

3<sup>rd</sup> February 2023

Dear CEO/Director,

## **Implementing the Consumer Duty in Credit Reference Agencies (CRAs) and Credit Information Service Providers (CISPs)**

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

We are sending this letter to firms whose primary business model is credit reference and/or credit information services to help them implement and embed the Duty effectively. This letter sets out:

- A reminder of the implementation timeline, the key elements of the Duty and how it applies to firms in the CRA and CISP portfolio.
- Our expectations for how firms should embed the Duty, including how firms evidence the outcomes their customers are getting.
- Feedback from our recent review of firms' implementation plans.
- Our approach to supervising the Duty and planned next steps.

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

In addition, we wrote to you in [November 2020](#) setting out our view of the key risks of harm that CRA and CISP firms pose to their customers and the markets in which they operate. While we have seen improvements in some areas, there are risks of harm that remain and new risks that we expect firms within the portfolio to address.

Over the last 2 years our supervisory strategy for the CRA/CISP portfolio has been dominated by the pandemic and more recently the cost-of-living crisis. Our attention has been particularly focused on consumer forbearance and payment deferrals. This was a departure from our planned 2-year supervision strategy, set shortly before the onset of the pandemic. Since our November 2020 letter, we have also introduced the Consumer Duty and published our Interim Report on the Credit Information Market Study.

Accordingly, in Annex 1 and Annex 2 of this letter we:

- Set out our expectations for CRAs and CISPs to meet the requirements of the Duty (Annex 1)
- Provide an update on the Credit Information Market Study (Annex 1)
- Highlight issues that arise from the rising cost-of-living (Annex 2)
- Provide an update on our assessment of the key harms that CRA and CISP firms pose to their customers and the markets in which they operate (Annex 2).

### **Your timeline for introducing the Duty**

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

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

### **How the Duty applies to CRAs and CISPs**

The Duty applies to products and services offered to retail customers, and to all firms who determine or have a material influence over customer outcomes - not just those with a direct customer relationship. We've set out some more information and examples about how the Duty applies to CRAs and CISPs in Annex 1 to this letter.

This includes consideration as to whether you are a manufacturer and/or distributor for the purposes of the Duty, consideration of distribution chains and examples of how the Duty's Principle, the cross-cutting rules, and the four outcomes may apply to your portfolio. Annex 1 also sets out the FCA's assessment of the credit reference sector, initial findings, and early views on potential remedies following our Credit Information Market Study.

## Overview of the requirements of the Duty

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

The Duty requires firms to act to deliver good outcomes for retail customers. Firms must act in good faith towards customers, avoid causing them foreseeable harm, and enable and support them to pursue their financial objectives. Firms should consider the diverse needs of their customers – including those with characteristics of vulnerability (see chapters 4-5 of the Guidance), building on our [FG21/1 Guidance for firms on the fair treatment of vulnerable customers](#).

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

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

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

The Duty does not have a retrospective effect and does not apply to past actions by firms. However, the Duty applies, on a forward-looking basis, to firms' ongoing work for existing customers (chapter 3.10 of the FG22/5 non-Handbook Guidance)

## **Our expectations for how firms should embed the Duty in CRAs and CISPs**

Whilst you should consider all elements of the Duty, Annex 2 of this letter outlines five specific areas where particular focus is needed. As well as the rising costs-of-living, we set out our updated view on the key drivers of harm in the sector and where the Duty may be relevant in addressing these harms.

The harms we identify as relevant to this portfolio include the potential risks of:

- Ineffective services being provided to businesses which may mean consumers are excluded from products, or are being lent to, inappropriately
- Poor operational and cyber resilience
- Disorderly firm failure
- Poor complaint handling
- Fair value and the provision of credit information services.

We ask firms to pay particular attention to the detail set out in Annex 1 and 2 as these outline our renewed focus in collaboration with the Duty taking effect.

## **Feedback from our review of implementation plans**

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

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

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

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

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

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

## **Our supervisory approach and next steps**

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

As part of this work, we are developing a strategy for the CRA and CISP portfolios to embed the Duty in our Supervision work and tackle key harms, as well as metrics to measure the impact of the Duty in the sector.

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

We will continue our work to support firms' embedding activities in the run-up to the July 2023 implementation deadline. Our programme of communications on the Duty will continue, with further events and updates to our dedicated webpages. We are working with an external research agency that will soon be sending a short survey to a

sample of firms. This anonymised survey will help us understand the progress firms are making in implementing the Duty and will inform our ongoing communications to firms.

**For more information:**

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

**Contact**

If you have any queries regarding the content of this letter, please contact us at [firm.queries@fca.org.uk](mailto:firm.queries@fca.org.uk). This is your firm's primary point of contact for day-to-day interaction with the FCA. Other details of how to reach us are on our website.

