

Financial Conduct Authority (FCA)

Consultation Paper CP26/15

CONC 3: Reviewing the financial promotions rules for consumer credit

Submission by the Financial inclusion and Markets Centre (FIMC)

About The Financial Inclusion and Markets Centre

The Financial Inclusion and Markets Centre is a dedicated unit of the Financial Inclusion Centre which focuses on financial services policy and regulation, financial market reform, and evaluating the economic, environmental, and social utility of finance. The new unit also covers work evaluating the impact of developments at the intersection of finance and technology including AI.¹

¹ [About | The Financial Inclusion Centre](#)

Introduction

We are pleased to submit a response to such an important consultation. For further information, please contact Mick McAteer mick.mcateer@inclusioncentre.org.uk We are unable to respond in detail to all of the questions so we have focused on those issues that will have the most impact on consumers and markets.

Summary of our submission

- With regards to amending or revising the provisions in CONC and relying more on the Consumer Duty, we would caution against adopting this as a general approach. We are not persuaded that just because a Consumer Duty outcome appears to capture the intention of a corresponding CONC provision, that CONC provision should necessarily be removed.
- On page 19, the FCA includes a very helpful table of CONC provisions it proposes to remove and explains how these overlap with the Consumer Duty. We do not see any harm, in certain circumstances, retaining the specific CONC provision even if the FCA thinks the Consumer Duty would produce the same outcome. If the FCA expects that firms will consider the Consumer Duty and then go on to deliver the same outcome as intended by the relevant CONC provision, then it doesn't add anything to firms' responsibilities if firms act as the FCA intended.
- We would suggest the FCA adopts a different approach. Before deciding whether to remove a particular aspect of the guidance in CONC, not just CONC 3.3.10G(1) to (5), the FCA should apply the following questions – does the CONC provision:
 1. Contradict or confuse the intention of a Consumer Duty outcome, or provide clarity and aid the market's understanding of what is intended by a Consumer Duty outcome?
 2. Actually demand additional regulatory or administrative requirements of firms when demonstrating compliance with the Consumer Duty?
 3. Does the provision provide a foundation on which the Consumer Duty can build?
- FIMC experience is that many firms struggle with being given too much discretion and prefer the certainty of prescriptive rules and guidance. Allowing firms to use different formats, rather than aid consumer understanding, could cause confusion and make it more difficult for consumers to shop around so hindering effective competition.
- Clear, prescriptive rules on how, where, and when key pieces of information are disclosed is not at odds with firms using different channels of distribution to communicate with consumers. Nor, does prescription prevent or limit genuine innovation.
- We also think that relying too much on the Duty and giving firms significant discretion on promotions and disclosures would actually make it more difficult for the FCA to supervise market practices and behaviours.
- If the specific CONC provision does not conflict with the intentions of the relevant part of the Consumer Duty, it is hard to see how this would confuse the market. Rather, given the well documented problems many firms have with interpreting outcomes based on discretionary regulation, it would actually provide clarity. In other words, retaining specific CONC provisions does no harm, doesn't add to firms responsibilities but supports clarity, with the Consumer Duty hopefully further raising standards.

- We support the proposal to retain the rule in CONC 3.3.1R relating to the clear, fair and not misleading requirement so that the private right of action remains.
- We very much welcome the FCA’s measured approach to the APR. Further analysis and deliberation is required before any decisions are reached. Our view is that the APR should definitely be retained and supported with additional cost metrics. Moreover, firms should be mandated to inform potential borrowers what rate they are likely to get at the soft search stage.

Response to the specific questions

Question 1: Do you agree with our proposal to remove the guidance in CONC 3.3.10G(1) to (5) and to move the guidance in CONC 3.3.10G(6) to (8) relating to debt solutions to CONC 3.9?

No, we do not agree with the general approach of removing the guidance in CONC 3.3.10G(1) to (5). As outlined above, we are not persuaded that just because a Consumer Duty outcome appears to capture an issue, the corresponding CONC provision should be removed as a general approach. As long as the CONC provision doesn’t contradict the intentions of a Consumer Duty outcome, retaining a CONC provision can provide clarity for the market. It can support or reinforce the relevant Consumer Duty outcome. Moreover, if a particular CONC provision forms part of the subset of specific outcomes intended to be achieved by the Consumer Duty then by definition it doesn’t actually introduce any additional regulatory or even administrative requirements for firms.

