services causing widespread consumer detriment. As a result the consumer duty presents a critique of the standards and culture in both the FCA itself and financial services firms that have not been able to prevent consumer harm nor provide redress for it quickly enough.

So the FCA is clear that the aim of the duty was to raise the bar of standards in financial services to prevent financial products and services

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[6] HM Treasury and FCA (2023). *Policy paper DP23/5 Advice Guidance Boundary Review – proposals for closing the advice gap.* https://www.fca.org.uk/publication/discussion/dp23-5.pdf

[7] Financial Conduct Authority (2021). *Outcomes-focussed regulation: a measure of success? Speech by Charles Randell, Chair of the FCA and PSR, to the Building Societies Association, 6 May 2021* https://www.fca.org.uk/news/speeches/outcomes-focussed-regulation-measure-success

causing widespread consumer detriment. The FCA is also clear that the consumer duty aims to do this in a different way.

Rather than responding to consumer detriment through specific interventions, the FCA consumer duty is in essence a recommendation to firms to self-audit the outcomes they deliver to consumers, a framework telling firms how to do this, and a requirement to make changes where they find evidence that the consumer duty cross cutting rules and outcomes are not being met.

This implies an initial gear change by firms to build their understanding of their customers' needs, ensure their products and services were not creating foreseeable harm and assess the quality of customer outcomes. If this understanding flows into product and service design and delivery, and firms continue to monitor outcomes for different groups of consumers effectively, then future cases of widespread consumer detriment might be prevented.

However realising these benefits from the consumer duty requires active participation and leadership from the FCA. It must involve ongoing active supervision of firms' approaches and a continuing dialogue with firms on expectations, successes and areas for improvement. It will need the FCA to build an evidence base around consumer duty outcomes that compliments and triangulates with firms' own client research. It will result in a process of and adapting FCA rules and guidance where progress on the consumer duty suggests this.

It is clear that the FCA sees the consumer duty as a change of regulatory approach, with less reliance on compliance with detailed and prescriptive rules and more focus on demonstratable consumer good outcomes. The FCA has also been clear that it '*will be pragmatic when looking at enforcement of the Consumer Duty, tackling breaches that pose the greatest risk of harm but looking favourably on firms that have made reasonable efforts to address concerns'*.[8] There is a potential dividend here for both firms and consumers if the consumer duty embeds firmly into firms' decision making.

However making the consumer duty work will require the knowledge, expertise, resources and powers of the FCA. We do not see that there is another existing regulator equipped to successfully implement the consumer duty. Creating a new regulator would likely duplicate and

[8] Financial Conduct Authority (2024). Investing in outcomes: a regulatory approach to deliver for consumers, markets and competitiveness. Speech by Nikhil Rathi, FCA Chief Executive delivered at the Morgan Stanley European Financials Conference. 14 March 2024. https://www.fca.org.uk/news/speeches/investing-outcomes-regulatory-approach-deliver-consumers-markets-and-competitiveness

overlap with the responsibilities and resources of the FCA, with the risk of diluting the effectiveness of consumer protection at more regulatory cost.

Experience from elsewhere (the debt solutions market being an example, or consumer credit before conduct oversight passed into FSMA) suggests that dividing responsibility for consumer protection in a particular market between different regulators and regulatory regimes has not worked well.

In summary we do not believe that the consumer duty can be separated from the FCA. The consumer duty is central to the success of the FCA's consumer protection approach and can only succeed if supported by the FCA's expertise, resources and FSMA powers.

Weakening or overturning the consumer duty would signal a return to a regulatory approach that has not successfully protected consumers or supported a trusted financial services market in the past. That really would be Groundhog Day.

Constructive criticism of FCA implementation of the consumer duty

The duty has only been in force for 18 months, not long enough to properly understand the consumer protection impact, or other possible consequences such as changes to the rule book. However the FCA recently published a call for input into a review of FCA requirements following the introduction of the consumer duty.

The FCA sought views on '*whether, where and how we can simplify our requirements, through greater reliance on high-level rules, while ensuring we continue to support and protect consumers*'.[9] This aligns with the FCA's approach to reducing regulatory burden outlined in FCA Chief Executive Nikhil Rathi's letter to the Prime Minister on 16th January.

