

# ECONOMIC IMPACT OF THE FCA'S CONSUMER DUTY

Report prepared for the FCA Practitioner Panel

July 2021





This report was commissioned by the FCA Practitioner Panel.

The FCA Practitioner Panel is a statutory panel created along with the Financial Conduct Authority by the Financial Services Act 2012. The FCA has a statutory duty to establish and consult the Panel on the extent to which its policies and practices are consistent with its general duties. The FCA Board appoints Panel members, who are senior practitioners within the largest firms in the industry. Its key remit is to represent the interests of practitioners of larger firms (other statutory Panels represent the interests of smaller business practitioners, market practitioners and consumers) and to provide input to the FCA from the industry in order to help it in meeting its strategic and operational objectives in an effective manner. The Panel advises the FCA at a strategic level, responding both publicly and in private to its consultations.

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## EXECUTIVE SUMMARY

The FCA is consulting on a newly proposed Consumer Duty, which it believes will set higher expectations for firms' standards of care towards consumers. The FCA Practitioner Panel has asked Frontier to **estimate the economic impact of the FCA's proposals**.

Robust quantification of the impact of the proposals is not possible at this stage, given there is no agreed evidence base for the status quo against which to measure the changes driven by the proposals, the proposals themselves remain vague at this early point in the overall consultation process, and in any case because the proposals are limited to changes in one or two of a wider set of regulatory forces that will determine the outcomes.

While it is not possible to robustly quantify the impact of the proposals, we identify the mechanisms through which costs, benefits and risks could arise from the proposal, and the actions that would maximise the effectiveness of the policy. We also comment on the magnitude and pattern of where, in the Panel's view, the impacts are most likely to be felt.

Starting with a complex and uncertain status quo, and then adding further uncertainties, it is almost inevitable that short run **costs** for regulated firms will increase, even for firms that meet the standard of the proposed Principle. There will be one-off costs to understand the new requirements, cross-checks against the existing rules, and costs to review and potentially redesign many existing products, customer communications (including T&Cs) and customer journeys. On an upfront and ongoing basis, new evidential requirements are likely to require significant system changes to create and maintain the new evidential monitoring and reporting the Consumer Duty will give rise to, and the level and nature of FCA supervisory activity may rise.

Beyond the direct relationships with the FCA, there is a risk that the new Consumer Principle provides additional opportunities for private litigation, FOS complaints, and claims management company ("CMC") activity.

Firms are likely to proceed with a view that regulatory risks have increased, which will influence their decision-making. Some marginal decisions that today lead to an offer to a customer may in future lead to the offer not being made, and in some cases, the aggregate effect of these decisions could be to reduce availability for particular customer groups, or to pull back from certain product areas. It is plausible that this may be more likely for vulnerable customer groups.

Other potential responses may include simplifying pricing structures, reducing the risks taken in innovation and product redesign, and the possibility that more frictions are inserted into customer journeys.

To the extent these behavioural responses occur, there will be wider risks and policy considerations around support for vulnerable customer groups, financial inclusion and the 'levelling up' agenda, and the international competitiveness of the UK Financial Services sector.

The FCA believes the Consumer Duty will deliver **benefits** to consumers by increasing their confidence, and by reducing the overall level of harm that occurs.

For the purposes of an economic impact assessment, it is important to define the benefits solely as those that are driven by harms that would occur in the absence of the Consumer Duty, which would be prevented with a Consumer Duty in place.

There are a number of harms that are unlikely to be directly affected by the introduction of the Consumer Duty, or where the influence of the Consumer Duty may be more questionable, including harms from outside the regulatory perimeter, the actions of “bad actors”, or where behaviours and outcomes have already become endemic in a market. The benefits therefore appear to be centred around dissuading compliant firms from introducing ‘harmful’ practices in the first place, or through more effective identification and resolution of issues compared with today.

It is difficult to point to a list of case studies that fall into this relatively narrow category of potential benefits, and there is likely to be uncertainty whether many of the issues that the Consumer Duty might look to target and address could in any case already be targeted using the FCA’s existing powers.

As we are unable to quantify the costs and benefits at this stage, we are not yet able to come to a view on the overall cost benefit ratio of the proposals. However, given the information available the uncertainties around the scale of benefits appears potentially greater than the uncertainties around the costs. It is **uncertain whether the proposals will result in a net benefit overall** – that is whether the balance of benefits and costs under the proposals is greater than under existing regulation.

This overall view holds for all of the policy options within the consultation paper. Qualitatively, the Panel have most concerns around the overall cost benefit ratio of the proposals in scenarios where a PROA is introduced, and with a ‘best interests’ as opposed to a ‘good outcomes’ formulation of the overarching Principle. There are also concerns over the proposed use of a requirement to take ‘all reasonable steps’ in the proposed cross-cutting rules.

While there is broad support for the overall intent behind the Consumer Duty, there are different expectations between practitioners and regulators which influence assessments of the impact the implementation of the duty will have. It would be helpful for these differences in expectation to be resolved, to the extent possible. The main differences include the importance of the precise wording used for the Consumer Principle and in the statements governing the Consumer Duty, whether harms could already be tackled under the FCA’s existing powers, and the extent to which the level and scale of supervisory activity and evidential requirements will change.

More generally, there are a number of **actions the FCA could take that would appear to universally improve the cost benefit ratio** of the proposals. These include providing as much clarity as possible including around retrospective actions, streamlining existing rules and processes where there is overlap between the Consumer Duty and existing handbook rules, reforms of the FCA’s own processes around data sharing and information management to act faster on issues raised under the new Consumer Duty, better targeting of supervisory resources to the highest risk areas of harm, and putting processes in place to help firms learn more quickly and systematically as the Consumer Duty comes into effect.

# 1. INTRODUCTION

The FCA is consulting on a newly proposed Consumer Duty, which it believes will set higher expectations for firms' standards of care towards consumers.<sup>1</sup> The FCA expects the new duty to add to its existing range of regulatory tools in service of meeting its strategic objective of making markets work well, and would help bring together the FCA's consumer protection and competition objectives.

The proposed Consumer Duty involves a package of measures, including:

- a new Consumer Principle providing an overarching standard of conduct; plus
- a set of Cross-cutting Rules and Outcomes that support the Consumer Principle by setting clear expectations for firms' cultures and behaviours.

The existing consultation covers the introduction of the new Consumer Principle and proposals for the scope and structure of the underpinning rules and the outcomes the FCA should seek to deliver. Views are also being sought on how a private right of action ("PROA") could support or hinder the success of the proposals and their intended impact on firms, consumers and markets. The detailed drafting of the underlying rules themselves will follow in a future consultation, along with a published cost benefit analysis.

**The FCA Practitioner Panel has asked Frontier to estimate the economic impact of the FCA's proposals.** In doing so, the Panel requested that we comment on:

- any difference in the expected impact of the proposed alternative wordings of the new consumer duty (that firms should seek to deliver "good outcomes" for customers, or that firms should act in their customer's "best interests");
- the impact of the four of the Outcome Statements contained in the consultation (relating to communications, products and services, customer service, and price and fair value); and
- the impact of a private right of action and how this could interact with the proposed wording of the Principle.

This report sets out Frontier's assessment. In reaching our views we have applied our own understanding and experience of the UK regulatory landscape, in addition to collecting views from a wide range of affected parties, including Panel members, senior members of legal, risk, compliance, and regulatory teams working in financial institutions across all sectors, consumer organisations, and the FCA itself.

## Context for analysis

The current consultation represents the latest addition to a longstanding and wider regulatory debate. UK financial services regulation has moved through a number of phases in past decades. Historically, much of the supervisory focus was on improving information disclosure. More recently, emphasis was shifted to ensuring regulated firms "Treat Customers Fairly", which has resulted in the large and

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<sup>1</sup> <https://www.fca.org.uk/publications/consultation-papers/cp21-13-new-consumer-duty>

complex FCA rulebooks that regulated firms must adhere to today. The FCA also holds competition powers to investigate and intervene in markets at an overall market-level. The FCA's proposed Consumer Duty would shift the emphasis again, towards influencing firm culture by requiring a more direct focus on customer "outcomes".