There may be times when your firm faces urgent issues of strategic importance. In such instances, please contact the Head of Department, Jonathan Phelan, on 020 7066 1470 or [jonathan.phelan@fca.org.uk](mailto:jonathan.phelan@fca.org.uk). If not available, then please contact Sunil Thakar, Manager, on 020 7066 5996 or at [Sunil.Thakar@fca.org.uk](mailto:Sunil.Thakar@fca.org.uk).

Yours sincerely

Roma Pearson

Director of Consumer Finance

Supervision, Policy & Competition Division

## **Annex 1 – How the Duty applies to firms in your Portfolio**

### **How the Duty applies to CRAs and CISPs**

Depending on their activity, firms in this sector may be both manufacturers and distributors for the purposes of the Duty. For example, a firm would be a manufacturer of a service that it designs and operates. It would be a distributor of that service when it is made available to retail customers.

Firms should also consider the Duty if they are part of a distribution chain that serves retail customers, even if they do not have a direct client relationship with retail customers. All firms in the chain may have obligations under the Duty to the extent they can determine, or materially influence, retail customer outcomes.

Firms should therefore consider where their actions could have a significant impact on consumer outcomes. For example, we would expect the following aspects of the Duty to be most relevant:

- Under the Duty's Principle and cross-cutting rules, we would expect firms to handle consumer data appropriately and ensure the products and services they provide are effective. In providing these products and services, firms must take reasonable steps to ensure that data subjects are not exposed to foreseeable harm because of poor cyber resilience or other ways their data may be lost or misappropriated. Where there are failings, we expect firms to proactively consider potential consequential harm caused to affected data subjects and take appropriate action to mitigate harm, including providing redress where this is appropriate.
- Under the price and value outcome, firms should consider factors that might affect whether their products and services provided to retail customers represent fair value. For example, this may include the effectiveness of the product and whether this has been tested; the pricing of services that the customer would easily have been able to undertake themselves; and the transparency to the customer of the cost and value of a product or service when provided alongside other products that are paid-for together.
- The consumer communications outcome and the consumer support outcome of the Duty would also be relevant where, for example, consumers who are data subjects contact a firm to ask about personal data. Firms should consider how they can ensure that consumers, as individual data subjects, understand how their data will be used. In addition, firms should consider what information consumers need to understand how a firm's products and services work, and how to cancel them if they are no longer needed.

- The Duty does not have a retrospective effect and does not apply to past actions by firms. However, the Duty applies, on a forward-looking basis, to firms' ongoing work for existing customers (chapter 3.10 of the FG22/5 non-Handbook Guidance).

Feedback we have received to-date suggests there may be other questions on how the Duty will apply. We will continue engaging firms in this portfolio to help further clarify how the Duty will apply.

## **Credit Information Market Study (CIMS)**

In our [portfolio letter of November 2020](#), we said we would refine our 2-year strategy following the interim findings of the [Credit Information Market Study \(CIMS\)](#). However, the need to reprioritise our work during the pandemic meant the FCA decided to pause the work on the CIMS.

The [CIMS interim report](#) ('the Report') has now been published and sets out the FCA's assessment of the credit information sector, initial findings, and early thinking on potential remedies. It also considered a [study we commissioned](#) into potential future developments in the credit information market.

### **CIMS Key findings and proposed remedies:**

Whilst the report outlines several ways in which the market works well, it also identified some aspects of the market that were not working well. These are summarised below:

- Governance arrangements, set up in the 1990s to oversee the sharing of consumer information, to help support lending decisions and reduce fraud, appear to be slow to respond to emerging issues in a co-ordinated way. This may hinder improvements to the credit reporting framework.
- There are significant differences in the credit information held on individuals across the three largest CRAs. These differences can lead to poor consumer outcomes.
- The market is concentrated and barriers to entry high. Switching between CRAs can be difficult. Challenger CRAs find it difficult to compete effectively, without access to historic credit performance data.
- Consumer understanding of credit information is relatively low. It can be difficult for individuals to access their credit information through the statutory process, and to dispute information where necessary.



The Report sets out a range of potential remedies to the issues above. These reflect a combination of industry-led change and possible new FCA rules. These proposed remedies seek to address the following key areas:

- Reform industry governance arrangements.
- Improve the quality and coverage of credit information.
- Enable greater competition and innovation.
- Support consumers to understand, access, and dispute, credit information.

We invite firms in the portfolio to engage with the Report, give feedback, and consider what operational changes would need to be made to address the potential improvements and remedies the Report identified. We are asking for comments on this report by 24 February 2023.