Here, we are supportive of simplifying requirements, but the FCA will need to be to be clear that any simplification (including those that may aid growth) do not result in a reduction in consumer protection. If the FCA believes that the consumer duty can by itself replicate the outcomes of an existing rule or guidance, then the reasons for this should be clearly stated. This well help ensure that the secondary competitiveness and growth objective is aligned with the consumer protection operational objective. He we note that the consumer duty was implemented to raise standards, not lower them.

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[9] Financial conduct Authority (2024) *Call for Input: Review of FCA requirements following the introduction of the Consumer Duty.* *https://www.fca.org.uk/publication/call-for-input/call-for-input-review-retail-conduct-rules.pdf*

In general we find the consumer duty cross-cutting rules and outcomes and supporting guidance give a very clear direction of travel on the regulator's expectations. However addressing specific consumer harm will sometimes require precise intervention through rules. For instance misuse of continuing payment authority by high-cost short-term credit providers resulted in harmful collection practices. The FCA responded to this by developing specific and focused handbook rules (see CONC 7.2.12R onwards).

Replacing specific rules with the higher level more principles-based consumer duty may reduce the size and complexity of the rule book, but that could lead to a reduction in both transparency over the FCA's expectations and on the way the FCA executes its consumer protection objective.

Principles or prescription

The public discussion on how the FCA can support growth, and some of the published evidence to this enquiry highlights a desire from some firms for a more principles-based approach to regulation. At the same time firms have also asked for clearer messaging from the FCA about its expectations in respect of the consumer duty. There is a clear tension here and a question about how the FCA sets expectations for different firms.

A practical example of this can be found in the current debate about reforming the remaining provisions of the Consumer Credit Act 1974 (CCA). This Act provided the basis of consumer credit regulation until responsibility for authorisation passed to the FCA. However the CCA provisions on the content, presentation and timing of certain notices and required information remain in force. HM Treasury are consulting on the best way to move these provisions these into FCA rules.

There is widespread agreement among financial services firms and consumer groups that the CCA information provisions are not very helpful to consumers, but different views about how this should be approached in FCA rules.

We have heard views from the large credit providers that no detailed rules are needed from the FCA because the consumer duty sets out clear high-level rules under the *consumer understanding* outcome (See PRIN 2A.5). We have heard a different view that small consumer credit firms, who do not have large compliance teams or a direct supervision relationship with the FCA, are worried about moving to an approach with little or no prescription.

Here we would agree with those firms who say value in the way that specific rules can provide a concrete way to clarify expectations on specific important points.

- Detailed rules can give substance and intention to high level principles.
- Prescription has been crucial to stop harm to financially vulnerable consumers where firms have exploited gaps or ambiguities in high level rules.
- Prescriptive rules are a basis for consumers (and advisers) to challenge firm practices and make complaints.
- Prescription can alleviate burdens on firms that otherwise are uncertain as to the FCA's expectations of standards.
- Monitoring outcomes in the market is hard without reasonably specific expectations.

The beating heart of the consumer duty is the call for firms to work harder to understand their customers' needs as the starting point of consistently achieving good outcomes. That is a necessary condition for achieving better consumer outcomes in the communications example cited above. The question is not really one of 'principles or prescription', but what intervention is needed to best deliver the right consumer outcome. The role of the consumer duty is not primarily to replace existing rules (though that is a possibility), but joining rules, principles and a better understanding of consumer needs together into effective consumer protection.

StepChange, as a consumer policy advocate, looks at the question through this consumer protection lens. Going back to the communications example, communications to consumers should be neither a free-for-all where each firm does its own thing, nor something written rigidly into rules without regard to consumer outcomes. There is a growing body of evidence finding that some of the consumer information approaches required in consumer protection legislation do not work as intended and can even be harmful. In contrast, approaches based on behavioural science insights and feedback from actual consumers seem to deliver better results.

However, good consumer insight is hard to develop, and scaling insight from different firms to something that works consistently across a market as diverse as consumer credit is difficult. So co-ordination and leadership is needed. If the consumer duty is to be successful in raising standards and preventing future harm, it must be applied as a process 'curated' and led by the FCA.

Using the consumer duty to resolve specific complex issues
As part of the implementation of the consumer duty, the FCA has produced guidance and good/poor practice assessments looking at aspects of the consumer duty outcomes, process requirements and some specific issues. Among these is the FCA's findings of the 2023 multi firm work on the application of the consumer duty in retail banking. This included an assessment of support for borrowers in financial difficulty, which is a core concern for us.

Earlier in this note we have highlighted the harm that problem debt causes for individuals, for families, for the economy and for society as a whole. One of the ways this harm develops and is transmitted is through people experiencing bad 'financial difficulties journeys'.

