

A duty of care and potential alternative approaches: summary of responses and next steps

Feedback Statement

FS19/2

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This relates to

DP18/5

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1 Summary

In July 2018, we published the Discussion Paper 'A duty of care and potential alternative approaches'. This Feedback Statement summarises the responses received and gives an update to interested stakeholders about how we are taking forward our consideration of the many issues the discussion raised.

Who this affects

1.1 This feedback statement is likely to be of interest to:

- consumer groups and individual consumers
- industry groups / trade bodies
- regulated firms
- policy makers and regulatory bodies
- industry experts and commentators
- academics and think tanks

The wider context of this debate

Our consultation

1.2 In Our Mission 2017, we explained how and why we prioritise, protect and intervene in financial markets. We set out our intention to be more transparent and accountable for the way we carry out our role. In our Approach to Consumers paper, published alongside the Discussion Paper, we committed to keeping our powers and tools under review, including how we use them, to ensure we are working effectively to protect consumers. The Discussion Paper formed part of that commitment. Publishing the Discussion Paper is also in line with our statutory objective to secure an appropriate degree of protection for consumers. It is an opportunity for us to consider whether the right balance is currently being achieved between firm and consumer responsibility (see section 1C(2)(d) of the Financial Services and Markets Act 2000).

1.3 Stakeholders have previously told us that our regulatory framework, including our Principles for Businesses (the Principles), may not be sufficient or applied effectively enough to prevent harm to consumers. Some suggested we introduce a duty of care to reduce harm and ensure that firms avoid conflicts of interest, as well as supporting firms' longer-term cultural change. However, other stakeholders suggested existing FCA rules already provide sufficient protection for consumers and impose the same requirements on firms as a duty of care would.

1.4 Given the strength of these conflicting concerns, we considered it important to invite an open discussion about the potential merits of a duty of care, beginning with the publication of the Discussion Paper. We wanted the discussion to give us a deeper understanding of the issues, and the way in which stakeholders perceive them, before we reach for specific solutions. We framed our questions widely to invite views that

go beyond the binary question of whether a duty of care is needed or not, to consider other possible options that might also be effective to ensure the appropriate level of consumer protection is delivered.

- 1.5** We said in the Discussion Paper that we also have a responsibility to consider alternative approaches that might address stakeholder concerns. We used the term 'New Duty' in the Discussion Paper to encompass a duty of care and any alternative approaches.
- 1.6** We published the Discussion Paper to:
- help us better understand whether there is a gap in our regulatory and legal framework, or the way we apply it in practice, that could be addressed by introducing a New Duty
 - assess whether change is desirable and, if so, what form it could take, how it would work in practice alongside our current framework, and what consequences it would have for consumers, firms and the FCA
 - better understand and consider possible alternative approaches that might address stakeholder concerns
 - understand what a New Duty might do to enhance good conduct and culture in financial services, and how this could influence consumer outcomes alongside the Senior Managers and Certification Regime (SM&CR)
- 1.7** We received many well-considered responses from the full range of our stakeholders, including consumer groups, individual consumers, firms, parliamentarians, think tanks, and academics. The tone of the debate has been considered and constructive.
- 1.8** Many stakeholders chose to structure their response by theme, rather than according to the questions we asked in the Discussion Paper. This reflects the complex and overlapping nature of the issues in the Discussion Paper. Given this, and the number of responses and their wide-ranging nature, we cannot respond to every comment individually. Instead, this feedback statement sets out stakeholder views according to main themes and then explains what steps we will take to consider them further.

Summary of feedback

The case for change

- 1.9** Most respondents consider that levels of harm to consumers are high and there needs to be change to better protect them.
- 1.10** A few stakeholders told us there is no case for change, arguing that our current approach is working and should continue, or that recent initiatives need time to be embedded in before we can evaluate the need for change (like the SM&CR and our [Fair Pricing discussion paper](#)).

Options for change

A New Duty

- 1.11** Some of our stakeholders consider we need to provide a new definition of the standard of conduct firms owe to consumers, to improve consumer protection. This could be either as a statutory duty or as a duty expressed within the Principles.

