Response by TISA to Call for Input: Review of FCA requirements following the introduction of the Consumer Duty

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About TISA

The Investing and Saving Alliance (TISA) is a unique, rapidly growing membership organisation for UK financial services.

Our ambition is to improve the financial wellbeing of all UK consumers. We do this by convening the power of our broad industry membership base around the key issues to deliver practical solutions and devise innovative, evidence-based strategic proposals for government, policy makers and regulators that address major consumer issues.

TISA membership is representative of **all sectors of the financial services industry.** We have **over 200-member firms involved in the supply and distribution of savings, investment products and associated services**, including the UK's major investment managers, retail banks, online platforms, insurance companies, pension providers, distributors, building societies, wealth managers, third party administrators, Fintech businesses, financial consultants, financial advisers, industry infrastructure providers and stockbrokers.

As consumers, the financial services industry and the economy react to and recover from the effects of the pandemic, the importance of the three key pillars of work that TISA prioritises has never been more apparent:

- **Strategic policy initiatives that influence policymakers** regarding the financial wellbeing of UK consumers & thereby enhancing the environment within which the industry operates in the key areas of **consumer guidance, retirement planning, later lifetime lending, vulnerable customers, financial education, savings and investments**.
- TISA is recognised for the **expert technical support provided to members** on a range of operational and regulatory issues targeted at improving infrastructure and processes, establishing standards of good practice and the interpretation and implementation of new rules and regulations covering **Governance, Conduct and Culture, Consumer Duty**, **MiFID II, CASS, ESG/RSI, Operational Resilience, Financial Crime Prevention** and a range of other areas.
- **Digital transformation initiatives** that are driving ground-breaking innovation and the development of industry infrastructure for greater operational effectiveness and revenue promoting opportunity for firms. TISA has become a major industry delivery organisation for consumer focused, digital industry infrastructure initiatives – **TISAtech** (a digital marketplace that brings together financial institutions and FinTechs for greater collaboration and innovation) and **TURN** (TISA Universal Reporting Network – a digital platform providing a secure data exchange for financial services using blockchain technology) – alongside projects **Digital ID** and **Open Savings, Investments & Pensions**. This reflects TISA's commitment to open standards and independent governance.

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Introduction and Summary of Recommendations

TISA welcomes the opportunity to respond to the FCA's Call for Input "Review of FCA requirements following the introduction of the Consumer Duty".

The Consumer Duty has introduced a significant cultural and practical shift in the way firms are expected to deliver outcomes to consumers. While the introduction of Consumer Duty is welcome and necessary to enhance consumer protection, there are critical areas where we believe existing rules could be streamlined, consolidated, or adjusted to prevent duplication, avoid conflicting Handbook provisions and align more effectively with the new regime.

Many of our members have highlighted that it may be premature to make definitive conclusions at this stage. Notably, the introduction of the Consumer Duty coincides with a broader shift in the FCA's regulatory approach, as the FCA has emphasised its move towards being more outcomes-focused, assertive, and data-driven in its oversight. We have noticed this move, but thorough and consistent embedding will take time. We see the FCA's Call for Input as a key element to driving this broader shift forwards and welcome the opportunity to engage with the FCA at this early stage.

It is also early to assess the extent to which the Consumer Duty will promote growth or support the FCA's competition objective. While some firms may view an outcomes-based approach as an opportunity to innovate for their customers, with reduced prescriptive rules potentially aiding this, other firms—particularly smaller ones—may lack the confidence to innovate due to concerns about not meeting the FCA's outcomes-based expectations in a less rule-driven environment. There is a balance to be struck to ensure the UK's financial services can flourish and better serve UK consumers.

Following discussion with our members, there does appear to be a number of areas where the existence of Consumer Duty presents an opportunity to streamline, consolidate or remove certain rules that may now be redundant. In addition, there are some areas of the Handbook where compliance with overly prescriptive rules offers no obvious consumer protection and may even cause harm in relation to the cost of compliance which is indirectly passed to the customer.