The landscape today involves broad and inconsistent views about the appropriateness and effectiveness of FCA oversight using its existing suite of powers and processes. No-one appears happy with the status quo:

- the FCA makes clear in the consultation paper that it believes 'too much' harm takes place and that the existing rules and processes are not sufficient to prevent the harms that still arise;
- recent independent reviews have questioned the effectiveness of the FCA's actions, policies and approach to supervision, the findings and conclusions of which the FCA has accepted;<sup>2</sup>
- consumer groups believe the FCA should be doing more to protect customers, and that insufficient attention is currently paid to future customer behaviours, focussing too much on sales processes and information disclosure at the point of sale;
- practitioners believe the costs of complying with the existing system are already high and that these costs are disproportionate overall relative to the harms they are meant to address, and not sufficiently tailored and focussed to the areas of highest risk; and
- there is general dissatisfaction with the FOS and its ability to determine its interpretation of the role and responsibilities of firms under the FCA's regulatory requirements.

There is no consensus between parties around the need for more or less FCA intervention overall, how the FCA's activities should best be targeted, the cost and effectiveness of the existing set of FCA rules, activities and processes, the appropriate regulatory perimeter, the correct balance of regulatory vs. legal processes to determine policy and redress, or the appropriate place to draw the boundary between consumer responsibility and consumer protection.

Similarly, there is no agreed evidence base that quantifies these impacts or supports the existing (or alternative) positions, and no robust quantification is available. This is an important starting point to recognise: the current system is complex and imperfect but very few beliefs can be credibly and coherently evidenced, meaning **the status quo is disputed**.

In conducting a cost benefit analysis, the standard approach is to identify what action is taking place and then to identify the categories of relevant cost and benefit that result from such an action, relative to a stated counterfactual (usually the status quo, or "do nothing" option). The uncertainty of the status quo, and the uncertainty of the proposals in the consultation make this a very difficult task in this instance.

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<sup>2</sup> <https://www.fca.org.uk/news/press-releases/fca-responds-independent-reviews-london-capital-finance-connaught>

## A framework for analysis

As with all forms of regulation, we can identify certain characteristics or “regulatory forces” that, together, determine regulated outcomes. These forces include the following:

- the regulatory “**rules**” – including in this case the wording of the new Consumer Principle, and the associated underpinning rules;
- the **implementation** of policies that determine how the rules are applied and operate in practice (e.g. where the regulator focuses, how it engages with regulated firms, how transparent it is, etc.);
- the **penalties** (financial, reputational etc.) and availability of compensation / redress that applies if the rules are broken (scale, likelihood, ease of process, etc.);
- the scale of regulatory efforts (and regulatory effectiveness) to **monitor and enforce** the rules;
- the **effort and focus of associated parties** to uphold compliance to the rules, or otherwise monitor compliance with them (e.g. policy-makers, ombudsman, wider legal system etc.);
- the effort and focus of **other external challengers** (e.g. consumer organisations, private litigation, claims management companies); and
- the **strength, speed and effectiveness of feedback mechanisms and learning** within the market, particularly where the market is competitive.

The way in which the existing regulatory forces interact and combine, and the impact this has on overall regulatory effectiveness today, is not currently understood with any degree of precision. Equally, the costs and benefits of the current set of regulatory forces are not understood and the evidence base to assess them is incomplete.

In analysing the impact of the proposals, it is important to recognise these wider forces as the mechanisms through which the proposed changes may influence outcomes. This wider view of the proposals also suggests that as well as consumers, regulated firms, and the FCA itself, there are a wider set of potentially affected parties that should be considered.

## 2. ESTIMATED PROPOSAL IMPACT

### Description of the proposals

The FCA's consultation paper is an early stage consultation, requesting views on the high level principles and approach to the Consumer Duty in advance of the detailed rules that will follow. There are a large number of questions in the paper, but the most material elements of the proposals we focus on are:

- the wording of the overarching Consumer Principle; and
- whether or not to introduce a PROA (which would apply to the Consumer Principle).

The FCA also makes a number of assertions or assumptions in the consultation paper regarding the impact the Consumer Duty will have:

- the new Consumer Duty is **in addition to the existing handbook rules** and FCA requirements (at least in the short and medium term);
- the stated intent is to **increase the standards** regulated firms are held to overall;
- the intention is to **influence and change firm culture**, potentially impacting decision-making throughout all areas of a regulated firm's business model; and
- the new duty may hold firms to **new and additional evidential standards** and regulated firms may in future need to provide new types of information to the FCA, both in a supervisory context, and in other FCA processes.

For the purposes of our analysis, we proceed on the basis of these assumptions. Nevertheless, at the outset this leads us to a very clear conclusion: robust quantification of the impact of the proposals is not possible. There are a number of cumulative challenges to quantification that in this case, at this point in time, are not possible to overcome.

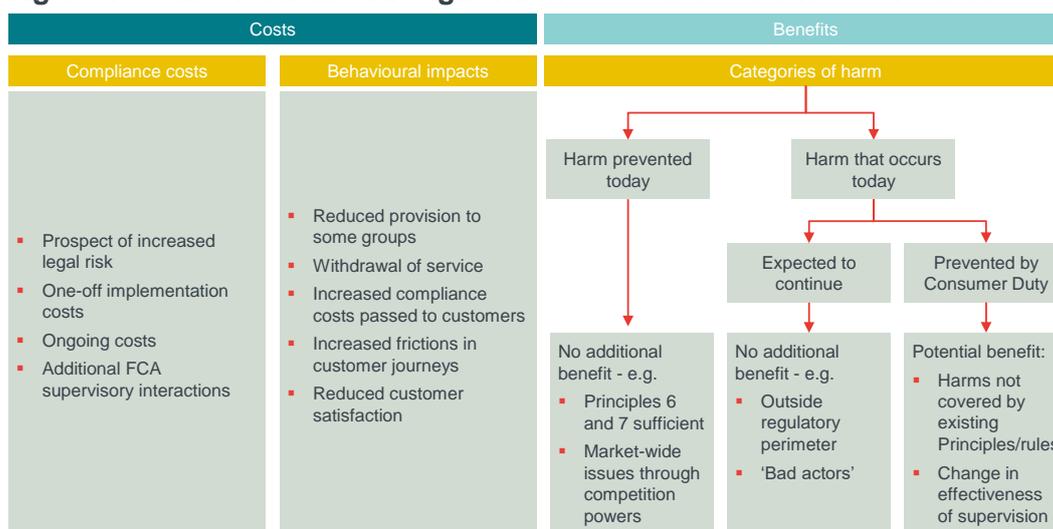
First, there is no agreed evidence base for the status quo, against which to measure the changes driven by the introduction of these proposals. Robust quantification would require an agreed methodology and set of data sources, and an agreed starting point for the analysis.

Second, the proposals themselves are vague at this stage. In part, this reflects the early stage of the consultation: some of the current uncertainty should be addressed in due course through the publication of the detailed rules. However, even then there are likely to be at least two sources of remaining uncertainty: (a) some of the mechanisms the proposals seek to impact are inherently hard to define, predictably influence, or measure e.g. firm culture, decision-making; and (b) it is questionable that it will be possible to precisely define the terms being used (e.g. "reasonableness") when applied to all relevant circumstances (customer, market, product, process etc.). In at least the short-term, this will be uncertain and only resolved over time as a body of precedent is established.

Third, the proposals are limited to one or two of the regulatory forces (elements of the “rules” and the possibility of increased penalties), with details about the other forces either unknown or to be provided later.

While it is not possible to robustly quantify the impact of the proposals at this stage, in what follows we **set out the mechanisms through which costs, benefits and risks could arise from the proposal, and the actions that would maximise the effectiveness of the policy**. These mechanisms are illustrated in the figure below.

