

A new Consumer Duty Consultation

The British Vehicle Rental and Leasing Association (BVRLA) represents the demand side of the automotive industry. Our members engage in vehicle rental, leasing and fleet management. BVRLA members own and operate more than four million cars, vans and trucks. They spend more than £30 billion upgrading their fleets each year and are responsible for buying around 50% of new vehicles sold annually in the UK, including 83% of vehicles manufactured in the UK for sale in the UK. The vehicle rental and leasing industry supports over 465,000 jobs, adds £7.6 billion in tax revenues and contributes £49 billion to the UK economy each year.

The BVRLA and its members are supportive of the FCA's work looking at enhancing consumer protection and avoiding harms. However, the introduction of these new regulations must also be fair on firms. Firms within our sector are already providing great consumer care by following the existing well-designed Principles of Business in a compliant manner. Whilst we agree with the objectives of the proposed Consumer Duty, the current regime provides the right regulatory framework for achieving these. Adding in a new measure in the form of a Consumer Duty will not further enhance these levels of consumer protection and are instead more likely to result in confusing duplication for firms. This disruption to the industry could result in less innovation and ultimately, a poorer outcome for customers. The FCA should undertake a review of existing measures in place to protect consumers, such as SM&CR, before introducing a new Consumer Duty. If the FCA does go ahead with a new Consumer Duty, further clarification will be needed to detail how businesses can carry out these requirements in practice and indicate what good looks like. We would welcome further engagement with the FCA on these explanations and expectations.

Consultation questions

Q1: What are your views on the consumer harms that the Consumer Duty would seek to address and/or the wider context in which it is proposed?

Whilst the BVRLA is supportive of protecting consumers from harms, the new Consumer Duty is not needed to achieve this. There are already extensive principles and regimes in place within the financial services regulatory framework to avoid many of the harms outlined and the Consumer Duty could duplicate the function of many of these. Where there are possible harms the FCA has taken action to introduce targeted measures. Within the past three years, we have seen the introduction of a ban on discretionary commissions, commission disclosures, SM&CR and the FCA Register for all Senior and Certified functions within the financial services sector.

The BVRLA audits firm compliance to FCA regulations through an extensive compliance programme, to ensure that compliance is both in line with the letter and spirit of the FCA's intention. Our members meet the current regulations and achieve good customer outcomes. In this already rigorous compliance landscape members are constantly reviewing and updating their policies, terms and conditions, and customer service levels to ensure fair treatment of consumers. There is a healthy level of competition across the sector as members seek to enhance their reputation in this area.

The BVRLA also questions the wider context in which these proposals are being put forward, as their wide focus fails to take into account the varied situations of different firms and sectors that work within the financial services. The motor trade sector, especially businesses that are acting as brokers, have very different consumer expectations to other firm types such as insurers and banks. The new Consumer Duty does not represent this variation on the duty requirements faced by different business types.

Similarly, this FCA consultation confirms that many firms are already delivering the right outcomes for customers. Imposing a more burdensome duty which adds an extra layer of complexity is unfair in cases

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River Lodge, Badminton Court, Amersham, Bucks HP7 0DD

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where businesses already meet the desired level of consumer outcomes. Instead of a catch-all measure, there should be a mechanism in place to more closely monitor those firms which are not yet delivering good outcomes and to produce the required targeted interventions.

The introduction of Consumer Duty, which would theoretically comprise a 13th principle is not the best approach. The FCA should reexamine the existing principles and regulations and make adjustments to these measures if required to enhance consumer protection. Adding in an overarching measure for businesses to follow is not needed where firms are already delivering the right, high-standard outcomes for their customers.

Q2: What are your views on the proposed structure of the Consumer Duty, with its high-level Principle, Cross-cutting Rules and the Four Outcomes?

The Consumer Duty proposal is not comprehensive enough for a full evaluation. The principles, rules and outcomes are too abstract and need to be better defined in sector specific tests. Without comprehensive specific guidance, firms will have to either make subjective interpretations or fall back on existing FCA guidance, making the Consumer Duty redundant. This will be especially problematic for sectors that don't have as much existing guidance in the FCA's explicit expectations.