In summary, our response focuses on the following recommendations:

- **Overlapping of existing rules with the Consumer Duty principle** - the FCA should consider reviewing specific elements of rules like Treating Customers Fairly (TCF) which overlaps with the principles embedded in the Consumer Duty, and whether detailed rules, such as those contain in PROD, are necessary alongside the Consumer Duty.
- **Conduct Rules -** There is obvious duplication between the Consumer Duty and conduct rule 4 and conduct rule 6. The FCA could consider removing these given they have been superseded by the Consumer Duty. We would suggest prioritising the removal of conduct rule 4, since conduct rule 6 represents a higher standard.
- **Harmonising Communication and Disclosure Requirements -** existing rules governing communication standards, such as those in COBS, should be evaluated for potential alignment with the Consumer Duty's "Consumer Understanding" outcome. We recommend that certain disclosure rules be integrated into the Duty's outcome-focused framework, particularly where evidence shows that overly technical or legalistic disclosures do not achieve the intended consumer understanding. TISA research has shown that the disclosure scheme is not working and we would welcome the FCA

overhauling its approach so that the purpose of the disclosure is clear and the approach taken is consistent with the stated purpose.

- **Vulnerable Customers -** this is an area with multiple different publications over many years. We recommend the FCA considers refining this work so that it forms a single section of the Handbook with further clarification for firms. We would be happy to engage further with the FCA on the nature of these further clarifications.
- **Value for money -** throughout the Consumer Duty and other FCA rules, there are numerous references to 'value for money' and 'fair value.' The current Consultation Paper (CP24/16) proposes an overly prescriptive additional layer of regulation regarding the 'value for money' of workplace pensions. We recommend the FCA reviews how this term is used throughout their Handbook to avoid duplicative or conflicting definitions of 'value.'
- **Investment pathways** - this is a recent example of highly prescriptive regulation. While we support the underlying concept, we believe there is considerable potential to shift toward a more outcomes-based approach in this area.
- **CASS -** overall, we feel the CASS rules provide a reasonable balance between prescriptive requirements and flexibility to produce the relevant outcomes. However, the CASS Audit imposes a substantial annual cost on firms and certain CASS requirements produce a disproportionate level of debate between auditor and firm, with no obvious benefit to consumer, for example, CASS 8. The FCA should consider the benefit of such rules, when balanced against the cost of compliance and audit.
- **SM&CR -** the FCA could consider simplifying some aspects of SM&CR to avoid duplication with the responsibilities imposed by the Duty. The focus should be on reinforcing accountability for consumer outcomes without adding additional layers of regulatory complexity.
- **Equality, Diversity & Inclusion –** the FCA should review the Handbook to ensure that the drafting used is inclusive. There is ample research, including FCA work, that calls out the need for financial services to be more inclusive, both in terms of the individuals that work in financial services and the people that financial services firms serve. However, throughout the Handbook, there are references to financial services personnel and customers being only being male: for example, the reference to an advisor being only a 'he' in PERG 8.27.2, or to a reasonable investor only being a 'he' in PERG 9.9, or customers of financial services and recipients of financial promotions only being male in references throughout PERG 8.14. In light of the FCA's Public Sector Equality Duty, we recommend that the FCA reviews the entire Handbook to ensure that the rules and guidance it provides is inclusive in its drafting.

Additionally, we are glad to see the **Advice Guidance Boundary Review** highlighted in the call for input. The introduction of targeted support will necessitate a review of certain sections of the rulebook. We hope this review will adopt an outcomes-based approach, leveraging the Consumer Duty, rather than introducing unnecessary prescriptive measures. If the FCA has concerns about potential consumer harm, we recommend it provides guidance on best and worst practices to set expectations and baseline standards across the industry.

We welcome further dialogue on these recommendations and look forward to collaborating with the FCA as it refines the implementation of the Consumer Duty.

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Question Responses

Q1: Could any of our retail conduct rules or guidance be usefully simplified or removed by relying on requirements under the Consumer Duty? Please tell us:

a. which rules or guidance (e.g. Handbook chapters, or non-Handbook guidance) you consider cover similar ground to Duty requirements, or are otherwise overly detailed or prescriptive, or arguably redundant in light of other materials, and why

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

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

CONCON
There is clear duplication between Conduct Rule 4 [COCON 2.1.4R: You must pay due regard to the interests of customers and treat them fairly] and Conduct Rule 6 [COCON 2.1.6: You must act to deliver good outcomes for retail customers]. Since Conduct Rule 6 sets a higher standard, Conduct Rule 4 could be removed without compromising the conduct behaviours the FCA seeks to promote. While the practical impact of this duplication may not be significant, it does require monitoring conduct against two rules instead of one, leading to confusion among staff regarding the differences between the two and creating an unnecessary burden.

