

21<sup>st</sup> February 2023

Dear CEO/Director,

**Implementing the Consumer Duty for Debt Purchasing, Debt Collecting and Debt Administration Services ("DPCA") portfolio.**

The Consumer Duty ("the 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 debt purchasing, collecting and/or administration services to help them implement and embed the Duty effectively. This letter sets out:

- A reminder of the implementation timeline, key elements of the Duty and how it applies to firms in the DPCA 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 [January 2021](#) setting out our view of the key risks of harm DPCA firms pose to their customers and the markets in which they operate. In that letter, we also set out our strategy for this portfolio to ensure firms understand our focus, expectations of them, and the actions needed to manage their risks and reduce potential harm to consumers. Since our January 2021 letter, we have also introduced

the Consumer Duty which comes at a challenging time for consumers and the wider economy following the significant rise in the costs-of-living.

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

- Set out our expectations for DPCA firms to meet the requirements of the Duty (Annex 1)
- Highlight issues that arise from the increase in cost-of-living (Annex 2)
- Provide an update on our assessment of the key harms that DPCA 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 of financial products and services should have completed all reviews necessary to meet the outcome rules and shared necessary information with their distributors
- The Duty comes into force on 31 July 2023 for new and existing products or services that are open to sale or renewal
- On 31 July 2024 the Duty comes into force for closed products or services.

### **How the Duty applies to DPCA firms**

The Duty applies to products and services offered to retail customers, and to all firms who determine or have a material influence over customer outcomes - not just those with a direct customer relationship. We've set out some more information and examples about how the Duty applies to DPCA firms in Annex 1 to this letter. This also includes specific consideration as to whether you are carrying out debt collections or debt purchasing activities.

## Overview of the requirements of the Duty

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

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

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

- **Products and services:** are designed to meet the needs, characteristics, and objectives of a specified target market (chapter 6)
- **Price and value:** Products and services provide fair value with a reasonable relationship between the price consumers pay and the benefit they receive (chapter 7)
- **Consumer understanding:** Firms communicate in 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).

## Our expectations for how DPCA firms should embed the Duty

Whilst you should consider all elements of the Duty, Annex 2 of this letter outlines five initial 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:

- Customer circumstances, vulnerabilities, and complaints
- Statute barred debts
- Firm financial and operational resilience
- Business ownership models
- Emerging issues

We ask firms to pay particular attention to the detail set out in each Annex as these outline the areas that we intend to focus on as the Duty takes effect.

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

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

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

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

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

- **Effective prioritisation:** We saw 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 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 DPCA portfolio 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.

DPCA 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 relevant 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

## 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 the primary point of contact for your firm's day-to-day interactions with the FCA. Further details of how to reach us are on our website.

We recognise there may be times when your firm faces urgent issues of strategic importance. If this happens, 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, Sunil Thakar, Manager, on 020 7066 5996 or [Sunil.Thakar@fca.org.uk](mailto:Sunil.Thakar@fca.org.uk).

Yours sincerely

Roma Pearson

Director, Consumer Finance

Supervision, Policy & Competition Division

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

### **How the Duty applies to DPCA firms**

Our aim is to oversee a sustainable and effective debt purchaser, collections, and administration market, which serves its customers well. To achieve this aim, we will continue to seek to raise standards across the market, including through implementation and supervision of firms under the Duty. We will look to increase our industry-level engagement, to make sure our expectations are clear.

In their implementation of the Duty, DPCA firms will need to ensure their business strategy and objectives are set in line with how their business will deliver the outcomes the Duty expects. Firms in the portfolio should also consider the following:

- whether your products or services are open or closed;
- whether your activities are regulated or ancillary to regulated activities;
- the supply-chain involved in manufacturing the service and/or products provided; and
- whether you are a manufacturer and/or distributor of debt purchasing, collecting, or administration services.

If you carry out **debt collections activities**, in Consumer Duty terms, the 'product' is the service provided by the debt collection firm to the lender which enables that lender to procure performance of the credit agreement. The product of debt collection does not involve a contract between the debt collector and retail customer, so it cannot be classed as a 'closed product' under our definition. The extent of a debt collection firm's responsibilities under the Duty will depend on the firm's role and the extent of its influence over retail customer outcomes. The level of responsibility depends on what the firm's actual role and influence is in practice, rather than just what is set out in contractual terms between firms in the chain.

If you carry out **debt purchasing activities**, where a regulated loan is purchased from a lender, the purchaser becomes the creditor under the agreement. The product that the purchaser holds will be closed if the purchase took place before 31 July 2023 and the product is not being marketed or distributed to retail customers (including by way of renewal) by the purchaser. Whether or not the original lender is continuing to market or distribute the original credit product is irrelevant to the open/closed status of the product held by the purchaser.