The principle of delivering good outcomes for consumers or acting in their best interests is very wide and what that means for different sectors and firms is not clear. Without a clear test, it is difficult for firms to know what steps they need to take to guarantee the best outcome for all consumers. Equally, it is difficult for firms in the same industry to ensure consistency of approach as some may naturally take a more risk adverse approach than others, even when they are still delivering good outcomes.

Nowhere in the overarching duty does the FCA set out how it will test what constitutes 'good' in business. What good looks like will result in a different answer for each business depending on a range of factors. It is unclear how the FCA will measure a business meeting the consumer duty outcomes in these cases. If the Consumer Duty is to go ahead, many more examples and case studies will be required so that firms have sufficient guidance to enact the principles, rules and outcomes. As it currently stands, the proposed structure is not practicable for businesses.

Q3: Do you agree or have any comments about our intention to apply the Consumer Duty to all firms engaging in regulated activities across the retail distribution chain, including where they do not have a direct customer relationship with the 'end-user' of their product or service?

If a Consumer Duty must be introduced then it should apply to firms that are responsible for the design, target market or performance of a product or service.

It is also clear that much more detail of how this would function would be needed before any Consumer Duty could be introduced. For example, it's unclear what the expectations will be for brokers operating a panel. Lenders will interpret the Consumer Duty requirements differently, especially without specific tests and case studies. There needs to be clarity as to who has primary responsibility. If each lender is attempting to comply with the new requirements in good faith, then this could lead to multiple and conflicting requirements for the broker.

Q5: What are your views on the options proposed for the drafting of the Consumer Principle? Do you consider there are alternative formulations that would better reflect the strong proactive focus on consumer interests and consumer outcomes we want to achieve?

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Given the huge scope the Consumer Duty sets to meet there is no ideal option, as every interaction will depend on the information the customer provides and the choices the customer makes along the way. However, if a Consumer Duty is introduced, Option 1 is the more acceptable of the two.

Q6: Do you agree that these are the right areas of focus for Cross-cutting Rules which develop and amplify the Consumer Principle's high-level expectations?

The cross-cutting rules are already set out and embodied by current Principles 1, 2 and 6, which firms are already enacting.

Q7: Do you agree with these early-stage indications of what the Cross-cutting rules should require?

The cross-cutting rule requiring that firms 'enable consumers to pursue their financial objectives' needs elaboration. In certain cases, a consumer may have a set objective and pursue an option most suitable for them. Whilst a business is responsible for communicating all available options to the consumer, some options may not be relevant to a customer's financial objective. In these instances, the disclosure of another available option may risk confusing the consumer.

Another issue is that the customer's choice of option may not align with their original objective. As experts in their field, it is the role of businesses to inform the customer of what product may be the best fit for their purpose, which the customer may not initially comprehend or be aware of. This is somewhat contradictory; whilst steering the customer toward the best outcome for them in the aim of treating them fairly, businesses could not meet the duty requirements of enabling the customer to pursue their financial objective. In practice, this would mean that a firm acting to mitigate harm to the consumer by ensuring the best product is sold to them could be penalised for preventing the customer from pursuing their initial objective. Further clarification on the requirements of the rules is required to disentangle this.

Q9: What are your views on whether Principles 6 or 7, and/or the TCF Outcomes should be disapplied where the Consumer Duty applies? Do you foresee any practical difficulties with either retaining these, or with disapplying them?

As the Consumer Duty repeats Principles 6 and 7, rather than going above them, it would be impractical to disapply these principles. In the event the Consumer Duty is introduced, firms are likely to retain their established practices in line with the principles of treating customers fairly and in their interests in a way which is not misleading. Firms should not be subsequently penalised against enacting these principles to meet their new Consumer Duty requirements.