SM&CR
The FCA's Senior Managers and Certification Regime (SM&CR) plays a critical role in the implementation of the Consumer Duty. The Duty enhances accountability by requiring senior managers to ensure their firms deliver good outcomes for consumers. Given this, we recommend that the FCA consider simplifying some aspects of SM&CR to avoid duplication with the responsibilities imposed by the Duty and the risk that the delineation of responsibility and accountability across senior managers is unclear. The focus should be on reinforcing accountability for consumer outcomes without adding additional layers of regulatory complexity and confusion.

PROD
The introduction of the Consumer Duty's "Products and Services" outcome provides an opportunity to revisit existing product governance rules contained in the PROD (Product Intervention and Product Governance) Sourcebook. The Duty's principles require firms to design products that meet consumer needs and ensure good outcomes, which overlaps with existing product governance regulations. We propose that the FCA review whether PROD's detailed rules are necessary alongside the Consumer Duty or whether they could be streamlined into a more flexible, outcomes-focused framework.

Communication and Disclosure Requirements
Existing rules governing communication standards, such as those in COBS (Conduct of Business Sourcebook), should be evaluated for potential alignment with the Consumer Duty's "Consumer Understanding" outcome. The Duty's focus on ensuring that communications support informed decision-making is broader and more flexible than many existing prescriptive requirements. For example, the rules in PRIN 2A.5 appear to be a duplication of existing rules and we recommend that certain disclosure rules be integrated into the Duty's outcome-focused framework, particularly where

evidence shows that overly technical or legalistic disclosures do not achieve the intended consumer understanding.

Value for Money

The Consumer Duty's emphasis on ensuring products and services offer fair value to consumers should prompt a review of existing and future proposed rules that govern pricing practices. Specifically, the FCA could assess whether current pricing and fee disclosure requirements can be consolidated under the Duty's more general requirement that firms deliver fair value across the customer lifecycle. For example, the introduction of the VfM framework should remove the requirement to double up on costs and charges reporting in line with PS20/2.

This would not only simplify compliance but also encourage firms to focus on ensuring the overall benefit-cost ratio for consumers rather than meeting prescriptive pricing benchmarks.

Vulnerable Customers

Protections for vulnerable consumers are a core aspect of the Consumer Duty. We recommend that the FCA review its existing guidance on vulnerable consumers and assess whether it can be integrated under the Duty's outcomes-based approach. Current rules within CONC (Consumer Credit Sourcebook) and other areas might be revised to create a more cohesive framework for addressing consumer vulnerability, especially as the Duty requires firms to proactively consider and support vulnerable customers throughout their product and service offerings.

Equality, Diversity & Inclusion

We recommend that the FCA review the entire Handbook to ensure that the drafting used is inclusive. There is ample research, including FCA work, that calls out the need for financial services to be more inclusive, both in terms of the individuals that work in financial services and the people that financial services firms serve, and the FCA rightfully prides itself on leading the sector's work in this space. However, we are aware that throughout the Handbook, there are references to financial services personnel and customers being only being male: for example, the reference to an advisor being only a 'he' in PERG 8.27.2, or to a reasonable investor only being a 'he' in PERG 9.9, or customers of financial services and recipients of financial promotions only being male in references throughout PERG 8.14. In light of the FCA's Public Sector Equality Duty, we recommend that the FCA reviews the entire Handbook to consider ways in which the rules and guidance can be drafted in a more inclusive manner.

Q2: Is there a lack of clarity on how requirements under the Duty and other FCA rules interact? Please tell us where this issue arises and your views on how it could be addressed. For example, would guidance on the interaction be helpful?

Breach reporting

Currently it appears to be unclear and a matter of interpretation by firms, as to how breaches of rules that have also potentially breached the Consumer Duty should be recorded and/or reported.
For example, guidance on the interaction between COBS 4.2.1 (Fair Clear and not misleading) and PRIN 2A.5.3 (Communications to retail customers) would help firms to identify which rule to apply. For example, if a communication has been sent to a customer which is unclear are both rules breached or does one rule override the other?

Definition of co-manufacturer
There is currently no formal glossary definition of "co-manufacturer," a new role introduced by the Consumer Duty, and the guidance regarding this role is quite limited. In contrast, the requirements for firms acting as manufacturers and distributors in PROD are much more detailed and are incorporated into the Duty. We believe that firms would benefit from additional clarity and detail concerning the co-manufacturer role, including a clear definition of responsibilities and a formal glossary definition.