## **Annex 2 – Other key things for firms to consider**

### **The Rising Cost-of-Living**

Our expectations of how CRAs and CISPs should implement the Duty are also relevant in the context of the rising cost-of-living. Inflation has been rising and this will be felt most acutely amongst the poorest households. According to our [Financial Lives Survey](#), just over a quarter (27%) of the UK population have low financial resilience; a figure that may increase over the coming months.

The rising cost of living may bring credit information into greater focus; with potentially greater demand for credit and increases in borrowers experiencing financial difficulty. So, we expect firms in this portfolio to consider how the rising cost-of-living will impact consumers, their credit scores, and access to credit while ensuring consumers credit files are accurate and up to date.

The current, and forecasted, economic environment may give rise to increased operational risks. Firms should ensure they have robust governance arrangements and the ability to identify, monitor, and manage the operational risks they may be exposed to on an ongoing basis. For example, firms should ensure they have appropriate controls to manage data protection and cyber resilience risks. They should consider different scenarios that may test operations, to ensure that their internal processes and control mechanisms are adequate.

We will continue to work with firms and the financial services sector to monitor, manage, and mitigate any consumer harm due to the rising cost of living.

### **The key drivers of harm and our expectations of firms**

Our updated view of the key drivers of harm includes those we highlighted previously, as well as new emerging harms. Firms should be aware of the drivers of harm in their businesses and mitigate them wherever possible.

The potential harms relevant to this portfolio are set out below.

- 1. Ineffective services provided to businesses may mean consumers are excluded from products, or are being lent to, inappropriately**

Credit referencing plays a significant role in the financial services market. In times of economic uncertainty, a greater number of consumers are likely to face financial difficulties and are at risk of becoming over-indebted. Credit reference data provided to lenders underpins their affordability assessments, lending decisions, account management, and, ultimately, consumers' access to credit and the terms on which it is granted.

To ensure consumers are not excluded from products or lent to inappropriately, we expect firms to have robust governance arrangements in place to enable improved data quality. A firm's leadership and governance play a key role in driving a culture with a strong focus on consumer outcomes. During the past 2 years we have carried out work, focussing on governance issues, with firms in the portfolio. We have seen improvement with the CRAs, through the formation of audit committees and introduction of independent non-executive directors (INEDS).

We expect all firms in the portfolio to have robust governance in place to ensure products and services are designed to meet the needs of the target audience, and data held is accurate to achieve appropriate customer lending. This will be increasingly important as firms bring innovative products and services to the market, combining traditional credit reference data with open banking, and Deferred Payment Credit ('DPC'), data.

Where firms are aware (or could reasonably be expected to be aware) of data inaccuracy, under the Duty's consumer support outcome, we would expect them to take proportionate steps to avoid causing foreseeable harm.

## **2. Poor operational and cyber resilience**

A key commitment in our [three-year strategy](#) is to ensure that firms are operationally resilient. The rising cost-of-living and the market impact of geopolitical uncertainty may challenge this ambition. Like others your firm should continuously monitor, and be prepared for, cyber risks and sudden increases in consumer contact volumes.

In the summer of 2021, we initiated work on operational resilience with several firms in the portfolio. The work included completion of an Operational Resilience Questionnaire (ORQUEST) that focussed on firms' self-assessment against 10 core areas of operational resilience, including risk management and third-party management. Our review identified these firms rated themselves as being largely effective in 2 out of the 10 areas of operational resilience. Improvements needed were identified in the remaining 8 areas, which included risk management.

We expect firms to act on our March 2022 feedback to reduce technology, resilience, and cyber related risks.

Firms in the portfolio should consider the adequacy and effectiveness of their business continuity, operational resilience planning, and risk management, procedures. We will continue to focus our work in this area.

From 31 March 2022, firms authorised and registered under the Payment Services Regulations 2017, and Electronic Money Regulations 2011, have been subject to the new rules on operational resilience that came into force on 31 March 2022. Some firms in this portfolio will be subject to these new rules. They should be undertaking the required mapping, and testing, to ensure they remain within their impact tolerances. Firms this applies to must also have identified any vulnerabilities in their operational resilience, in line with our expectations.

We expect firms to consider developing, and implementing, scenarios that will stress-test their operations. These should ensure processes, systems, and controls are adequate and resilient enough to manage the risk of operational failures; and will withstand increases in service demand arising from the increased cost-of-living and possible ID fraud.

Firms in this portfolio are heavily reliant on technology to deliver their products and services to clients and consumers. Firms should note the guidance in SYSC (Systems and Controls) 4.1.6 and 4.1.7 and take steps to ensure continuity in the performance of their business.