1.12 Others think that the SM&CR is already bringing about the change needed and that we should wait until we can evaluate its impact before we can accurately assess whether a New Duty is needed.

1.13 Those arguing in favour of a New Duty, in whichever form, have told us it could:

- trigger fundamental culture change within firms by creating a unifying, overarching standard of care that moves firms to ask 'is this right?' rather than 'is this within the rules?'
- incentivise firms to anticipate and evaluate harm at every level of business and every stage of a consumer journey, and to take better preventative action
- create clarity for consumers about what they can expect and/or demand of firms, and give a single, overarching concept of care that is vital to rebuilding consumer trust in some sectors
- create clarity for the FCA, by acting as a general 'baseline' against which the regulator can take action in cases of new and emerging harms that may not be captured by existing rules

1.14 The principal arguments against introducing a New Duty of any kind mostly centred on the SM&CR. Many stakeholders see the SM&CR as a significant change in the regulatory landscape and think we should wait to understand its effects on culture and governance before introducing any more change. Others said that the combination of existing Principles, particularly Principle 6 on Treating Customers Fairly (TCF), rules, guidance and SM&CR amount to a sufficiently robust duty on firms.

A statutory duty of care

1.15 There were very different views on the merits of a New Duty set out in legislation.

1.16 Most of the arguments both for and against a statutory duty of care were based on the assumption that individual consumers would have the ability to take court action to recover losses that resulted from a breach of that duty (i.e. be 'actionable'). Most respondents do not support a statutory duty, whether actionable or not, and these stakeholders come from across the spectrum, including industry and some consumer groups.

1.17 The most common concerns about a statutory duty of care were about:

- difficulties in being able to consistently apply a single duty to the huge variety of firm/consumer relationships in financial services
- duplication of existing obligations, creating legal complexity and confusion
- legal uncertainty and delay, due to how quickly precedent would develop, and the sheer number of different firm/consumer relationships, sectors and products for which precedent would need to be developed before there could be real clarity
- loss of regulatory agility, because if the pace and will of the courts were to determine the interpretation and application of the duty, then the regulatory environment would become less responsive, flexible and adaptable to change
- perceived risk of stifling access, innovation and competition by making firms too cautious
- cost, delay and stress of litigation for consumers
- consumer confusion about multiple avenues of redress
- perceived risk of a negative, adversarial effect on firm/consumer relationships, and of false claims

- whether an actionable statutory duty would have any greater deterrent effect than the current regulatory regime, particularly for firms which are already non-compliant

1.18 However, a small group of stakeholders strongly believe that a statutory duty, whether it has an attendant right of action or not, is the right answer. They told us that the strength of a statutory duty is in its ability to re-set the context in which financial services are delivered and regulated. They also felt it is a critical step towards restoring consumer trust. They argue it has the unique capacity to drive change by providing an overarching, legislative standard of care that sits above the rest of the regulatory and legal framework, and to which everyone would have regard at all times.

Revising the Principles for Businesses

1.19 Some think revising our Principles would strengthen and clarify firms' duties to consumers, and would, as well as changes to how we apply the Principles in practice (see paragraph 1.28), help us prevent harm more effectively without adding legal complexity.

1.20 Some stakeholders told us the concept of TCF in Principle 6 has not been effective in improving consumer outcomes because the concept of 'fairness' is too vague, and because our approach to applying this Principle has not been robust enough. Several stakeholders have suggested wording for new and/or revised Principles.

1.21 However, those in favour of revising the Principles are clear that we must only make such a change as part of a stronger and/or renewed regulatory approach; changes to words alone would not be enough.

Private right of action for breaches of the Principles

1.22 Only some respondents commented specifically on whether consumers should have a private right of action for damages based on breaches of the Principles. Many of their arguments for and against were the same as those made about an actionable statutory duty.

1.23 In addition to these points, those arguing against a private right of action said existing redress options, especially the Financial Ombudsman Service (the Ombudsman), were cheaper and more consumer-friendly than litigation. They felt that the expense, stress and complexity of litigation mean it is not in consumers' interests.