Definition of foreseeable harm
There are 30 references to 'foreseeable harm' in PRIN 2A. There is, however, no definition of this term in the FCA Handbook. We would welcome the FCA defining and providing clarity on this term.

Data sharing
The Consumer Duty's requirement for firms to assess and improve consumer outcomes necessitates greater reliance on data-driven insights and sharing of data between partners in the distribution chain. Firms are expected to track consumer outcomes and make necessary adjustments, and this could be done more efficiently by leveraging digital platforms and technology, such as blockchain-based solutions for aggregating consumer feedback. However, despite work across trade bodies to standardise such data sets, adoption has been slow and is not yet widespread, with varying interpretations around the extent of data that should be shared and to what extent existing shared data can be repurposed. Some additional guidance in the space would be helpful.

Q3: Are there other areas in our rules or guidance, beyond those with an overlap with the Duty, where we should consider simplification or removal? Please tell us:

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

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

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

CASS
Our overall assessment is that the CASS rules strike a reasonable balance between prescriptive requirements and the flexibility needed to achieve the desired outcomes. However, the CASS Audit imposes significant annual costs on firms, and the recent FCA sanction of a CASS Audit firm has highlighted that the quality of audits can sometimes be inadequate.

Certain CASS requirements lead to excessive debate between auditors and firms about whether specific processes meet regulatory standards and whether a firm is in breach of particular CASS obligations, such as CASS 8. In our opinion, the prescriptive nature of CASS 8 provides little to no benefit to consumers and does not effectively mitigate any risks they may face. Specifically, direct debits should be excluded from CASS 8, reflecting other existing protections.

Overall, it would be helpful if the rules stated that in the event of conflict in the rules or a gap then the firm should always undertake the process which is most beneficial to the client. The following points should be considered in relation to CASS, since they relate to friction and cost caused by compliance to the rule where there is no obvious risk of customer detriment:

- (CASS 7.11.57R) Increasing the de minimis for paying unclaimed client money. It was £25 when introduced in 2017, which was arguably too low then. Moving it to £50 would be appropriate.
- (CASS 6.3.1R) Introducing guidance that confirms that where the performance of due diligence (initial or periodic) is not retained that the firm should repeat the due diligence promptly and until such time as it is completed firms are non-compliant with CASS. This will remove those situations where some audit firms consider the breach to be open forever when one is lost.
- (CASS 7.11.32R) On the topic of interest, an allowance should be considered that where a bank is unable to pay interest earned on client money direct to corporate (assuming it's not due and payable to clients) that it should be removed by close of business the day following receipt. This will provide more flexibility in the rules.
- (CASS 8.3.2G) Expansion of guidance to confirm that the firm is not required to retain a paper mandate to comply with the record keeping requirements for mandates. Instead, the firm should just retain a record of transactions placed and the conditions that applied in its operation of the mandate on behalf of the client.
- Exclusion of direct debits from CASS 8, reflecting other existing protections. Once the money is collected the firm is required to comply with CASS 7 so in theory it should be protected and the client can always go to their bank and request the money be repaid to them under the DD indemnity.

Q4: Do you agree that work towards simplifying our retail conduct rules can help us meet all our objectives, including the secondary objective? Please explain why or why not

We believe that the introduction of the Consumer Duty does present an opportunity for the FCA to reduce regulatory complexity by aligning existing rules with the new outcomes-based framework. We therefore support the FCA's approach to review areas where current prescriptive rules can be consolidated into broader, more flexible principles that focus on delivering good outcomes for consumers. By doing so, the FCA may reduce the compliance burden on firms, encourage innovation, and promote a more dynamic regulatory environment, while ensuring strong consumer protection remains at the heart of financial services regulation.

As noted in our response below, we think the FCA should carefully consider its secondary objective in light of its competition objective. Both should work in tandem to increase competition, innovation and growth in a way that benefits all UK consumers and seeks to address financial exclusion and financial vulnerability in the UK. We would welcome the FCA moving towards an approach that considers their secondary growth objective, through a consumer-focussed, 'inclusive economic growth' lens, as if growth is not benefitting UK consumers, it begs the question as to who is benefitting.

Q5: In which circumstances do you think it is appropriate to rely on:

a. high-level rules under the Consumer Duty

b. more detailed rules

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

The starting point, in line with the FCA's stated overall approach to regulation, should be outcomes based, high-level rules. These set the parameters and standards expected of firm wishing to provide financial services in the UK.