So, rather than comment on individual parts of the CONC guidance to be removed, we would suggest the FCA adopts a different approach. Before deciding whether to remove a particular aspect of the guidance in CONC, not just CONC 3.3.10G(1) to (5), the FCA should apply the following questions – does the CONC provision:

1. Contradict or confuse the intention of a Consumer Duty outcome, or provide clarity and aid the market’s understanding of what is intended by a Consumer Duty outcome?
2. Actually demand additional regulatory or administrative requirements of firms when demonstrating compliance with the Consumer Duty?
3. Does the provision provide a foundation on which the Consumer Duty can build?

FIMC has always said that it would support the removal of any rules or guidance that set expectations of regulated firms that went beyond what society expects of well run businesses. A number of the CONC provisions the FCA is proposing to remove do not go beyond those expectations. If anything, they help firms and external observers better understand the intention of regulation. Indeed, we also believe that a too outcomes-based approach to regulation is more difficult for the FCA to monitor and supervise.

We agree with the second part of the proposal to move the guidance in CONC 3.3.10G(6) to (8) relating to debt solutions to CONC 3.9.

Question 2: Do you agree with our proposed amendment to CONC 3.5.11R?

Yes, we do agree.

Question 3: Do you agree with our proposal to remove CONC 3.5.12R?

See response to Q1, above. If setting out restricted expressions brings clarity to the process they should be retained. Potentially useful provisions should not be removed just on the grounds that they do not align with the FCA's preferred approach to regulation, or in some way outmoded. Any decision should be judged on whether it adds to or detracts from the effectiveness of the consumer protection regime overall. Prescriptive provisions do not necessarily limit or stifle genuine innovation.

Question 4: Do you have information or data you can share about the extent to which regulated credit agreements secured on land are used in the market?

No comment.

Question 5: Do you agree with our proposal to remove CONC 3.6 from the Handbook?

We do not have a particularly strong view on this. As the FCA says, it appears that this type of lending is extremely rare, as loans secured on land will generally fall under the regulated mortgages regime. However, if it is indeed rare, then this means it will rarely be called into use. Therefore, it can't be seen to be a 'burden' on the industry. So, retaining it does no harm but would protect consumers in those rare circumstances that it may be needed.

Question 6: Do you agree with our proposals to remove the provisions in the table above from CONC 3, and rely on the Duty?

As outlined above, we do not think that the FCA should automatically remove those provisions if they are covered by the Consumer Duty. To reiterate, before deciding whether to remove a particular aspect of the guidance in CONC, the FCA should apply the following questions – does the CONC provision:

1. Contradict or confuse the intention of a Consumer Duty outcome, or provide clarity and aid the market's understanding of what is intended by a Consumer Duty outcome.
2. Actually demand additional regulatory or administrative requirements of firms when demonstrating compliance with the Consumer Duty.
3. Does the provision provide a foundation on which the Consumer Duty can build?

So, for example, retaining CONC 3.2.3G and 3.3.1R (1B) would make it more explicit what 'prominent' entails and how comparisons should be used, and would not demand additional requirements of the industry.

Whereas retaining 3.3.1R (1A)(d) could contradict the Duty, and the Duty clearly goes further on consumer understanding of communications so could be safely removed.

Question 7: Do you agree with our proposals to remove the provisions in the table above?

Yes, we agree.

Question 8: Do stakeholders agree with our proposals in respect of implementation and transitional periods?

Yes, we agree.

Question 9: Are the 3 triggers as set out in CONC 3.5.7R appropriate, or should they be changed or removed entirely?

Yes, we think they are appropriate. The FCA definition of separate ‘access’, ‘comparison’, and ‘incentive’ triggers is very helpful.

Question 10: If the triggers are removed, would the Duty’s principles-based good consumer outcomes-led approach to disclosing the APR (or alternative cost information) suffice?

No, we do not think the Duty’s principles-based approach would be as effective as the more explicit triggers outlined by the FCA.

Question 11: Do you have evidence that using alternative cost disclosures to APRs would increase competition and supply of higher cost credit?

We are unclear as to why the FCA is asking this question. The issue, surely, is not how to increase the supply of higher cost credit but how to protect consumers and facilitate effective decision making. In our view, the APR acts as a deterrent or ‘friction point’ for some consumers alerting them to the high cost nature of particular forms of credit. We think it can help some consumers think twice about taking out high cost credit and raise awareness of the nature of high cost credit.

