

3 March 2023

Dear CEO/Director,

Implementing the Consumer Duty in credit brokers

The Consumer Duty is a significant shift in our expectations of firms. It introduces a more outcomes-focused approach to consumer protection and sets higher expectations for the standard of care that firms give customers.

We are sending this letter to firms in the credit brokers portfolio to help them implement and embed the Duty effectively. This letter sets out:

- A reminder of the implementation timeline, key elements of the Duty and how it applies to credit broker firms
- Our expectations for how credit broker firms should embed the Duty
- Feedback from our recent review of firms' implementation plans
- Our updated view of the key risks of harm posed by credit brokers and expectations

We expect the Duty to be a top priority for you personally. We want good outcomes for customers to be at the heart of firms' strategies and business objectives, and leaders have a key role to play here. Firms' Boards and senior management should embed the interests of customers into the culture and purpose of the firm.

Your timeline for introducing the Duty

In July 2022 we published final rules and guidance for firms, and set out the following timeline for firms to implement the Duty:

- By the end of October 2022 firms' boards or management bodies should have agreed their plans for implementing the Duty.
- By the end of April 2023 manufacturers should have completed all reviews necessary to meet the outcome rules and shared necessary information with their distributors.
- The Duty comes into force on 31 July 2023 for new and existing products or services that are open to sale or renewal.
- On 31 July 2024 the Duty comes into force for closed products or services.

How the Duty applies to credit broker firms

The Duty applies to products and services offered to retail customers, and to all firms who determine or have a material influence over customer outcomes – not just those with a direct customer relationship.

For the purposes of the Duty, firms will be treated as 'manufacturers' if they have a role in the design or operation of a product or service. As most credit brokers are responsible for the design and operation of their credit broking service, this means that relevant aspects of the Duty will apply to them.

As credit brokers are also distributors of financial products that are designed by lenders, they also have responsibilities to maintain, operate and review product distribution arrangements for the products they distribute (and may have more comprehensive responsibilities under the Duty).

We've set out some more information and examples about how the Duty applies to credit broker firms in Annex 1 to this letter. This includes consideration of distribution chains and examples of how the Duty's Principle, cross-cutting rules, and outcomes may apply to your portfolio.

Overview of the requirements of the Duty

The Finalised Guidance we published in July provides firms with a full explanation of the requirements of the Duty, including many helpful examples of good and poor practice.

The Duty requires firms to act to deliver good outcomes for retail customers. Firms must act in good faith towards customers, avoid causing them foreseeable harm, and enable and support them to pursue their financial objectives. Firms should consider the diverse needs of their customers – including those with characteristics of vulnerability (see chapters 4-5 of the Guidance).

The Duty also introduces new rules and guidance to ensure that:

- **Products and services:** Are designed to meet the needs, characteristics and objectives of a specified target market (chapter 6)
- **Price and value:** Products and services provide fair value with a reasonable relationship between the price consumers pay and the benefit they receive (chapter 7)
- **Consumer understanding:** Firms communicate in a way that supports consumer understanding and equips consumers to make effective, timely and properly informed decisions (chapter 8)
- **Consumer support:** Firms provide support that meets consumers' needs throughout the life of the product or service (chapter 9)

A key part of the Duty is that firms need to define, monitor, evidence and stand behind the outcomes their customers are experiencing (chapter 10). This monitoring must enable firms to identify where customers, or groups of customers, are experiencing poor outcomes, and where this is the case firms must take appropriate action to rectify the situation.

The Duty does not have a retrospective effect and does not apply to past actions by firms. However, the Duty applies, on a forward-looking basis, to firms' ongoing work for existing customers (chapter 3).