As well as helping firms in the implementation of the Duty, we aim to improve understanding and awareness in the DPCA sector on our forbearance and vulnerabilities guidance. Recent FCA research indicated some firms were failing to implement aspects of our existing [Tailored Support Guidance](#) ("the TSG") and [Guidance on the fair](#)

[treatment of customers with vulnerabilities \(CG20/3\)](#) (“the Guidance on vulnerabilities”). These share a common focus on vulnerability with the Duty and remain critical during a rising cost-of-living.

## **Annex 2 – Key issues for firms to consider**

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

In our [Dear CEO Cost of Living Letter](#) (“Dear CEO”) of 16th June 2022, we set out our expectations of lenders. This included how they should support consumers as they feel the impact on their finances of the rising cost-of-living. We expect you to be able to demonstrate the steps you have taken to address the risks identified both in this letter, and the Dear CEO letter. For example, we expect firms to support customers struggling with personal debt, or showing signs of financial difficulty, by reviewing the customer’s current arrangements to mitigate any potential harm these could cause; and signposting them to free debt advice.

As increased numbers of consumers fall into [default or arrears difficulties](#), the rising cost-of-living is likely to have the greatest impact on consumers in vulnerable circumstances. As outlined in our [guidance](#), vulnerabilities come in various forms, including financial difficulty, mental health challenges, or changing personal circumstances. Consumers are also experiencing lower and, in some cases, negative disposable income as a result of the increased cost-of-living. We expect your firm to consider how the rising cost-of-living is likely to impact your customers.

We expect firms to give borrowers in financial difficulty appropriate, tailored, forbearance that is in their interests, taking account of their individual circumstances. However, our work on [Borrowers in Financial Difficulty](#) shows that not all firms have been implementing all aspects of the [Tailored Support Guidance](#).

In the coming year, some consumers will be at greater risk of arrears as a result of increased living costs. This may drive up demand for debt collecting, debt purchasing, and debt administration services in a short space of time. It’s important that DPCA firms and those they act on behalf of, proactively plan for and are able to manage the operational risks that may come with potentially increased demand, to ensure they are able to continue serving their customers well. We remind firms they need to have robust governance arrangements in place to identify, monitor, and manage any operational risks they may be exposed to; and to be able to scale up to meet an increase in demand in a way that protects consumers from undue harm.

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

In our previous [DPCA Portfolio letter](#) to you in January 2021, we reflected on the key drivers of harm in the sector. This included issues surrounding the treatment of customers (particularly those experiencing vulnerabilities), litigation and unenforceable debts, and ensuring firms have sufficient and appropriate prudential resources.

Since then, the financial services landscape has faced significant challenges. Financial pressure is building for consumers with the rising cost-of-living and reducing disposable income. In this time, we have also introduced the Duty to raise standards of customer treatment across industry.

This section therefore outlines our updated view of the key drivers of harm, building on those harms we have identified previously and highlighting emerging harms in the sector. In doing so, our focus now includes business ownership models, increasing uptake of buy now pay later, the use of online, digital and automated platforms, as well as the importance of maintaining high standards of customer treatment in firms' ancillary and other unregulated activities.

As such, our expectations are that firms act in accordance with our Principles, Rules and Guidance to mitigate the following existing and emerging risks of harm to consumers that now form our focus for the sector.

### **3. Customer circumstances, vulnerabilities and complaints**

In the current climate, your customers may be more likely to experience vulnerabilities impacting their circumstances. Customer needs are likely to become more complex, which means firms need to ensure they are identifying, managing, and adapting services for vulnerable customers in a changing environment. In February 2021, we published our [FG21/1 Guidance on vulnerabilities](#). This guidance sets out what firms should do to comply with their obligations and ensure they treat customers in vulnerable circumstances fairly.

The outcome of the Duty on 'Consumer Support' reinforces the importance of identifying vulnerability in potential customers and treating them appropriately. The Duty's cross cutting rules also require you to act in good faith, avoid causing foreseeable harm, and enable and support the customer to pursue their financial objectives.

The [Government's Debt Respite Scheme](#) ("Breathing Space") also provides a form of customer support through specialised mental health crisis breathing space. It is available to customers receiving mental health crisis treatment, lasting the duration of the person's mental health crisis treatment, plus 30 days. Please consider whether this tool may help your customers achieve their financial objectives.

Generally, unless your communications are required under statute or FCA rules, you should not contact customers during the period they are in a Breathing Space. Where a customer is not in a Breathing Space, our guidance in Chapter 7.9 of the FCA Handbook's Consumer Credit Sourcebook ('CONC 7') is clear that you should not contact customers at unreasonable times and you should pay due regard to customers' reasonable requests in respect of when, where, and how, you can contact them.

Overall, we expect firms to continue to provide appropriate customer support and service. Firms should ensure that where complaint management teams are located within a compliance function, the complaint handling team's activities are subject to appropriate independent oversight. This also applies to customer disputes and complaints regarding statute barred debts.