Moreover, it is difficult to see how alternatives would promote effective competition. Using alternatives might help potential suppliers and funders of high cost credit overcome the embarrassment factor and reputational issues involved in providing this form of credit. So, in theory, we might see more products on the market. But, more choice is not the same as effective competition. There is not much evidence from history to support the idea that competition dynamics creates better outcomes in consumer credit markets, particularly the high cost credit market. So, replacing the APR would remove a deterrent or friction mechanism without improving the high cost credit market.

Question 12: Do you have suggestions on alternatives to APR?

The FCA has produced very helpful research and analysis of the effectiveness of different options. We think the APR should be retained but we agree with the FCA that it is not

always enough and should be complemented with other cost information such as the total repayment metric.

Question 13: If firms are permitted to use alternative cost disclosures to APRs, how might this impact on consumers' ability to compare products and shop around?

We think the blended option of retaining the APR with other cost metrics would help some consumers compare products but retain the protection provided by the friction and deterrent factor described above.

Question 14: What are your views on retaining mandatory Representative APR disclosure, while allowing flexibility for additional cost of credit disclosures alongside it?

We agree with retaining mandatory Representative APR disclosure and incorporating additional cost of credit disclosures. Of course, this would require prescriptive rules and guidance on how this additional information is to be disclosed to ensure that firms do not downplay the prominence of the APR.

Question 15: What are your views on removing the requirement to display a Representative APR without prescribing an alternative cost metric, and instead allowing firms flexibility to provide the cost information they consider best supports their consumers' understanding?

We very much disagree with this idea. Firms should not be allowed this type of discretion. The APR should be retained with additional cost disclosure metrics. The format and presentation of these additional metrics should be prescribed by rules and guidance.

Question 16: What are your views on maintaining the current approach under which the Representative APR is the sole prescribed cost metric?

We would not object to this but think that the blended approach is preferable.

Question 17: If our rules enabled firms to present alternative cost disclosures to APRs, which products would benefit from these alternatives and how should the criteria be defined (for example, based on interest rate or length of term)? Are there any products that might see disbenefits, and how might providers of credit products respond in these cases?

We do not think this should be an option for providers of any type of credit products. We think that option could encourage more aggressive selling of high cost credit. We support the blended approach described above.

Question 18: Should 'Representative examples' continue to be required in financial promotions based on the current triggers, or at all?

We have no particular views on this. But, we do think that representative examples have a role to play in the selling of credit via television and radio advertising in that they can

provide some of the friction described above by causing consumers to ‘switch off’ paying attention to advertising for credit.

Question 19: What is your view as to whether the current 51% threshold for presenting the Representative APR is appropriate, and do you have views on the alternative options stated or other suggestions?

We support returning the threshold back to 66%, mandatory price caps relative to the APR, and mandatory soft searches.

Some firms already tell consumers what rate they are likely to be offered at the soft search stage. We think this should be mandated for all firms. Developments in the use of tech/big data means this should not be an unreasonable expectation for firms.

Moreover, we would urge the FCA to supervise more closely how firms calculate and display the representative APR.

Question 20: Would providing guidance to encourage firms to fully explain the Representative APR be helpful?

We think guidance should be provided requiring firms to communicate clearly that a potential borrower may not get the advertised rates.

We do not think requiring firms to tell potential borrowers at what stage they will be told the rate they will be offered is sufficient. As outlined above, we think all firms should be mandated to tell potential borrowers what rate they are likely to get at the soft search stage. How firms use representative rates and the difference between promoted and actual rates should be a priority for FCA supervision.

Question 21: Do you agree that the term ‘representative’ can be omitted where the firm only offers a single APR in respect of the financial promotion?

Yes, we agree.

Question 22: Do stakeholders have views as to an alternative term to ‘representative’ when denoting the APR?

We don’t have particular views on this but, on balance, ‘typical’ is probably more understandable for potential borrowers.

Question 23: Do you have any views on the cost benefit analysis?

We do not have the resources to comment on the detailed costs included in the CBA. But, we do not agree with the FCA’s ‘theory of change’ or ‘causal chain’.

We do not think the general approach of removing CONC provisions and relying more on the Consumer Duty will produce the expected benefits for consumers. Prescribing how core

elements of a credit offer is disclosed does not inhibit the market's ability to innovate in terms of adopting different distributing channels or reaching consumers. Allowing firms more discretion on promotions is likely to result in greater consumer confusion, which will make it more difficult for potential borrowers to make effective decisions.

Moreover, we think this approach would make it more difficult for firms, rather than add clarity. Furthermore, we think it would make it more difficult for the FCA to supervise the market.

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