Our expectations for how firms should embed the Duty in credit brokers

It is for your firm to assess if it is currently providing customer outcomes which have gaps or fall short against the higher standards set by the Duty, and to identify what it needs to do to address those. Such gaps or shortfalls may be specific to your firm. However, at Annex 1 we highlight some aspects that we presently consider especially important for credit broker firms in general. At a high level these are the need for credit brokers to:

- **Design services that meet the needs, characteristics and objectives of a specified target market.** This will include designing the credit broking service so that the information the customer is given accurately reflects the service offered. Services should not include unnecessary and harmful barriers that unreasonably restrict a customer from acting in their interests. Services should not seek to exploit customers' behavioural biases.
- **Offer products and services that provide fair value with a reasonable relationship between the price consumers pay and the benefit they receive.** Where firms charge customers fees, they should ensure that the fair value aspects of the Duty are taken into account. Firms are required to disclose to customers how and when any fee for brokerage service is payable and in what circumstances a refund may be payable, including how and when a refund is available under section 155 Consumer Credit Act 1974.
- **Communicate in a way that supports consumer understanding and equips consumers to make effective, timely and properly informed decisions.** This includes providing customers with prominent, sufficient and timely information about the nature of the credit broking services provided by the firm.
- **Provide support that meets consumers' needs throughout the life of the product or service that they provide.** This includes ensuring that staff who broker credit and other financial products have sufficient training, knowledge and experience to accurately answer or redirect any queries they receive about the operation of the product. Firms who broker credit digitally (i.e., online) should consider how they can ensure customers' queries can be answered or signposted effectively.

Feedback from our review of implementation plans

On 25 January we [published feedback](#) for firms on the implementation plans we have reviewed. This feedback contains examples of good practice, and areas for improvement, which will be useful for all firms to review as they implement the Duty.

Many of the plans we reviewed showed that firms have understood and embraced the shift to focus on consumer outcomes, established extensive programmes of work to embed the Duty, and are engaging with the substantive requirements.

However, we did also identify plans that suggested some firms may be further behind in their thinking and planning for the Duty. This brings a risk that they may not be ready in time, or they may struggle to embed the Duty effectively throughout their business.

We have identified three key areas where firms should particularly focus their attention during the second half of the implementation period (to 31 July 2023):

- **Effective prioritisation:** We saw a number of plans where it was not clear what the basis was for prioritising some implementation work ahead of other aspects. Firms should make sure they are prioritising appropriately, focusing on reducing the risk of poor consumer outcomes and assessing where they are likely to be furthest away from the requirements of the Duty.
- **Embedding the substantive requirements:** We saw some plans that suggested firms may have considered the requirements superficially or are over-confident that their existing policies and processes will be adequate. We urge firms to carefully consider the substantive requirements of the Duty, so that when they are reviewing their products and services, communications and customer journeys, they identify and make the changes needed to meet the new standards.
- **Working with other firms:** To implement the Duty on time, many firms need to work and share information with other firms in the distribution chain. However, some firms may need to accelerate their work on this important aspect of implementation.

As they oversee the implementation of the Duty, firms' boards and management bodies will want to particularly focus and provide challenge in the three areas above, and on the other issues highlighted in our feedback.

Our supervisory approach and next steps

The Consumer Duty is a cornerstone of our [three-year strategy](#), and a key element of our work to set and test higher standards between now and 2025. It is being prioritised at every level of the FCA, from the board down, and it will drive our supervision strategies and prioritisation.

As part of this work, we are developing a strategy to supervise credit brokers as they embed the Duty in our Supervision work and to tackle key harms, as well as metrics to measure the impact of the Duty in the market.

Credit brokers of all sizes in the sector should be prepared to discuss the Consumer Duty with us and to provide us with information on the reviews and assessments they have conducted as part of the embedding process. These additional engagements will be carried out through a variety of means, likely to include bilateral engagement, continued close engagement with the trade bodies, and industry events.

We will continue our work to support firms' embedding activities in the run-up to the July 2023 implementation deadline. Our programme of communications on the Duty will continue, with further events and updates to our dedicated [webpages](#). We are working with an external research agency that will soon be sending a short survey to a sample of firms. This anonymised survey will help us understand the progress firms are making in implementing the Duty and will inform our ongoing communications to firms.