#### 4. Statute barred debts

In our [January 2021 letter](#) to you we raised issues in the DPCA sector concerning litigation and unenforceable debts. Following this letter, we undertook a review to determine whether DPCA firms' systems and controls were effective; and that customers are being treated fairly, both prior to a debt becoming, and once it becomes, statute barred. This review demonstrated pockets of good practice, but there was some evidence that our expectations regarding statute barred debt were still not being met.

Crucially, some firms are still sending misleading communications to customers in relation to statute barred debts. In particular, some firms are misleading customers by suggesting or stating that they may be the subject of court proceedings when the firm knows or ought reasonably to know that the relevant limitation period has expired. [CONC 7.15](#) sets out our requirements on firms in relation to statute barred debts, and it will also be important for firms to fulfil the third outcome of the Duty, on consumer understanding, and the Duty's cross-cutting rule on acting in good faith toward customers.

Our review found several further aspects of conduct where our expectations on statute barred debt were not yet being met:

- a) **Approaches to statute barred debt:** We found firms' approaches to statute barred debt were not well defined. Firms should consider setting a clear and appropriate standard in relation to their approach to statute barred debt and take a view on how they are best able to measure their performance against this standard.
- b) **Policy and process:** When reviewing firms' policies applicable to statute barred debt, we saw that firms' policies are frequently driven by strict compliance with relevant rules and Laws (such as the Limitation Act 1980 or CONC 7.15) with limited consideration and recognition of customer outcomes. Particularly in light of the Consumer Duty and the need for firms to pay regard to and measure consumer outcomes, firms should identify how customer harm could be caused during, and after, the limitation period and how this will be managed to reduce the risk; and define what outcomes customers can expect.

- c) **Incorrect application of non-payment transactions:** Our review highlighted non-payment transactions (for example, credits from the original creditor or balance adjustments) were not always correctly identified, leading internal systems to identify them as 'causes of action' and re-setting the limitation period for a debt. Firms may wish to consider how and when these types of failure may occur; and review the control framework so that limitation periods are not inappropriately extended.
- d) **Customer information requests:** The review identified that information that customers had requested is not consistently delivered to them within reasonable timescales. This could expose customers to harm. Ensuring customers consistently receive adequate information at the point of advice or engagement and receive sufficient information about all relevant options available to them, are important steps toward meeting the third outcome of the Duty on Consumer Understanding.
- e) **Oversight:** We found that firms generally do not monitor statute barred debt processes or outcomes as a priority. Firms may wish to consider undertaking customer journey reviews with specific focus on potential points of failure pre- or post- limitation period, to ensure that the debt pursued is both compliant and that it provides good customer outcomes.
- f) **Credit reference agency reporting:** Firms should ensure that reporting to Credit Bureau is accurate. This applies regardless of whether the debt is statute barred or not.
- g) **Staff training:** We found that staff are not always sufficiently trained on dealing with statute barred debt. Therefore, firms may wish to consider providing enhanced training materials. This may include for example, practical case studies and scenarios, relevant to staff day-to-day roles and include additional guidance for specialist dispute and complaint handlers.

We will monitor firms' progress against the key aspects identified above and act where required.

## **5. Firm financial and operational resilience**

With uncertain economic circumstances, and increasing numbers of consumers requiring forbearance and support, we expect firms to anticipate and plan for the likely impacts on their business models. You must ensure the firm has adequate liquidity and capital to service its existing operations in stress-based scenarios.

The rising cost-of-living presents greater risks of customer arrears and defaults. This may result in growing account volumes for Debt Collection Agencies. We expect firms to consider and plan for the financial and operational implications of this, including how they plan to manage an increase in demand to service growing numbers of accounts. If firms don't do so, consumers may also not receive sufficient communication from firms on how to proceed with repayments and may be left uncertain about the status of their debts.

There is a risk that these financial and operational pressures may drive harmful approaches to collections on unenforceable debts and litigation. This is particularly where consumers present a low or negative disposable income. We will monitor closely how firms ensure that appropriate forbearance and support is offered to customers when using enforcement tools, such as litigation.

Where firms do experience higher volumes of accounts to service, we expect them to prevent, adapt, respond to, recover, and learn, from operational disruptions that may be caused by such an increase. In our recent [Policy Statement \(PS21/3\)](#) we detailed our findings, and final rules, on building operational resilience.

At a minimum, firms must comply with the [prudential resource requirements](#) at all times. If firms are unsure whether this will continue to be the case, they must make a [notification](#) according to chapter 15 of the FCA Handbook's Supervision Manual ('SUP15').

## **6. Business ownership models:**

DPCA firms need to be alert and responsive to risks of harm inherent in certain business ownership models and what this means for customer treatment and outcomes as these debts are collected.