**Figure 1 Mechanisms through which costs and benefits could arise**



We are also able to comment on the magnitude and pattern of where, in the Panel’s view, the impacts are most likely to be felt. And as a consequence, the collective preferences of the Panel against the different options included in the consultation.

## Costs

We first consider the direct compliance costs that could be created as a result of the proposals. We then consider the costs that could be created through the behavioural responses of regulated firms, and the aggregate effects these responses could create.

### Compliance costs

Starting with a complex and uncertain status quo, and then adding further uncertainties, it is almost inevitable that short run costs for regulated firms will increase.

#### One-off implementation costs

The Consumer Duty sits on top of the existing rules and requirements, and in due course will involve a large number of additional rules being brought in. Regulated firms will need to work through the implications of the new rules, and assess their existing processes and policies against these. Given the nature of what is being

proposed, the answers to these internal compliance and risk assessment exercises are unlikely to provide clear-cut answers, meaning regulatory risk and uncertainty can be expected to increase.

As a result, one-off costs are likely to be driven by the work that regulated firms will undertake to review, and potentially redesign their existing products, customer journeys and customer communications (including T&Cs) against the requirements of the new Consumer Duty.

Further, the FCA recognises that there is likely to be some degree of overlap between the new requirements under the Consumer Duty and the existing rules, particularly Principles 6 and 7.<sup>3</sup> In the short-term there is no intention to remove any existing requirements, meaning these risk assessment exercises may potentially also uncover areas where different interpretations under the duty and the existing principles may be possible. This is likely to generate additional uncertainty and one-off costs for regulated firms.

One-off costs are also expected given the new requirements will need to be reflected in internal communications, policies, and in the training provided to staff members. These costs can be expected to increase given the changes being made, and given the complexity of the requirements will now increase. Finally, the FCA is clear that the new Consumer Duty will fall within the remit of the Senior Managers and Certification regime. This too is likely to drive internal costs to communicate and monitor compliance against the new requirements, and provide support and guidance to relevant senior managers.

### Ongoing costs

On an ongoing basis, the FCA describes that the consumer duty will involve new evidential requirements that can be called upon in supervisory discussions. It is possible that some firms may already hold the evidence the FCA has in mind, and that the FCA may provide more clarity on the sorts of management information ("MI") that may be covered in the next consultation. However, in our direct experience and based on the feedback from firms in this process, it is very likely that new MI will need to be created, and/or existing pieces of relevant information made more robust and more systematically collected and analysed by firms, given it may now be used for formal and external purposes, as opposed to internal management purposes. This may generate significant additional cost as firms

#### EXAMPLE: COMPLEXITY

A customer has requested an unsecured loan and the provider has sent both detailed terms and conditions (to comply with the Consumer Credit Act) as well as a simplified key terms document (to comply with the Duty).

The customer asks if they need to read both the detailed and simplified terms: does the provider respond to confirm that the customer does need to read both sets of terms? And if so, what purpose did the simplified terms serve?

Are providers able to rely on a term that is not in the simplified terms?

<sup>3</sup> <https://www.handbook.fca.org.uk/handbook/PRIN/2/1.html>

transform these processes, even where underlying business decisions and outcomes do not need to change.

Further, given the subjective nature of what firms will be asked to provide, conversations around the new Consumer Duty may risk increasing the level and nature of supervisory activity regulated firms undertake. As well as potentially significant addition to supervisory dialogue, there is also a potential for impasse given uncertainties around definitions e.g. “reasonable” and “all reasonable steps”, as illustrated in the text box.

Finally, beyond the direct relationships with the FCA, there is a risk that the new Consumer Principle provides additional opportunities for private litigation, FOS complaints, and claims management company (“CMC”) activity, all of which will potentially increase the volume of cases brought against regulated firm beyond existing levels. This increase in activity would inevitably require larger internal legal teams to evaluate, manage, and where appropriate defend against the new claims being made. Again, to the extent the new principles are inherently uncertain, this too would increase the potential for claims to be brought.

### Panel member views on compliance costs

We are unable to provide a robust quantification of these one-off and ongoing compliance costs. However, we note the FCA describes the intention is

to create a significant shift in culture and behaviours. It would appear consistent to believe that the types of costs described to also be potentially significant, reflecting the adjustments the FCA hopes that regulated firms will make.

We also note that while we describe these costs as directly borne by regulated firms, in practice these costs will be passed on in some form, to either shareholders or customers. Where markets are competitive, the balance is likely to tilt more towards these costs ultimately being borne by customers.

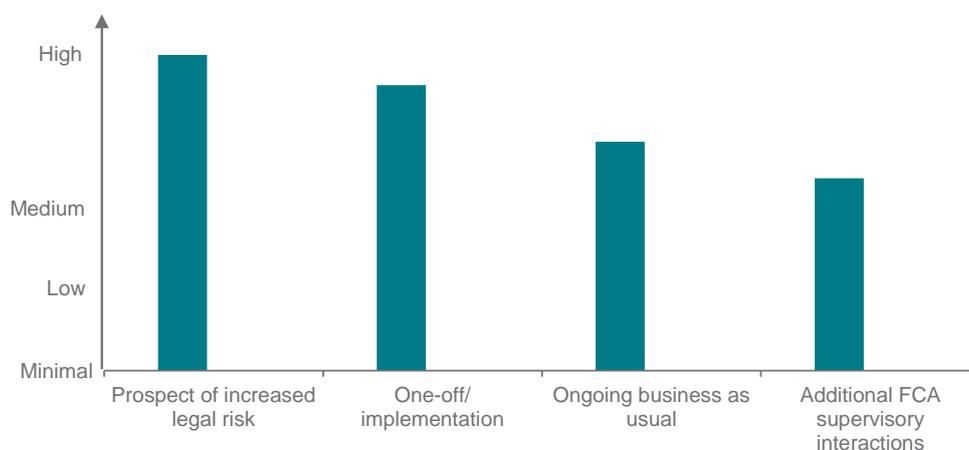
To give a sense of relative scale, as shown in Figure 2 below, expected compliance costs across all categories are expected to be material. It is expected that one-off implementation costs are likely to be greater than ongoing costs, which is consistent with a view that this represents a significant shift, and that uncertainties will resolve themselves somewhat over time. The most significant concerns relate to the actions of third parties and the potential for the Consumer Duty to introduce new legal risks for regulated firms.

### EXAMPLE: HIGH RISK INVESTMENT

A bank customer seeks to invest all of their savings into a cryptoasset. The bank refuses to authorise this transaction on the basis of foreseeable harm. The next day, the customer seeks to transfer the same amount to an investment platform that offers cryptoassets. In taking ‘all reasonable steps’ to avoid foreseeable harm, should the bank refuse to authorise this transaction?

Should the bank instead take the step to communicate with the investment platform to avoid the foreseeable harm from authorising the transaction?

Faced with the same customer, should the investment platform always take steps to use the same information held by the bank (through Open Banking) to avoid foreseeable harm with such investments?

**Figure 2** Expected compliance cost impacts

Source: Frontier Economics survey of Practitioner Panel members

Note: Members asked to assess costs on scale of minimal to extreme. Scale is illustrative.

## Potential behavioural responses

All business operate in an uncertain environment, and all commercial decisions are taken on the basis of expected costs and benefits, given the information available at the time the decision is made. The business model of each regulated firm, and the regulatory and commercial risk tolerance each firm has will determine the decisions it makes, resulting in the product and customer base it serves, and the wider business model.

Under the status quo, all business decisions will take account the potential regulatory risk associated with different options. This will include, for example, decisions and controls in place around product design, pricing structures, channel design, initial customer journeys, ongoing support, and customer communications. These decisions are often made explicit through the actions of internal legal and risk departments and formal decision-making committees. But these considerations are also present informally in the culture of a business, and through the oversight of the senior managers regime.