For more information about the Duty:

- Read our **Finalised Guidance** [Finalised Guidance \(FG22/5\)](#)
- Consider our [feedback](#) on our **review of implementation plans**
- Visit our **Consumer Duty homepage** www.fca.org.uk/firms/consumer-duty where you will find additional information about the Consumer Duty, on-demand webinars and [podcasts](#), and the option to sign up for email updates
- If you have any questions, you can **email us** at firm.queries@fca.org.uk

Contact

If you have any questions, please contact the FCA's Supervision Hub. This is the primary point of contact for your firm's interactions with the FCA. You can email us at firm.queries@fca.org.uk. However, there may be times when your firm faces urgent issues of strategic importance. If this happens, please contact Costas Pittas on 0207 066 0042, or at costas.pittas@fca.org.uk. If not available, then please contact one of my managers, Gillian Small, email gillian.small@fca.org.uk.

Yours sincerely,

Roma Pearson
Director, Consumer Finance
Supervision, Policy & Competition Division

Annex 1 – How the Duty applies to credit brokers

The [Finalised Guidance \(“Guidance”\)](#) we published in July 2022 provides firms with a full explanation of the requirements of the Duty, including many helpful examples of good and poor practice. The Duty also introduces new rules and guidance to ensure that:

- Credit brokers must design the credit broking service so that the information the customer is given accurately reflects the service offered. Services should not include unnecessary and harmful barriers that unreasonably restrict a customer from acting in their interests. Services should not seek to exploit customers' behavioural biases.

Firms should have processes to effectively manage any potential conflicts of interest that could arise from the firm, or staff, remuneration. Firms should identify risks in their incentive structure and manage them to help ensure it does not drive behaviours that result in poor customer outcomes. For example, firms' controls for sales targets and staff incentives should identify risks that need managing to prevent mis-selling of financial products.

Firms should also ensure that distribution strategies are appropriate. For example, where customers are passed to other companies, including other brokers, the customer is made aware that this is happening and the reasons for it. The referral should not happen in a way that will cause customers' foreseeable harm.

- Where firms charge customers fees they should ensure that the fair value aspects of the Duty are taken into account. Firms are required to disclose to customers how and when any fee for brokerage service is payable and in what circumstances a refund may be payable. This includes how and when a refund is available under section 155 Consumer Credit Act 1974.

However, value is about more than just price, and we want firms that don't charge customer for their services to assess their products and services in the round to ensure there is a reasonable relationship between the price paid for a product or service and the overall benefit a consumer receives from it.

- Credit brokers, should provide customers with prominent, sufficient and timely information about the nature of the credit broking services provided by the firm.

This may include whether the customer should expect to receive advice or a recommendation, how many lenders the firm has credit broking arrangements with and whether it receives commission from lenders for its credit broking services. It also includes making customers aware if their details may be passed to other intermediaries and what role those firms have. Where CONC 5.4.2 applies, when a credit broker gives advice or recommendations it must consider the customer's needs and circumstances, including whether the product is affordable and whether there are any factors that might make it unsuitable for the customer.

A firm's financial promotions should be clear, fair and not misleading and not designed to exploit customers' behavioural biases. Where appropriate, firms should test

communications before sending or publishing them, and regularly monitor their impact after communication.

- Credit brokers must ensure that staff who broker credit and other financial products have sufficient training, knowledge and experience to accurately answer or redirect any queries they receive about the operation of the product. Firms should also ensure that frontline staff have appropriate skills and capabilities to recognise customers with characteristics of vulnerability, and to respond appropriately. Our guidance on the fair treatment of vulnerable customers highlights the actions firms should take. Firms must also have clear and prominent complaint procedures and be sufficiently resourced to deal with complaints appropriately.

We expect firms to be clear as to their roles in the distribution chain and meet their commitments under the Duty. Lenders and finance providers and those broking finance (including dealerships) need to consider their respective roles, i.e., whether they are acting as manufacturer, distributor or are co-manufacturers and distributors. Firms are manufacturers if they create, develop, design, issue, manage, operate, carry out, or (for insurance or credit purposes) underwrite a product or service. There may be multiple manufacturers for a single product or service.