- a) **Book sales to unregulated entities:** We remind firms that the sales of books to unregulated entities (such as special purpose vehicles) may introduce specific challenges for consumers, for instance should they wish to raise a complaint. We remind firms of their obligations under the Duty. Paragraph 3.30 of FG22/5 provides non-Handbook guidance on product or service books purchased after the Duty takes effect.
- b) **Outsource collections of early arrears to Business Process Outsourcers (BPOs):** We expect the rising cost-of-living may cause the number of consumers in early arrears to increase, and that some firms may outsource these cases to BPOs. The use of 'multi-skilled' agents, combined with increased volumes, could lead to poor outcomes for consumers as agents try to manage higher workloads

from multiple firms simultaneously. If outsourcing to a BPO, it is your responsibility to review BPO compliance with the rules.

- c) **Sales of High-Cost Lending back books:** We consider it likely such books may contain high levels of potential redress, due to unaffordable lending historically. These sales can impose barriers to customers, preventing them from making affordability complaints against the lender. In such cases, we expect firms to cooperate fully, and in good faith, with firms in an insolvency process, or with restructuring plans, to deal with redress claim liabilities that are in place, and act to mitigate consumer harm arising from this emerging risk.

Where we see consumer harm and a failure to treat customers fairly, we will use the FCA's full range of supervisory tools and enforcement powers.

## 7. Emerging issues

We have seen a number of emerging issues through our supervisory work and findings from [Borrowers in Financial Difficulty](#) and will we work closely with the industry to monitor these issues. We expect firms to anticipate how the Duty, the TSG, and the Guidance on Customer Vulnerabilities may apply. These issues include:

- a) **Increased uptake of deferred payment credit (unregulated 'Buy Now Pay Later'):** Our supervisory work suggests deferred payment credit debts are increasing as a proportion of total customer debt. This may present operational challenges where the number of accounts agents need to service continues to rise. We expect firms to anticipate the operational requirements they need to make in order to manage any increased demand and to note the [Government's recently announced](#) intention to bring currently exempt 'Buy Now Pay Later' products into regulation.
- b) **Ancillary activities and other unregulated activities:** The Duty will apply to your unregulated activities which are carried on in connection with a regulated activity or held out as being for the purposes of a regulated activity ("ancillary activities"). Firms should ensure the high standards of consumer support and forbearance apply to their ancillary activities. An increase in unregulated debts (such as utility bills) referred for collection could also lead to an increased need for resources such as skilled collections staff. We expect firms to proactively manage this to ensure good consumer outcomes and compliance with the appropriate resources' threshold condition (COND 2.4). A firm's conduct with respect to unregulated activities may also be relevant to the ability of a firm to meet the suitability threshold condition (COND 2.5).

- c) **Using online, digital, and automated platforms:** We acknowledge that online payment portals have the potential to increase consumer access and improve inclusion. When designing and implementing portals, particularly where automated decisions are taken, it is important that adequate steps are taken to ensure sustainability of repayments and controls in place to monitor their effectiveness. We expect online payment portals to comply fully with all existing rules and regulation. Digital platforms can represent a substantial change in the services offered to consumers. Where firms add these to their offering in future, they should consider the need to notify the FCA in line with chapter 15 of the FCA Handbook's Supervision Manual ('SUP15'), and particularly [SUP 15.3.1 R](#). Firms can do so by completing and sending us this [notification form](#) or contacting us via the details at the end of this letter.

## **8. Appointed Representatives (AR) Regime**

Firms in the DPCA portfolio use ARs. In August 2022, the FCA confirmed new rules to increase FCA-authorised firms' responsibility for their ARs.

Our new rules came into force on 8 December 2022. They require Principal firms to provide us with more information on their ARs, including Introducer Appointed Representatives (IARs). They clarify and strengthen the responsibilities on, and expectations of, principal firms. These changes to the AR regime go hand-in-hand with the Duty, published in July 2022.

If you are a Principal firm, you should ensure you have appropriate controls in place to oversee your firm's ARs' activities effectively. You should also ensure the ARs comply with the Duty. Principal firms should read our updated expectations and take any steps necessary to comply with the changes.

Please see our [Policy Statement PS22/11](#) here for more information.

## **9. Environmental, Social and Governance (ESG) Strategy**

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

Achieving a more diverse and inclusive financial services industry is an important part of the FCA's ESG priority. Diversity and inclusion is key to a healthy culture. We believe that diversity of perspectives and thought, when part of an inclusive culture, results in better judgements and decision making. We recently [published a review](#) of approaches to diversity and inclusion in a sample of regulated firms. We encourage all regulated firms to consider these findings in the development of their diversity and inclusion strategies and practices. We intend to publish a Consultation Paper (CP) this year and encourage DPCA firms to read and respond to the CP when it is published.