This describes a process where people do not get or feel confident to ask for help with financial difficulties at an early stage. As a result they try to manage their financial difficulties by juggling payment demands, using more credit, and falling behind on essential bills like rent, energy, council tax to keep up with credit payments. This becomes a viscous circle propelling people further into problem debt. In May 20024, polling we commissioned from YouGov found an estimated 9 million UK adults (17%) struggling to keep up with bills and credit repayments had recently borrowed to pay for essentials.[10] So the scale of the problem is by itself significant.

We warmly welcome the FCA's attention to this problem through sectoral assessments of consumer duty implementation and a thematic BiFD review that led to new rules in the consumer credit (CONC) and mortgage (MCOB) rule books. We believe these changes will help address the problem but will not significantly resolve it.

This is because complex problems like bad financial difficulties journeys have multiple causes[11] that need to be addressed together as a whole.

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[10] For instance, see StepChange Debt Charity (2022). *Falling behind to keep up: the credit safety net and problem debt*. https://www.stepchange.org/Portals/0/assets/credit-safety-nets/Falling-behind-to-keep-up-the-credit-safety-net-and-problem-debt-StepChange.pdf and StepChange (2024): *How consumer credit causes harm for people struggling with the cost of living. https://www.stepchange.org/Portals/0/23/policy/Preventing%20harm%20in%20consumer%20credit/CD_Debt_Difficulties_INFO_1600x8500_Final_No_URL.pdf*

[11] Causes Include: Financial difficulties not picked up early enough by lenders, consumers don't seek help because they are worried about the Impact on their credit score, or don't think their lenders will help; Firms continue to lend to people In financial difficulty, or Increase credit limits on revolving products, or have given people large balances that are drawn down in desperation; people who reach out to their lenders for help do not also get it; collections communications from firms frighten people who disengage from further contact as a result; explanations about help are not clear enough or not given prominently enough. See StepChange and Amplified Global (2022). *Mixed Messages: Why communications to people in financial difficulty need to offer a clearer,*

We would like to see the FCA develop 'use cases' where the cross-cutting power of the consumer duty is harnessed to remove the causes of complex concrete problems.

This feels like a break from the FCA's current 'business as usual' approaches. In the past the FCA has worked well at identifying consumer problems and then developing compelling evidence-based explanations for why this are happening. But the remedies that follow often fall short of delivering an outcome where that problem no longer exists.
For instance, the Credit Card Market Study identified a problem with credit card users becoming trapped in persistent debt (a key component of bad financial difficulties journeys). However the remedies focused on reducing the costs of persistent debt for consumers rather than effectively tackling persistent credit card debt itself. We are waiting for an FCA review of the persistent debt rules it developed, but our assessment based on the experience of our clients is that persistent credit card debt is still an issue.

Concerns raised by StepChange and other debt advice charities about poor practices in the commercial debt solutions market led the FCA to introduce rules stopping debt solution intermediaries (debt packagers) from taking referral fees for farming consumers out to commercial debt solution providers. The FCA found that these referral fees created a wedge between the commercial interests of the debt packagers and the interest of clients. The result was poor advice and poor outcomes for financially vulnerable consumers. The FCA rules did make a difference, but in the absence of an approach that focused on resolving the whole problem of poor outcomes in that market, the debt solution market has adapted and problems still remain.

This is important because FCA investigations can take a long time to arrive at policy change. Some five years passed between debt advice charities raising concerns about problems in the debt solutions market and the 'debt packager' rules coming into force. This speaks to the challenges the FCA faces in exercising effective supervision. It also speaks to the hurdles that Parliament requires the FCA to get over before making rule changes that further the consumer protection objective. The consumer duty will not reduce these challenges, but it should ensure that interventions by the FCA are based on a clearer sense of outcomes as 'solving the problem', that the success of remedies can be measured against.

The FCA's direction of travel seems to be towards less rule making and more use of principle-based outcome-based regulation. If so, the FCA will

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better route to help.
https://www.stepchange.org/Portals/0/assets/pdf/2022/policy/mixed-messages-report-2022.pdf

need to be proactive in the way it uses the consumer duty. The FCA will need to curate the process of change better than at present and set outcomes that aim to solve market problems with more ambition than in the past. These are the starting conditions from which simplification of the rule book might be done without a reduction in consumer protection.

10 February 2025