A firm would be considered a co-manufacturer where they can determine or materially influence the manufacture of a product or service. This would include a firm that can determine the essential features and main elements of a product or service, including its target market. As an example, if a lender negotiates an APR price-point with a dealer or broker firm, the firms may need to consider whether the lender is making the pricing decisions or if the dealer or broker has a material influence on this.

Where firms collaborate in this way, they must have a written agreement outlining their respective roles and responsibilities to comply with the rules in this section. We expect the agreement to be a confirmation of which firm is responsible for meeting different aspects of the rules under this outcome. So, in the event of a problem, it is clear which firm is accountable.

Annex 2 – Key things for firms to consider

As reflected in our previous [portfolio letter](#), a diverse range of firms perform credit broking activities, both in terms of size and the sectors they operate in. For some firms, credit broking is their main business activity, but for many, it is secondary to another business activity from which they derive their main source of revenue.

We see risks occurring where firms are not fully aware of their regulatory responsibilities or inadvertently act outside the scope of their permissions, including limited permission brokers undertaking full permission broking. We have seen instances of firms obtaining authorisation but then undertaking different activities. We continue to see challenges for credit brokers, particularly around commission models and firms' monitoring and oversight of their staff and Appointed Representatives (ARs). All these examples could drive poor outcomes for consumers.

We want firms to be better informed at the point they apply for authorisation, during the early stages of being authorised and beyond. We are expanding our [Early and High Growth Oversight](#) to provide closer support for newly authorised businesses to help address some of these concerns.

Below are our expectations of firms and view of the key drivers of harm in the credit brokers portfolio, where relevant set out in the context of the Duty outcomes. These will be areas of our supervisory focus. We expect you to consider the degree to which your firm presents the risks we refer to in this Annex, review your strategies for mitigating them and be able to demonstrate that you and your senior managers (where relevant) are taking reasonable steps to mitigate these risks:

Products and services

Commission models and disclosure - including performance management policies, procedures and practices

Firms need to assess their approach to product sales (including incentives and commission models) and identify whether harm is foreseeable as a consequence of that approach, then act to prevent it from happening.

We have identified certain commission models which may cause consumer harm without appropriate oversight in place and cause potential conflicts of interests for sales staff or agents. An area where this is of particular interest is where sales take place in consumers' homes, i.e. domestic premises suppliers (DPS). In this context various factors can increase the risk of harm being caused, including where remuneration paid to firms' agents is largely comprised of commission, either on the sale of finance or of financed products and services, which can incentivise pressure selling.

We remind credit brokers of the requirements under Section [2.11](#) of the Consumer Credit Sourcebook (CONC), which builds on the requirements in Principle 3 and SYSC 4.1.1R to ensure firms identify and effectively manage the risks to customers that may arise out of firms' policies, procedures and practices for the remuneration of performance management of their employees, Appointed Representatives (ARs) and such, of their individual agents within the meaning of

CONC 14, who interact with customers. Principle 8 also requires firms to manage conflicts of interest fairly. We expect firms to take this into account of these requirements in relation to the remuneration models they operate.

We know incentives (commission and fee models) where the risks are not adequately identified and managed can lead to poor outcomes for consumers. We expect firms to understand the risks that could arise from their incentives model and review their remuneration model. If necessary, they should make changes to any current model which does not comply with our rules. This should include adequate staff training and oversight and controls in place to prevent their incentives model causing harm to customers.

We are also focusing attention on whether our [ban on discretionary commission models](#) in motor finance and amendments to commission disclosure (as outlined in PS 20/8) are being complied with by both lenders and credit brokers including motor dealers.

Consumer understanding

Financial promotions

The Consumer Duty requires firms to avoid causing foreseeable harm at all stages of the customer journey in addition to our existing rules and guidance concerning financial promotions. Credit brokers should consider this when they are thinking about groups of customers such as when considering the audience for a financial promotion.