In our experience most regulated firms take a risk averse approach to regulatory and litigation risk. This is reflected in the size of internal risk and compliance departments and in the decision-making that is made.

The Consumer Duty as currently articulated will increase the regulatory risk that regulated firms perceive. While this risk will be alleviated somewhat once the new rules are drafted and come into effect, as described above we consider it likely that some uncertainties will remain, in particular from two sources.

- Wider legal interpretation:** there is likely to be significant uncertainty over the legal interpretation of whichever wording is eventually landed upon across the Consumer Duty overall, e.g. 'good outcomes', 'all reasonable steps', 'best interests' etc. While the FCA may believe it will specify and control how these terms are applied in practice, it is possible the FOS will come to a different, and

potentially a more restrictive view. This was a strong and consistent concern raised with us by Panel members.

- **Consumer protection through outcomes focus.** The Consumer Duty is likely to involve a shift in the burden of responsibility towards firms for customer behaviour during the lifetime of the customer, which may span many decades and which may be subject to significant uncertainty. There will be an increased expectation that firms consider customer outcomes. Today under TCF, the formal responsibility of firms is limited to making sure customers understand what products and services they are purchasing and the risks involved.

Firms are likely to proceed on the basis of conservative interpretation and include planning on a worst case basis. This will influence decision making across all areas of the business model. It seems certain that these increased expected costs will influence marginal decisions: some difficult decisions that today lead to an offer to a customer at a particular price will no longer be made. In some cases, the aggregate effect of these decisions could be to decide **not to offer products for particular customer groups overall, or to pull back from certain product areas.**

Given the uncertainties involved, it is not possible to identify exactly which customer groups would no longer be served, or which providers will no longer offer particular products. In general, we might expect the highest risk areas to be those where:

- the expected profitability of customer groups or products is already low;
- products are complex to explain to customers, or where there is uncertainty around the best choice;
- customer outcomes are more variable and more outside the control of firms, meaning they are less able to control the outcomes; and
- customer engagement is low.

It is plausible that there is a significant degree of overlap between the customer groups most at risk, and the existing vulnerability measures used today.

There have been a number of examples of particular areas where Panel members have cited concerns, and have suggested the impacts of the RDR may provide one comparison of the scale of effects. Examples include advice products and long term investment products – particularly where customer investment pots are small,

#### EXAMPLE: HOME INSURANCE

A firm offers a standard home insurance product and an enhanced home insurance product with additional protections which costs more than the standard product, although still representing fair value. A customer buys the enhanced insurance product, valuing the additional protections as a good option to protect their assets at the time of purchase.

The customer does not claim under the policy over the term and is now seeking a refund on the basis that the policy did not offer value for money and that a “good outcome” would have been the standard insurance product.

The firm, without visibility of customers’ assets being insured and concerned about their limited ability to respond to similar “good outcome” refund requests in the future, may choose to withdraw the enhanced product from the market.

and unsecured credit for those with the highest credit risks. We note these are areas where mainstream provision has already, to varying degrees, left the market already under the existing regulatory uncertainties. This withdrawal of provision may extend into other product areas, such as home insurance as illustrated in the text box above.

Other potential responses may include simplifying pricing structures (e.g. where there is significant differential pricing), and reducing the risks taken in innovation and product redesign, given the potential additional regulatory risks that would be involved. To the extent this occurs, this would likely reduce competitive intensity across the industry, reducing the dynamic efficiency benefits for customers that are generated through the competitive process.

Finally, the new requirements may also create a risk that more frictions are inserted into customer journeys – either directly as a result of some of the new requirements around communications, or because a risk averse interpretation of the Consumer Duty leads to more information being disclosed, or more checks and checkpoints being inserted into customer journeys. This is likely to lead to lower levels of customer satisfaction overall, and potentially greater drop-outs leading to lower levels of provision, as illustrated in the text box below.

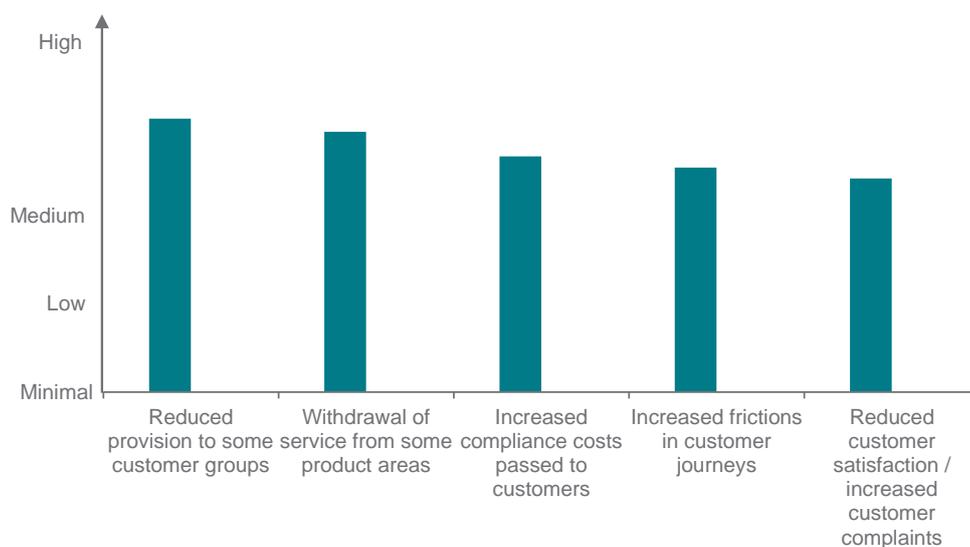
While we believe these impacts can be expected to occur to some degree, the scale and magnitude of these impacts is not possible to quantify at this point in time. Nevertheless, the concerns of Panel members, as shown in Figure 3 below are that all of these potential impacts are possible, and would have significant impacts. There is perhaps a sense that reduced provision for specific customer groups, as opposed to particular products or services, is the greatest risk.

#### EXAMPLE: FRICTIONS

A provider develops a lending product with an unregulated strategic partner whose business model is based on frictionless digital customer engagement.

The Consumer Duty would require certain levels of customer intervention and friction to ensure that the product provider can validate “good customer outcomes” and avoid “foreseeable harm.” This could create tension with the partner who insists that adding friction into customer journeys is neither warranted nor a “good” outcome for their customers.

Ultimately the partner may decide to partner with a more narrowly regulated provider with less customer data available to them, and with correspondingly less onerous demands.

**Figure 3** Expected cost impacts for behavioural response

Source: Frontier Economics survey of Practitioner Panel members

Note: Members asked to assess costs on scale of minimal to extreme. Scale is illustrative.

## Wider impacts and policy considerations

While the magnitude of the impacts described above are uncertain, they are potentially significant. Equally, the commercial cost-benefit analysis that firms undertake today, as applied to the new standards imposed by the Consumer Duty, has the potential to mean customer groups most at risk of losing provision will correlate with those with the lowest incomes, highest credit risk, and potentially vulnerability flags. This follows given these customers are likely to be the highest cost-to-serve groups today and where good outcomes and best interests may be most uncertain over the lifetime of the customer.

This may have a number of policy implications. First, losing provision of services is likely to impact negatively on wider measures to promote **financial inclusion**. Where mainstream providers choose to leave a customer or market segment as a result of the proposals, this would impact consumer choice, potentially worsen consumer outcomes if only non-mainstream provision is available, or over time via lower levels of competition. At the extreme, some products and services may disappear entirely for some customers.

Second, the pattern of impacts may also have regional implications. The types of customer groups described are likely to live in UK regions that are relatively less well off, and which may already have higher levels of deprivation. There is a wider political '**levelling up**' agenda that involves ongoing support for these areas, and which the behavioural responses to the Consumer Duty could negatively impact.