Where the FCA wishes to proscribe a certain requirement in a specific scenario, more detailed rules may be required. However, FCA should reflect on whether guidance would be sufficient to set expectations – for example, could guidance on how a firm should interpret an aspect of the Consumer Duty in a particular scenario ensure that firms adapt that practice?

In order to further the FCA's competition objective, it may be useful to have more proscriptive requirements to ensure that consumers are not suffering harm through financial exclusion. With nearly half of UK adults now living in financially vulnerable circumstances[1], it would seem that our financial markets are working for some, but not all, UK customers. In light of this, the FCA must do more to ensure that people are not financially excluded and instead, that there is effective competition in financial markets that benefits all UK consumers. Our financial markets and products should service all customers, not benefit an ever-increasingly smaller pool of wealthy, well-connected consumers. More focus should be given to consumers that are not benefiting from the current system, and ensuring that competition, innovation and growth reaches all UK consumers. Given the indications of financial exclusion and vulnerability, the current high-level approach taken to the competition objective suggests that further, more detailed review and rules are required.

[Is there a link to the Enforcement work? Given the FCA is an unelected body, we think it is appropriate for the FCA to have more detailed rules applying to the ways in which it will supervise and enforce its rules. We understand that HM Treasury sets these powers, but the ways in which the FCA can and will exercise its powers in respect of a regulated firm should be clear, precise and provide certainty for regulated firms and consumers.]

We recommend that the FCA relies on Consumer Duty in relation to Communication and Disclosure Requirements to the fullest extent possible when introducing the Targeted Support regime. Targeted Support will enable firms to further the Consumer Duty by enabling them to communicate with customers to nudge them in the right direction and prevent foreseeable harm. Currently, this is not happening and prevents further embedding of the Consumer Duty. As described in Q.1, this approach would be particularly beneficial in providing the flexibility for firms to drive good outcomes for consumers, without the need to comply with overly prescriptive rules that may provide barriers to innovation and a more tailored approach.

Q6: What do you see as the main costs and benefits of making changes to the FCA Handbook by simplifying or removing detailed expectations of firms?

In many instances, the ongoing cost of complying with a specific prescriptive rule is minimal, as the firm has likely already invested in establishing a stable process and procedure, albeit there are resource costs associated with operating these processes and procedures on an ongoing basis. That said, we believe that the most significant potential benefits will stem from the prescriptive elements of rules related to internal controls, especially those that undergo regular external reviews.

There is also a benefit in removing duplication and clarifying where overlapping rules apply, so that firms do not expend additional resource in ensuring the two sets of rules intended to achieve the same outcome are complied with.

[1] Nearly half of UK adults now living in financially vulnerable circumstances - Fair4All Finance

The main benefits that can be realised by the simplification of detailed rules is the flexibility to innovate and deliver tailored services to customer that can embody not just the letter of the rule, but the spirit of the Consumer Duty.

Q7: Where do you see high-level or detailed expectations having differing costs or benefits for different types or sizes of firm?

Many firms, especially high-volume retail businesses, have developed detailed procedures and even if a related prescriptive rule is removed, these firms are unlikely to invest in altering their existing processes.

As a result, established firms may continue to adhere to the behaviours mandated by previous prescriptive rules until a market event or competitor reaping the benefits of alternative approaches highlights the need or benefit of revising those processes. In contrast, new firms entering that sector or product area will design their procedures without considering the previous (but now removed) prescriptive requirements.

As also mentioned, smaller firms may welcome more detailed information on how to interpret FCA regulations in practice. These firms will not have the benefit of large compliance and legal resources upon which they can draw, and obtaining external advice is costly. These firms also do not have the benefit of a dedicated FCA supervisor who they can turn to for information and questions of policy interpretation. All of this may present a barrier to entry and disadvantages smaller firms. To remedy this, the FCA should consider providing more detailed interpretation information, best and worst practice information, as we have seen some examples of during the implementation period of Consumer Duty, to help firms with tangible interpretation matters. However, this could be taken a step further, for example, ESMA provides (Level 3) Q&A guidance to firms to assist with practical implementation and to support consistent application of relevant EU law. We would welcome the FCA adopting a similar approach – one that does not require drawn-out consultation processes, but instead provides clear information on the FCA's approach and thinking on a particular practical interpretation topic. This would provide a level playing field for firms and would be of enormous use to smaller firms.