We have identified concerns with some credit brokers issuing financial promotions that breached our rules. In response we published a [Dear CEO](#) letter to firms in May 2022 reminding them of the most commonly breached rules and our requirements under CONC. This included reference to [CONC 3.3.1R](#) ensuring that a communication or a financial promotion is 'clear, fair and not misleading' and CONC 3.3.3R which states that 'a firm must not in a financial promotion or a communication to a customer state or imply that credit is available regardless of the customer's financial circumstances or status'.

Our letter also asked firms to consider conducting a review of their processes and systems and controls and to retain evidence of having done so. We would expect any review to include a check that prohibited terms are not being used (e.g., any reference to guaranteed acceptance) and sign off requirements for any ARs or Introducer ARs. We remind firms that their financial promotions should also comply with all other relevant rules for financial promotions and communications with customers found in chapter 3 of the Consumer Credit Sourcebook ('CONC 3').

We have more recently [warned](#) about credit brokers and lenders offering high-cost short-term credit without giving any warning of the potential risks of taking out these types of loans.

Use of regulated status

We expect firms to make their regulated status clear to consumers, which includes what they are authorised to do. We are aware that some firms are not being transparent, and, in some cases, they are using their regulated status as a 'Halo' effect to suggest that their non-regulated activities may be less risky or lead customers to incorrectly believe they have recourse to The Ombudsman or Financial Services Compensation Scheme. We have taken action against such firms.

We are also aware that some firms remain authorised despite no longer conducting regulated activities. This creates a potential risk of misleading consumers and to firms having to pay fees which are unnecessary. Previously a period of non-use was classified as 12 months, however, under new [powers](#) granted in May 2022, this has been reduced to 28 days following a first warning.

You should review whether the permissions held are still required and remove those which are no longer needed or cancel the firm's Part 4A permission completely if regulated activities are not being conducted.

Consumer support

We want firms to provide a level of support that meets consumers' needs throughout their relationship with the firm. This means firms' customer service should enable consumers to realise the benefits of the products and services they buy and ensure they are supported when they want to pursue their financial objectives.

Firms must also ensure that customers do not face unreasonable barriers, for instance when making a complaint. In addition, ensuring that customers in financial difficulty receive fair and appropriate support remains a key priority for the FCA and a key outcome that the Duty seeks to enhance by ensuring that firms act in their customers' interests.

Against a backdrop of higher inflation and increasing interest rates, we are seeing an increasing number of customers facing difficult circumstances, personally and financially.

Whilst our policy work on the Duty pre-dates the rising cost of living, this crisis underlines the importance of the standards and outcomes we expect under the Duty and provides further opportunity for the sector to build public trust.

Our recently published [Dear CEO](#) letter outlines these points in greater detail, and you can find further information for firms in our [cost of living](#) key documents.

Under the Duty firms are required to avoid causing foreseeable harm to customers. We know that customers in financial difficulty are more likely to have characteristics of vulnerability, and that poor treatment of customers in this situation is likely to cause harm.

The Duty makes clear that firms must provide support that meets the needs of customers, including those with characteristics of vulnerability, throughout the life of the product or service.

With some customers more likely to have difficulties meeting loan commitments, credit brokers may be able to help by encouraging customers to contact their lenders for support if they start to experience difficulties repaying loans and by helping customers understand what types of debt help or money guidance are available.

Treating customers in vulnerable circumstances fairly

Our [Guidance on the fair treatment of vulnerable customers](#) is clear that to comply with our Principles for Businesses firms should embed the fair treatment of customers in vulnerable circumstances in their business models, culture, policies and processes. The Consumer Duty also embeds a focus on the treatment of customers with characteristics of vulnerability.

Our [finalised guidance \(FG21/1\)](#) on the fair treatment of vulnerable customers highlights that firms' senior leaders should create and maintain a culture that enables and supports staff to take responsibility for reducing the potential for harm to vulnerable customers. Firms should be able to evidence to us how they are monitoring outcomes for customers in vulnerable circumstances and what changes they are making as a result of their monitoring to improve outcomes for these customers.