Firms in this portfolio hold and process a wide range of personal consumer data. They should ensure that they have systems and controls in place to protect the data, process it correctly and are resilient against cyber-attacks. Such attacks erode market confidence and can cause consumer harm including consumers being denied access to credit and being the target of fraudulent activity. [Our expectations on cyber security can be found here](#). We plan to carry out targeted work in this area in the near future.

### **3. Disorderly firm failure**

During the pandemic, the FCA collected financial resilience data from some firms, to understand their financial position over time. This work is important to help the FCA understand and obtain an accurate view of the impact of Covid-19, and supports work to mitigate risks of consumer harm, the market, and competition within it.

Firms should have an effective plan in place which considers both the financial, and non-financial, resources needed for an orderly wind down. Further guidance on adequate financial resources can be found in our [final guidance on assessing adequate financial resources](#). Additionally, we expect firms to comply with our policy statement on [wind down planning](#), which includes how to assess whether they have the resources

to wind down in an orderly manner, with minimal adverse impact on its customers and the wider markets.

Firms in the portfolio should also ensure that any wind down planning makes provision for the safe and secure transfer or disposal of personal data, as appropriate.

#### **4. Poor complaint handling**

The CIMS identified that consumers face challenges in disputing credit information and often do not know who to contact about inaccuracies in that information. They are unclear where the responsibility lies for correcting errors (between the CRA and lender). We have seen instances where the consumer had been passed between the lender, CRA and/or CISP without resolution of the dispute.

We remind firms that an expression of dissatisfaction from an eligible complainant, which alleges the complainant had suffered (or may suffer) financial loss, material distress, or material inconvenience, should be treated as a complaint; and will be subject to any relevant Dispute Resolution rules ('DISP') in the FCA Handbook.

Firms in the portfolio have a duty to comply [with s159 of the Consumer Credit Act 1974](#). They must correct inaccurate information and have due regard to the applicable rules and guidance in DISP 1.1 and DISP 1.3.1R. They must ensure they deal with complaints promptly and fairly; and have effective and transparent procedures for the reasonable and prompt handling of complaints. Additionally, the Duty's consumer support outcome sets overarching requirements about the support firms must give their customers. These should be read in conjunction with the existing rules and guidance. More detail about the Duty's consumer support outcome can be found in Chapter 9 of the [FG22/5 non-Handbook guidance](#).

#### **5. Fair value and the provision of credit information services**

Some firms in the portfolio act on a customer's behalf to negotiate amendments to the customer's credit file or provide the customer with advice on how to do so. This is something customers may often be able to do themselves, by contacting the relevant credit reference agencies or lenders directly, if they have valid grounds for amending their credit file.

Some firms in the portfolio provide credit information (and often other) services for a single regular fee, or subscription payment. This can include providing customers with regular access to their credit files, credit scores, or credit repair services. Customers can access their credit files for free. Where several services are bundled together, it can be difficult for customers to assess the value of the overall offering. They may end up

paying for services they do not need. Firms must ensure that each component product or service, and the overall package, provides fair value. As outlined in Chapter 7 of the FG22/5 non-Handbook guidance, we expect firms to be able to show us that they have made an assessment and can demonstrate why they consider that the relationship between the price and benefit is reasonable.

Some firms in the portfolio provide services that claim to build a customer's credit score, through credit repair services. Where consumers can access any of these services for free, such as their credit information, the firm must ensure paid-for services provide fair value. The CIMS identified that while there are many firms providing credit information services which offer help to consumers, consumers are not always aware that credit information is available for free through a statutory process, without the need to sign up to subscription services.

Firms in the portfolio, or firms considering entering the market, should consider whether the product offering is in the consumers interest and offers fair value as outlined in the Duty.

Fair value is not limited to price. Value should be considered in the round, to ensure the price the customer pays is reasonable compared to the overall benefits the product or service provides. More detail about the Duty's fair value outcome can be found in Chapter 7 of the [FG22/5 non-Handbook guidance](#). The Duty's consumer understanding outcome may also be applicable here.

## **Data-led regulation**

To fulfil our ambition to be a more data-led regulator ([see the FCA data strategy](#)), we will increase our focus on data. This will not be limited to regulatory returns. The data we receive from firms helps inform us on the potential for harm and identify where to allocate supervisory resource. Our transition towards automated data collection should enable firms to meet their reporting requirements and submit returns more easily.

## **Environment, Social and Governance (ESG) strategy**

Financial services and markets also have a central role in the transition to a low carbon economy and a more sustainable future. We have developed a refreshed [ESG strategy](#) that sets out our target outcomes and the actions we expect to take to deliver these in the coming months. They span all our work on sustainability and climate change.

Our [joint discussion paper](#) with the PRA and the Bank of England sets out our existing requirements and expectations of firms, and dives deeper into our thoughts on accelerating meaningful change in diversity and inclusion.