Finally, at macroeconomic level UK Financial Services has undergone significant and sustained shocks over the past decade. The implications of Brexit and Covid are yet to play out, and the significant uncertainties and reforms following the financial crises are to some extent yet to be bed in. If the net impact of these proposals is to overlay an additional layer of uncertainties, and generally make UK Financial Services a less attractive market to operate in, this could negatively impact the UK's **international competitiveness**.

## Benefits

The FCA does not suggest the new Consumer Duty will deliver efficiency benefits and indeed as outlined above, we would expect the administrative (and wider) regulatory costs to increase, as a result of the Consumer Duty being introduced.

The FCA intends that the Consumer Duty will “give consumers more confidence that the financial products and services they buy are designed to deliver the benefits they expect, and represent fair value. Consumers would receive clear and understandable information from firms that enables them to assess which products and services are most likely to meet their needs. They would receive a standard of customer service that consistently meets their needs, and they would not be hindered from acting in their own interests.”

The FCA has not set out in detail the mechanisms through which these outcomes would be driven, stated explicitly how these benefits would be achieved, or quantified the value of these benefits. In considering the economic impact of the proposals, we can distinguish between:

- **Category 1:** harms that are already prevented under the FCA's existing regulation;
- **Category 2:** harms that occur today, but which would no longer take place with a Consumer Duty in place; and
- **Category 3:** harms that occur today and would be expected to continue to occur, even with the Consumer Duty.

Logically, the benefits from the Consumer Duty can only be driven from issues that sit within the second of these categories. It is not possible at this stage to identify an exhaustive set of issues that fall into each category, but at high level we can make a number of observations.

First, where the source of consumer harm is **outside the regulatory perimeter**, for example fraudulent activity, this falls outside the scope of the Consumer Duty and will therefore be unaffected directly by its introduction. (Indirectly, the impact of the Consumer Duty may be to increase the risks borne by regulated firms if they are now required to take *all reasonable steps to avoid* fraudulent activity.)

Second, where the source of consumer harm comes from firms operating with a limited sensitivity to regulatory risks (“**bad actors**”) it is questionable whether the new Consumer Duty will impact on their behaviours, and hence drive the benefits the FCA is seeking to achieve.

Third, where **behaviours and outcomes have already become endemic in a market**, the FCA's market-level powers and

### EXAMPLE: APPROACH TO FRAUD

A customer becomes aware that there is unusual activity on their current account and that they may be subject to financial crime. While their bank has repeatedly warned the customer of such risks, the customer takes no action, secure in the knowledge that if financial crime has occurred, the bank will ultimately be liable for any loss suffered.

The Consumer Duty may have limited impact on these behaviours and outcomes.

processes will be required to resolve these issues and it is unclear that the new Consumer Duty alone will be able to successfully and efficiently resolve these issues. The FCA's toolkit combines firm-specific powers and processes ("supervision") with market-level powers and processes. Where markets are competitive, this can drive outcomes that all firms must adhere to, in order to remain competitive. Sometimes these outcomes drive outcomes that the FCA may deem as 'harmful'. The FCA's recent interventions around GI pricing would be one example.

Importantly, where this is the case it would be inappropriate for the FCA to attempt to resolve the issue on a unilateral basis through direct supervisory interventions. Here, market-level intervention is required in order to overcome the coordination problems (and market failures) present in the market.

This suggests that the second category, where the Consumer Duty can deliver the benefits the FCA is seeking to achieve, will be populated by issues where **firms already have a compliant attitude to FCA oversight and regulations, and either**

- the Consumer Duty now dissuades these firms from **introducing 'harmful' practices** in the first place;
- these practices are identified and addressed more effectively by the FCA **before these practices take hold in a market** and become endemic; or
- the new focus on outcomes over the customer's lifetime allows some **new and additional** interventions.

It is also possible that the potential costs from reduced provision of services described above may in some cases, actually represent a benefit i.e. where provision itself, or to some specific customers, leads to harms today. The FCA has not made explicit if it holds this view, and if so where this would be the case, but we include this here for completeness.

We note this is quite a tightly defined set of circumstances. Due to the nature of these types of issues, it is difficult even to set out a number of case studies, or point to well-known issues that would have fallen within these categories had the Consumer Duty been in place historically.

We note that there is likely to be a degree of uncertainty regarding whether any issues in fact fall within the first or second categories. The FCA already has significant supervisory powers, it gathers a large volume of information and oversees firm activities in a way that enables it to intervene through supervision where it believes this is appropriate. Whether or not practices would have been identified and addressed under existing powers, or would require the Consumer Duty to identify and address, is therefore likely to be speculative. This may in practice point to most of the benefits of the Consumer Duty being driven by firms choosing not to engage in practices in the first place, rather than through more effective intervention.

Figure 4 below provides examples of the types of harms that are generated, and an illustrative assessment of whether the Consumer Duty is likely to address these harms in future.

**Figure 4: Illustrative examples of Consumer Duty application**

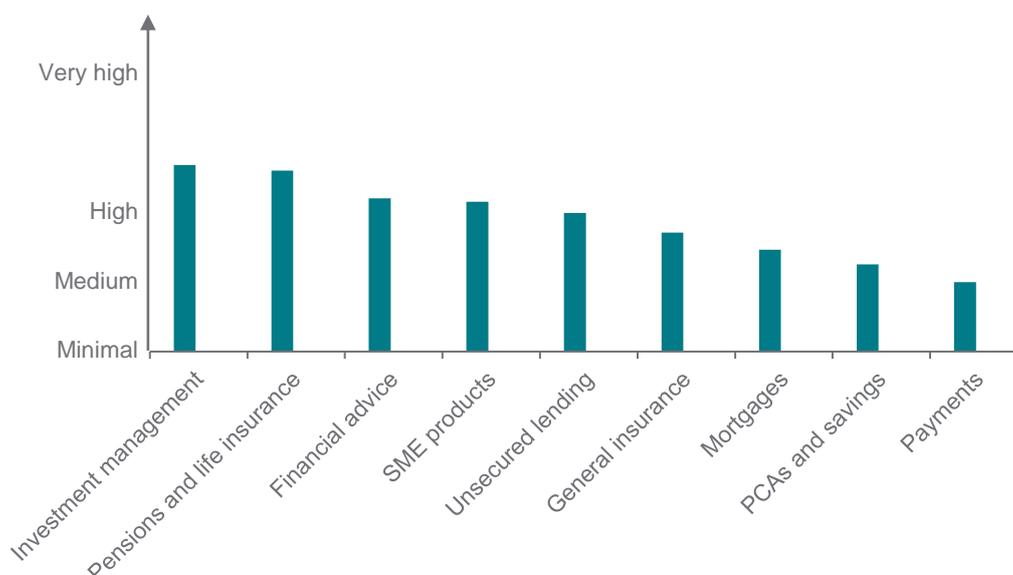
| Illustrative example                                   | Comment   | Consumer Duty benefits  | Impact   |
|--|---|---|----------|
| Single firm offers 'unfair' prices to a customer group | Potentially covered TCF / SMCR                                    | Quicker to identify or enforce? Reduce likelihood of this emerging at all | Possible |
| "Sludge practices"                                     |   |   |          |
| Bad advice   |   |   |          |
| Misleading customer communications                     |   |   |          |
| Customer outcomes deteriorate over time                | Not necessarily picked up under TCF                               | More systematic focus on these issues                                     |          |
| Harms from "bad actors"                                | Sensitivity to FCA rules, and changes to them, may be minimal     | In theory may influence behaviour, but power over incentives may be weak  | Unlikely |
| Fraud, scams, actions outside the regulatory perimeter | Unaffected by FCA regulation                                      | n/a   | n/a      |
| Market-wide common pricing practice (e.g. GI pricing)  | Market intervention appropriate, not bilateral supervisory action | n/a   | n/a      |

Source: Frontier Economics

## Impacts across product areas

In the Panel's view, the overall level of impacts is likely to differ by product area. As shown in Figure 5 below, overall concerns are felt across all product areas, with all areas being scored as at least facing 'medium' impact. Concerns are generally highest in product areas with the longest customer lifetimes, and for advice.