Appointed Representatives (AR) regime

We know that lots of firms in the credit market use ARs and this can bring benefits such as supporting innovation, providing more choice, and driving competition in the market. However, we have seen increasing harm from the AR model, as set out on page 4 of our [policy statement](#).

In August 2022, we confirmed new rules to strengthen the oversight of ARs by principals. Our rules came into force on 8 December 2022, which clarify and strengthen the responsibilities and expectations of principals. We require principals to provide more information on ARs including Introducer Appointed Representatives (IARs).

The changes we are making to the AR regime go hand-in-hand with Duty. If you are a Principal firm, you should ensure that you have appropriate controls in place to effectively oversee your ARs' activities and ensure that your ARs comply with the Duty. Principals should read our updated rules and expectations and take necessary steps to comply with the changes.

Change of legal status

We have seen cases of credit brokers changing their legal status, for example a sole trader becoming a limited company, without first submitting a new authorisation application. The new entity is also expected to sign a Deed Poll accepting responsibility for the former firm's obligations so that consumers are not adversely impacted should they wish to make a complaint.

The FCA [website](#) provides details of when a firm should cancel its existing authorisation and submit a new application. Firms who have made such changes to their legal status and who have not followed the process detailed should cease regulated activities until it is resolved as a matter of urgency.

Additional areas of consideration

In addition to the above key risks of harm, we would also highlight the following areas that firms should give due consideration to:

Environmental, social and governance (ESG)

Financial services and markets have a central role in the transition to a low carbon economy and more sustainable future. The Government has committed to achieving a net zero economy by 2050. We will support the financial sector in driving positive change, including the transition to net zero. Our refreshed [ESG strategy](#) sets out our target outcomes and actions we expect to take to deliver these in the coming months.

Achieving a more diverse and inclusive financial services industry is an important part of the FCA's ESG priority. Diversity and inclusion is key to a healthy culture. We believe that diversity of perspectives and thought, when part of an inclusive culture, results in better judgements

and decision making. We recently published a [review](#) of approaches to diversity and inclusion in a sample of regulated firms. We encourage all regulated firms to consider these findings in the development of their diversity and inclusion strategies and practices. We intend to publish a Consultation Paper (CP) this year and encourage firms to read and respond to the CP when it is published.

Senior Managers and Certificate Regime (SM&CR)

The SM&CR has been in place for solo-regulated firms since December 2019. The regime replaced Controlled Functions (CFs) with Senior Management Functions (SMFs) and certification functions.

As well requiring approval of SMFs, the SM&CR requires firms to identify individuals performing certain specific roles and to evaluate and certify these individuals as fit and proper for the roles they perform on appointment and at least once a year. These prescribed responsibilities do not apply to limited scope firms (i.e. limited permission credit brokers).

The deadline for completing the first certificates was 31 March 2021. Information about certified persons and other directory persons should have been uploaded to the Register via Connect. All other staff (apart from ancillary staff) must also have been trained in the conduct rules as they apply to their roles. Further information can be viewed in our [guide for FCA solo-regulated firms](#).

Disclosing criminal convictions

We expect firms and the individuals responsible for them to be open and honest throughout their relationship with us.

We have seen instances of individuals applying to hold a variety of senior manager functions but failing to disclose criminal convictions. Our application forms clearly set out the circumstances in which we expect criminal convictions to be declared (including spent convictions). If you are unsure in which circumstances you would be expected to declare a criminal conviction, you should seek advice.

We treat non-disclosure to the FCA extremely seriously. Failure to disclose could result in action being taken against firms and the individual concerned, such as a Warning Notice being issued. Our [website](#) explains this in more detail.

Financial crime, cyber resilience and data protection

All firms are expected to have appropriate controls in place to protect them from being used for financial crime. This also extends to having effective protection for their systems and customer data. These controls should be reviewed at regular intervals to ensure they keep pace with the changing financial landscape and methods that criminals use to obtain information.

Our website provides examples ([financial crime](#), [building cyber resilience](#), [handling customer data](#)) of what firms should consider to help them put adequate controls in place.