Q10: Do you have views on how we should treat existing Handbook material that relates to Principles 6 or 7, in the event that we introduce a Consumer Duty?

BVRLA members are uncertain about how the Consumer Duty principle will sit alongside Principles 6 and 7. The FCA states that the Consumer Duty is being introduced as the treating customers fairly (TCF) outcomes have not properly landed. More clarity is needed to understand how the Consumer Duty will be introduced amongst the existing principles, how they will interact and what has motivated its introduction.

Q11: What are your views on the extent to which these proposals, as a whole, would advance the FCA's consumer protection and competition objectives?

The proposals of the new Consumer Duty would have no further impact on the FCA's consumer protection and competition objectives over and above the impact of SM&CR. The expansion of the Senior Manager and Certification Regime placed accountability on seniors within a business and aimed to improve the culture and standards within an organisation from the top down and bottom up. This is echoed in the Consumer Duty which is to 'set clearer and higher standards of firms and the conduct we expect from them'.

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Similarly, the FCA advises that the Consumer Duty would create consumer confidence, yet this was again the intention of SM&CR along with the FCA Register which now includes all employees of a firm classed as a Senior Manager or who undertake a certified position. The new conduct rules of SM&CR which were implemented to 'shift the culture and behaviours within firms working in the financial services' are also reformulated into the Consumer Duty.

As SM&CR has only been in place for all financial services since December 2018, the FCA should first undertake a proper evaluation and analysis of how the expansion of the regime has impacted and benefited consumers before introducing further measures. The SM&CR regime has not had long to settle in and create change, especially due to the pandemic which significantly affected financial services and how firms carried out SM&CR. The FCA should review this existing regime and make amendments to strengthen it if it has not achieved the advancement of consumer protection and competition in the market. If no assessment is taken to determine why this is the case, the same issue may arise in establishing the Consumer Duty.

Q13: What are your views on our proposals for the Communications outcome?

The FCA states that for firms to meet the communications outcome, consumers must be equipped to make effective, timely and properly informed decisions. This requires that customers receive 'clear and understandable information', which is already captured in Principle 7 which covers Communications with Clients.

Currently, brokers in the motor industry send through a lot of detailed information to customers at many different touchpoints throughout the customer journey. There is little to no further information that could be provided to the customer without overloading them, which will worsen a firm's performance on other intended outcomes such as customer service. Following Principle 7 ensures that sufficient communication is already in place and customers are currently equipped to make their best decisions. Instead of a Consumer Duty, a different model should be introduced which targets the minority of businesses which are not meeting the existing principles.

Q14: What impact do you think the proposals would have on consumer outcomes in this area?

As outlined above, this proposal would not offer any additional benefit to our sector as it is not applicable. Compliant firms are already meeting communications requirements to adequately protect consumers in line with Principle 7.

Q15: What are your views on our proposals for the Products and Services outcome?

The outcome of specifically designing products and services to meet the needs of consumers and selling those only to those whose needs they meet is detailed in the Consumer Rights Act 2015, which states that 'products must be of satisfactory quality, fit for purpose and as described'. This definition captures that products and services must be catered to the specific customer and sufficient for their needs and as such, the FCA does not need the products and services outcome as an additional measure to this.

Additionally, there is a lack of detail and a subjective quality to the outcome. For example, the expectations on 'lifecycle' assurance and monitoring are subjective and will vary depending on the customer and product type. Firms will not know whether they are doing enough in taking proportionate action to monitor risk with varied product risk profiles. Furthermore, whilst the design of products applies to larger firms such as banks and insurance companies who offer loans or investments, this outcome is not relevant or understandable for many businesses within the motor trade as credit brokers do not design products. More guidance and case studies are required to exemplify how this outcome could be modelled in our sector.

Q16: What impact do you think the proposals would have on consumer outcomes in this area?

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For the reasons given above, these proposals would have a limited impact on consumer outcomes in our sector over and above the requirements of the Consumer Rights Act 2015.

Q17: What are your views on our proposals for the Customer Service outcome?