**Figure 5 Expected costs by product area**



Source: Frontier Economics analysis of Panel survey

Note: Members asked to assess costs on scale of minimal to extreme. Scale is illustrative.

This is perhaps unsurprising, given the focus of the Consumer Duty is to rebalance focus towards outcomes over the lifetime of a customer. Where these time periods are very long, and where there is greater potential for outcomes to be affected by external factors (e.g. investment returns), the risks from the new approach may be greatest. Equally, where judgements reached may be more subjective, or where there are a greater number of possible options and actions (e.g. advice), this too may leave providers with greater risks under the new approach.

### 3. COMMENTS ON SPECIFIC CONSULTATION OPTIONS

The Panel asked us to comment on the difference in the expected impact of the proposed alternative wordings of the new Consumer Duty (that firms should seek to deliver “good outcomes” for customers, or that firms should act in their customer’s “best interests”); and the impact of a private right of action and how this could interact with the proposed wording of the Principle.

The impacts that we describe in Section 2 above follow from all options under the Consumer Duty and a possible PROA, but they may be more or less significant depending on the wording of the Principle and whether there is a PROA. At this stage, it is not possible to quantify the relative impacts under each of these options. We asked the Panel Members to provide their view of the expected impacts that follow from each of these options, and to provide a qualitative assessment of the scale of expected costs under each of these options. We describe some of the potential differences below.

#### Good outcomes vs. best interests

The FCA has set out two options for the wording of the Consumer Duty Principle. The ‘good outcomes’ option is intended to place the emphasis on consumer outcomes. The ‘best interests’ outcome is intended to convey how firms should do the right thing for consumers.

An important difference between the two options is that a duty based on ‘best interests’ already exists in the FCA handbook. The customer’s best interest rule states that “a firm must act honestly, fairly and professionally in accordance with the best interests of its customer”.<sup>4</sup> This rule applies in several sectors including activities in relation to non-investment insurance contracts, mortgage and other home finance, investment business for retail clients, and regulated claims management companies. This means that firms in some sectors are already operating under a similar obligation to a possible ‘best interests’ wording. However, important differences are likely to include that the existing use of “best interests” is in the context of a handbook rule rather than an overarching principle, and that it currently relates to individual customers rather than all customers, or subsets of customers, at a more aggregated level.

In contrast, ‘good outcomes’ does not have an established legal meaning and would be a new obligation on all sectors.

It is not clear whether and to what extent the FCA intends different firm behaviours, standards and consumer outcomes under either wording. The FCA recognises that the ‘best interests’ wording may be seen as more demanding, but does not confirm if this would be its intention.<sup>5</sup> The FCA does propose the same Rules and Outcomes irrespective of the wording of the Principle suggesting that it intends for both options to deliver the same or similar Consumer outcomes.

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<sup>4</sup> ICOBS 2.5.1R, MCOB 2.5A.1, CMCOB 2.1.1R

<sup>5</sup> Consultation paragraph 3.23.

We have considered the question of whether there is likely to be a difference in the impact of the Consumer Duty under either option. If both options would achieve the FCA's objective for the new Consumer Duty, then a key question is which option is expected to result in lower cost with less risk and less likelihood of unintended consequences than the other.

The Panel's view is that the wording of this principle will matter for how the Consumer Duty is to be interpreted and implemented by firms. The 'best interests' obligation where it is introduced could lead to significantly different firm behaviours as they seek to meet the Principle, which may include the following.

- **Best outcomes interpretation.** For some products, the best outcome may be a reasonable interpretation of best interests (e.g. the lowest price). This is a much higher standard for firms to achieve than a good outcome (e.g. fair value), as defined further under the Consumer Duty Rules and Outcomes.
- **Increased information requirements.** Firms may want to understand the wider financial circumstances of customers to determine whether an action by the firm or customer is in the best interests of that customer. This may place additional requirements on consumers to provide information so that such assessments may be made.
- **Limit in product choice.** Firms may want to limit product choice for customers to only those options that it considers to be in the best interests of those customers, even where the customer may still achieve good outcomes with other products.
- **Restriction of customer behaviour.** Firms may want to restrict customer behaviours that are not in the customer's best

#### EXAMPLE – UNSECURED CREDIT

Banks offer different types of unsecured credit to customers including overdrafts, credit cards and unsecured loans. The outcomes for customers will depend on several factors including product design, pricing, customer product choice, customer behaviour and external financial shocks to the customer.

Under the current principles and rules, banks will typically ensure that customers are provided with clear and fair communication, and treat them fairly throughout the sale process. Further FCA rules following relevant market studies requires firms to monitor and manage persistent use of overdrafts and credit cards, and restricts pricing for overdrafts.

A 'good outcomes' principle may build on the market-wide rules around persistent debt and overdraft pricing and increase the focus on how customers use the product and what price different groups pay throughout their lifetime.

A 'best interests' principle implies that banks should go further. Firms may need to consider whether unsecured credit is in the best interest of the customer (going beyond whether it is affordable), and whether the particular product is in the best interests compared with alternative options. The best interest for each customer may also change over time requiring the firm to act to change the customers behaviour or product choice.

interest even if customers could still achieve good outcomes with those behaviours.

An example of how these different behaviours may lead to different outcomes in the unsecured credit sector under the alternative wordings is provided in the text box above.

The FCA recognises the potential for firms to interpret these principles beyond its intentions – for example it clarifies that the ‘best interests’ principle, does not mean firms have to deliver the best outcome for each and every customer. The FCA may need to define its intention further in relation to these and other potential firm behaviours that may result from a ‘best interests’ principle to ensure it meets its objectives and that firms do not go beyond what is required.

Panel members are concerned that uncertainty over the interpretation of these principles may remain even if the FCA sets out its intentions in more detail. We describe in general what the sources of this uncertainty and its consequences are in Section 2 above. Increased uncertainty may lead to some firms reducing provision for some customer groups, or the withdrawal of service from some product areas. The Panel’s view is that the uncertainty over requirements under the Principles is likely to be greater with the ‘best interests’ wording. In the unsecured credit example above, there is uncertainty over customer behaviour and circumstance throughout the lifetime of the product. It may therefore not be clear what is in the best interests of a customer at the point of sale, and it may not be clear what was in the best interests of a customer until much later. The FOS or the Court may take a different view as to whether the firm acted in the best interests of a customer given this uncertainty. If firms are risk averse, they may proceed on the basis of possible future interpretation by the FOS and courts, which would in effect create a higher standard. The possible costs of a Consumer Duty described in Section 2 above may therefore be greater under a ‘best interests’ principle.

#### EXAMPLE: PAYMENTS

A retail customer is looking to purchase a large white good using their debit card rather than their credit card. While the debit card has chargeback rights, these are not as comprehensive as Section 75 consumer credit act protections.

Does a regulated firm now have an obligation under all reasonable steps to intervene to let the customer know they could have better protections if they used their credit card? Is this duty enhanced if the provider can see from the data they hold that the retailer has a history of not delivering to customer expectations?

In addition, the Panel have concerns over the use of “all reasonable steps” language. While this is not in itself being formally consulted on, the Panel consider this will implicitly sets a higher bar compared to today around the *proactive* actions firms may be expected to take on behalf of their customers, which will create additional regulatory and commercial uncertainties for regulated firms. This is considered particularly problematic in combination with the FCA’s proposed “best interests” wording. Examples might include whether a firm should block investments in very high risk areas if the customer is known to have a low credit rating, or the limits of the information a firm should proactively collect before making assessments around investments, or providing advice and guidance.

There is not a consensus across the Panel over which option is likely to have greater expected costs. Some panellists recognise the existing obligation of the 'customer's best interest rule' in the existing handbook as it applies in their sector. In some sectors, there is greater concern about the additional compliance and other costs of a 'good outcomes' duty as this would be an incremental obligation in these sectors.

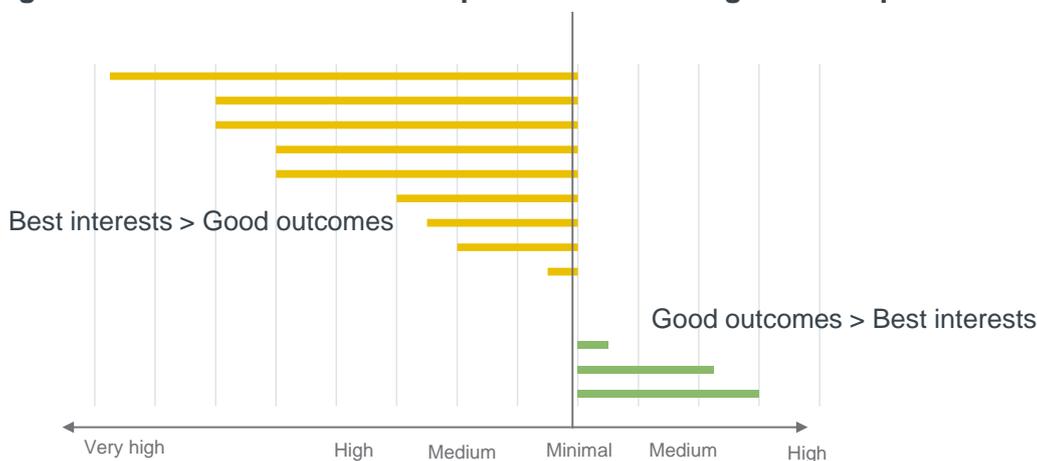
The chart below shows the range of views from the Panel as to which of these options is likely to lead to the largest expected costs. Most Panel members expect costs to be higher for 'best interests', with some members expecting costs to be higher for 'good outcomes'.

### EXAMPLE: GENERAL INSURANCE

A general insurer holds the policies of both individuals in a road traffic accident. In settling claims, good outcomes for both customers would involve the insurer providing an appropriate level of compensation for the losses incurred, consistent with the individual policies.

Under a 'best interests' standard, would the Consumer Duty require the insurer to make proactively efforts to seek the best possible outcome for each individual, which could involve incurring considerable legal costs to pursue and evidence (and in this case also defend) the case? If there was a resulting general uplift in overall industry costs, reflected in future premiums, would this be considered a good outcome, or in the best interests of consumers overall?

Figure 6 Panel's view on which option will have the greatest expected cost



Source: Frontier Economics analysis of Panel survey

Note: Chart shows difference between Panel Member's assessment of each option averaged across scenarios with and without PROA.

Overall, a 'good outcomes' principle appears likely to achieve the FCA's intention, as set out further in the Rules and Outcomes, with less uncertainty and risk for firms that a 'best interests' principle may result in. This view depends on how the FCA sets out its Rules and to a large extent on the introduction of a PROA.

## PROA vs. no PROA

The FCA is allowed to determine for each of its rules whether consumers have a private right of action for damages or loss caused by a breach of that rule. This right applies to most of its rules, but does not currently apply to breaches of principles. The FCA is considering in this consultation whether to allow consumers a private right of action for breaches of its principles, including any new principle under the Consumer Duty.

The FCA has considered the benefits and unintended consequences of introducing a PROA for breaches of its principles. The FCA identifies the key benefits as providing an additional deterrent to breaching the Principles in some specific cases, including where

- consumers' losses are greater than the FOS compensation limits; and
- where the FCA could impose an industry-wide redress scheme if there was significant market failure.

It is not clear what the scale and implication of these benefits may be. The current FOS compensation limit is £355,000, and so there are few cases for which bringing a case through the PROA would be required. Industry-wide redress may have an important role to play as a deterrent, although such industry-wide redress has been possible under existing mechanisms which may already act as a significant deterrent. The experience and exceptionally high cost of industry-wide redress for PPI acts as a strong incentive for firms and a deterrent for breaching principles.

The FCA also identifies the key costs of a PROA for breaching the principles including:

- that firms may become more risk averse, leading to the types of firm behaviours and costs for consumers identified in Section 2 where firms may withdraw service from some product areas and reduce provision to some customer groups;
- increased costs for firms even where cases aren't brought due to legal and indemnity insurance costs, which could be passed to customers;
- an increase in spurious activity by claims management companies; and
- that the courts would play a significant role in determining the interpretation of the Consumer Duty.

The main concern of the Panel is that a PROA for breaching Principles creates uncertainty as to the interpretation of the Principles and therefore may lead to and exacerbate those costs identified in Section 2. A PROA for breaches of rules, including the new rules under the Consumer Duty, already exists in most cases. Therefore a new PROA would be intended to cover breaches of Principles that are not breaches of Rules. This gap between Principles and Rules is where there will be most uncertainty as to how firms should apply the Principles.

A PROA for a breach of Principles will allow courts to determine the interpretation of the Principles. The Panel believe this uncertainty should be filled by the FCA through further work to provide guidance, develop rules and to enforce against the Principles at both a firm and market-wide level. Such supervisory activity can

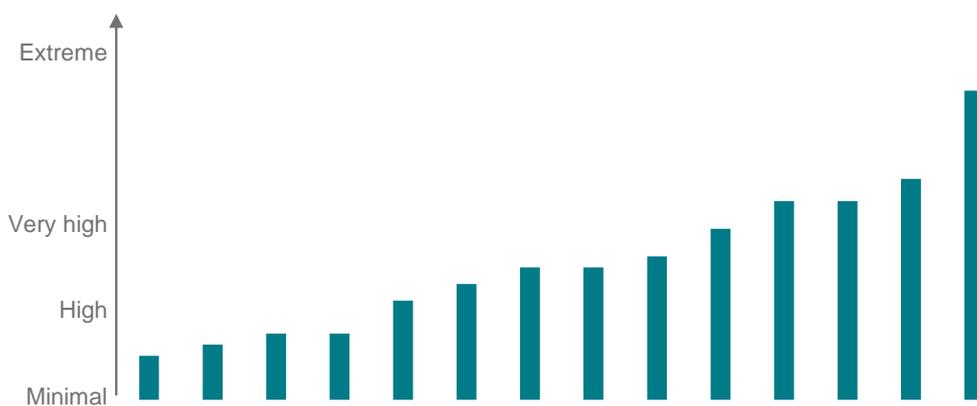
reduce uncertainty over time, ensure the FCA’s objectives are met and avoid unintended behaviours by firms.

The prospect of damages, claims management activity and industry-wide redress based on an interpretation of the Principles by the Court, where there are no breaches of rules, could lead to significant costs for firms. The uncertainty over interpretation of the Principle in future by a Court and potential damages costs create significant risks for firms in how they should interpret the Principles where there are not rules set by the FCA. Firms will incur costs to manage this risk. Firms that are risk-averse may also take actions that reduce this risk, but which are not intended by the FCA and would not be taken in the absence of the PROA. This could increase the likelihood of some of the firm behaviours described in Section 2 above, such as withdrawal of some products and services.

Some Panel members consider that the combination of a ‘best interests’ principle and a PROA for breaching this Principle, where this is not a breach of rules, would effectively create a Fiduciary Duty on firms. That is, firms would be legally obligated to meet the ‘best interests’ of consumers even where the obligations are not set out in the FCA’s rules. The FCA states that its intention for this principle is not to give rise to a fiduciary relationship. However, in combination with a PROA for breach of this principle, it may be for courts, rather than the FCA to interpret the relationship.

The chart below shows the overall strength of view of the Panel as to the expected additional costs of the Consumer Duty with and without the introduction of a PROA for breach of the principles. All Panel Members agreed that the introduction of a PROA would lead to higher expected costs as set out in Section 3, with some expecting the additional costs to be ‘very high’ to ‘extreme’.

**Figure 7 Panel’s view on the increased cost of PROA**



Source: Frontier Economics analysis of Panel survey

Note: Chart shows difference between Panel Member’s assessment of each option averaged across scenarios of each wording option for Principle.