The customer service outcome on meeting the needs of consumers so they can act in their interests without undue hinderance is already captured by Principle 1 and Principle 6. As Principle 1 states that firms must act with integrity, this means firms cannot hinder the decisions of customers. As Principle 6 states that a firm must pay due regard to the interests of its customer and treat them fairly, this means firms must enable customers to act in their best interests. These principles therefore sufficiently cover the requirements laid out in the customer service outcome.

Furthermore, the FCA cites a lack of commercial incentives present in the market for firms to deliver high levels of customer service. However, there has been a significant move toward this in the form of a ban on discretionary commission models, along with commission disclosures. These regulations incentivise transparency in business practice and motivate transparency in customer service as a competitive advantage for firms in the motor sector. The FCA suggest that ‘firms may sometimes lack’ good customer service practice. This is not the case for many firms following the current rules and meeting adequate standards of customer service.

Q18: What impact do you think the proposals would have on consumer outcomes in this area?

The proposals for customer service outcomes would have a limited impact on consumer outcomes as complaint firms in the motor trade follow Principles 1 and 6 and are already fiercely competitive in this area.

Q19: What are your views on our proposals for the Price and Value outcome?

As with the previous outcomes, the price and value outcome of representing fair value for consumers appears to be a repetition of current principles. Where any fees or extra charges are not foreseen by a customer, compliant businesses in our sector are transparent with consumers to make them aware of any hidden fees under obligations outlined in Principle 7.

Q20: What impact do you think the proposals would have on consumer outcomes in this area?

There will be no further impact on consumer outcomes in the area of price and value than the impacts of existing regulation.

Q21: Do you have views on the PROA that are specific to the proposals for a Consumer Duty?

The PROA will cause more issues than it will resolve. Notably, introducing a PROA for breaches of the Consumer Duty will stifle creativity of firms as they will become risk adverse to avoid litigation. This contradicts other aims of the Consumer Duty, such as the innovation of better designed or valued products for customers. The increased costs associated with a PROA for businesses will be passed down to the customer which counteracts the price and value outcome of the proposed Consumer Duty.

In contrast to empowering consumers to be able to take their own decisions, a PROA could also foster a culture of ‘ambulance chasing’ from Claims Management Companies which will make consumers think they do not have to be ultimately responsible for their actions and decisions. A PROA for breaches of the Consumer Duty thus undermines the goals of the Consumer Duty itself by creating more potential harms to consumers than the amount of net protections gained.

Q27: What are your views on the amount of time that would be needed to implement a

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Consumer Duty following finalisation of the rules? Are there any aspects that would require a longer lead-time?

The proposed timescale from receiving the final rules in Q1 to implementation on 31st July is far too tight, especially given the potentially substantial changes that would be required. Current regimes such as SM&CR have taken much longer to initialise, suggesting a significant extension to the current time period proposed is required in order to be fair on firms.

About the BVRLA

The BVRLA represents over 970 companies engaged in vehicle rental, leasing and fleet management. Our membership is responsible for a combined fleet of four million cars, vans and trucks – one-in-ten of all vehicles on UK roads.

BVRLA members represent the demand-side of the automotive industry, buying around 50% of new vehicles, including over 80% of those manufactured and sold in the UK. In doing so, they support almost 500,000 jobs, add £7.6bn in tax revenues and contribute £49bn to the UK economy each year.

Together with our members, the association works with policymakers, public sector agencies, regulators, and other key stakeholders to ensure that road transport delivers environmental, social and economic benefits to everyone. BVRLA members are leading the charge to decarbonise road transport and are set to register 400,000 new battery electric cars and vans per year by 2025.

BVRLA membership provides customers with the reassurance that the company they are dealing with adheres to the highest standards of professionalism and fairness.

The association achieves this by reinforcing industry standards and regulatory compliance via its mandatory Codes of Conduct, inspection regime, government-approved Alternative Dispute Resolution service and an extensive range of learning and development programmes.

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