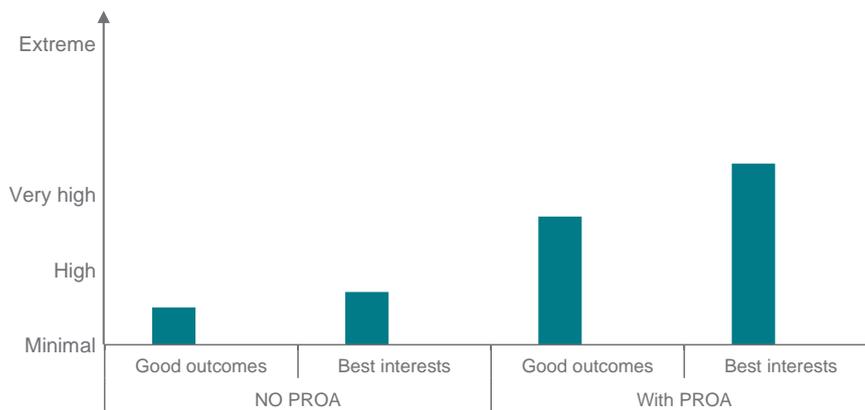
## Overall assessment of options

The Panel’s assessment of the expected costs of each option are summarised in Figure 8 below. The Panel expect that the costs of any option will be at least ‘medium to high’ reflecting the impacts we have described in the section above.

The expected costs of the 'best interests' wording are greater than those of the 'good outcomes' wording. This reflects the potentially higher standard of 'best interests' and uncertainty over how firms should interpret this relative to 'good outcomes'. Even so, expected costs under both Principles are in the 'medium to high' range.

There is a significant increase in costs expected from the introduction of a PROA that increase expected costs to a 'very high to extreme' level. The combination of a 'best interests' principle and a PROA for breach of this and other principles is considered to have extreme costs on the sector by some Panel members.

**Figure 8 Expected costs of different policy options**



Source: Frontier Economics survey of Practitioner Panel members

Note: Members asked to assess costs on scale of 'minimal' to 'extreme'. Scale is illustrative.

## 4. CONCLUSIONS

The Practitioner Panel asked us to estimate the economic impact of the FCA's Consumer Duty. In addition to commenting on the estimated economic costs and benefits, there are also a number of actions we believe can be taken to improve the overall cost benefit ratio of the proposals, regardless of the precise options within the consultation that are eventually reached.

### Costs and benefits

The economic impact of the Consumer Duty will be ultimately determined through the interaction of a number of regulatory forces. The Consumer Duty is relevant for some of these forces, and some of the forces are potentially outside the FCA's control. There is no consensus on the effectiveness of the existing regulatory regime, or the likely future evolution of it. This lack of certainty makes it difficult to assess the economic impact of the Consumer Duty.

Further, as this is an early stage consultation there is still significant uncertainty in how the chosen policy will be reflected in the forthcoming rules. Beyond this, how these rules play out in FCA supervisory processes, and in wider legal settings, is unknown. These impacts are likely to remain unknown for a long period as the new rules bed in.

The costs and benefits of the proposal are therefore uncertain in magnitude. While it is difficult to quantify these impacts, the expected impact types, and the mechanisms and drivers of these impacts, are more predictable and we comment on these in the report. In summary, compliance costs are expected to increase directly, and there is potential for significant costs following the likely behavioural responses to the new duty from firms if service provision to particular customer groups or product areas is withdrawn, given the increased regulatory uncertainty and risk that regulated firms will face. Qualitatively, the Panel believe these costs would be greatest in areas including investment management, pensions, and financial advice.

The FCA describes the benefits it is seeking to achieve with the Consumer Duty at quite a high level. Assessing how these benefits could be achieved, and thinking through the incremental changes relative to the existing suite of FCA powers, it appears the benefits would be likely to come through a relatively narrow set of circumstances: dissuading compliant firms from introducing harmful practices in the first place, and acting in cases where outcomes deteriorate over time. But even in these cases, it is arguable whether the harms could be addressed under the FCA's existing powers.

As we are unable to quantify these impacts at this stage, we are not yet able to come to a view on the overall cost benefit ratio of the proposals. However, given the information available the uncertainties around the scale of benefits appears potentially greater than the uncertainties around the costs. It is uncertain whether the proposals will result in a net benefit overall.

This overall view holds for all of the policy options within the consultation paper, namely the two alternative wordings of the principle, and whether or not a PROA should be introduced. Qualitatively, the Panel have most concerns around the

overall cost benefit ratio of the proposals in scenarios where a PROA is introduced, and with a 'best interests' as opposed to a 'good outcomes' formulation of the principle.

## Aligning expectations and understanding

We believe there is a good degree of alignment between all parties (including regulated firms, the FCA, and consumer groups) as to the overall intent behind the Consumer Duty. However, there are some quite different views in a number of areas around the impact the Consumer Duty will have once implemented.

Aligning understanding around these issues would be helpful. As described, many of the costs from the proposal are likely to be driven by uncertainties, and firm's natural reaction to these, which will involve a degree of risk aversion. The proposals will also succeed through ongoing dialogue and understanding between firms and the FCA through supervisory processes, which will work better if there is common ground. Directly, better alignment of understanding will also support the FCA in reaching the best set of detailed rules and final proposals over the next design phase.

The most significant areas of differing views identified include:

- **Legal interpretation of wording.** The FCA suggests the wording of the consumer principle is not expected to result in different standards of expectation, whereas the industry believes this will impact the standards firms will be held to, in line with how the FOS and Courts ultimately interpret the Consumer Duty.
- **Existing powers.** The FCA believes the existing regulatory toolkit is insufficient to address overall harms to an acceptable level. Regulated firms believe the FCA's powers are already significant, and that a different approach under the existing powers would be sufficient to address the harms the FCA is targeting.
- **Evidential standards.** The FCA appears to believe many firms may already hold the new types of evidence it will require under the Consumer Duty, and that this will be straightforward to provide to the FCA. Regulated firms believe the new Duty will require significant additional efforts to create new MI.

## Maximising the benefits relative to costs

At this stage, maintaining dialogue with the industry and exploring why expectations are not aligned will help all parties to work together over the remainder of the consultation period and beyond.

At this particular point in time, there are a number of actions the FCA can take that would appear to be net positive in terms of their overall impact of the policy. Regardless of the uncertain starting point, we believe the following would maximise the effectiveness of the Consumer Duty, once implemented.

- How much **further clarity** is it possible for the FCA to provide around the impact the proposals will have, including in the upcoming rules and guidance, but also in terms of how it can set expectations around any new evidential

requirements, supervisory processes, and how it is likely to judge what is “reasonable”?

- Can the FCA provide further **assurance that implementation will not be retrospective** in practice and allow time to review and reflect the new Duty in existing products and services?
- Where possible, can the same outcomes be achieved through a more cost efficient manner by **streamline existing rules and processes**, where there is overlap between the Consumer Duty and existing handbook rules?
- Can **uncertainties around future FOS interpretation and CMC activity be managed and controlled**?
- Some of the harms being targeted could potentially be addressed through existing FCA powers and processes, and/or the effectiveness of the Consumer Duty will be maximised with efficient FCA processes. Can the FCA say more about how it intends to **reform the FCA’s own processes**, including:
  - better internal **data sharing and information management** to act faster on issues raised under the new Consumer Duty;
  - better **targeting of supervisory resources** to the highest risk areas of harm within the regulatory perimeter; and
  - greater emphasis on publicising the FCA’s supervisory decisions to the market, making interpretations public and **helping firms to learn more quickly and systematically as the Consumer Duty comes into effect**; and
- Given the significant shift in approach, and the uncertainties in how implementation will take effect, can the FCA commit to a test and learn approach with **early evaluation of the impact of the Consumer Duty**, and be prepared to make changes where necessary.