1.24 Some argued in favour of a private right of action for Principles breaches. They felt that the Ombudsman is an inadequate avenue for redress because of its damages limit, and the additional threat of potential legal action could further incentivise better standards of firm conduct.

A fiduciary duty

1.25 Only a few respondents commented specifically on whether a firm should be subject to a fiduciary duty to its customers.

1.26 Those in favour said a fiduciary duty would create the necessary, explicit obligation to avoid conflicts of interest altogether. Those who were against the idea told us that the concept of undivided loyalty to a customer is inconsistent with commercial enterprise.

How we use the existing regulatory framework

- 1.27** Although stakeholders calling for change disagree about whether a New Duty is needed, most feel that, as the regulator, we should consider changes to the way we use the existing regulatory framework.
- 1.28** Chiefly, we have been asked to:
- Apply the Principles more broadly by acting more readily. This is particularly the case in our supervisory function, where there is misconduct which results in poor consumer outcomes and that may be in breach of a Principle even if not of another detailed rule.
 - Be more transparent about what our standards for good customer treatment are and how we act to secure these. This will help firms feel confident and incentivised to improve their practices based on a clear understanding of our expectations, how they translate to day-to-day business, and how we will enforce them.
- 1.29** Some told us our current approach, which they described as prescriptive and overly rules-based, encourages firms to adopt a 'tick-box' compliance approach – where some firms wait until they are 'found out' by the regulator instead of making their own informed evaluation of whether a course of action is best for consumers. These respondents want us to broaden our application of the Principles, increase our appetite for taking action where there is no other detailed rule breach, and have a clearer public dialogue about our expectations. They believe that, if we did this, firms would feel more confident and incentivised to proactively 'get it right' from the start, instead of waiting to be told.
- Culture change: beyond the reach of the regulator?***
- 1.30** A number of stakeholders told us that real change to consumer outcomes can only come from fundamental cultural change within firms – of a kind that cannot be driven by external force, such as regulatory intervention or a legislative duty. They argue that the will to change must come from firms themselves and must begin at the top of the management structure.
- 1.31** However, they also told us that we have an important role to play in driving and sustaining the debate about culture change in financial services.

Next steps

- 1.32** The volume and quality of responses we received have given us a strong foundation on which to advance our consideration of the issues. They will play an important part in our work on two Business Plan priorities: considering the future of regulation following our Mission and as the UK leaves the EU, and exploring issues of culture and governance in financial services. It is important that we make progress. But it is also important that any changes we decide to make have a lasting impact, so we must give these complex questions the careful consideration they demand.
- 1.33** A key part of our consideration of issues in the Discussion Paper is to understand the different types of consumer harm, so we can assess how to tackle them using the options respondents raised.

- 1.34** We know that consumer harm can be caused by different things, so there is unlikely to be a one-size-fits-all solution to any weaknesses in consumer protection. We also need to consider how existing protections might already address some of the perceived gaps in consumer protection.
- 1.35** From the feedback and our early analysis, we have identified the options that are, alone or in combination, most likely to deliver a higher degree of consumer protection. These will be our primary focus. They are:
- reviewing how we apply the regulatory framework – particularly how we apply the Principles and how we communicate with firms about this
 - new/revised Principles to strengthen and clarify firms' duties to consumers, including consideration of the potential merits and unintended consequences of a potential private right of action for Principles breaches.
- 1.36** We recognise that some stakeholders have argued that a duty of care created within primary legislation would be more effective than one created with our existing rule-making powers. They feel a legislative duty would have greater visibility because it would sit above our Principles and rules. We do not consider that this is a sufficient basis for making changes to primary legislation, which Parliament would need to make. However, if, as part of our analysis, we take the view that there are substantive reasons for supporting a statutory duty, we will consider this further.
- 1.37** We will do further internal work to examine the options that are likely to be the most effective and proportionate, so we can understand their likely impact on all areas of our operation, industry and consumers. We will continue to engage with stakeholders on this, including our three statutory panels.
- 1.38** We will publish a further paper in autumn 2019 seeking detailed views on specific options for change. We have included this commitment in our Business Plan 2019/20. We will also continue our work on culture in financial services to help firms develop a clear understanding of what a healthy culture looks like, understand its benefits and ensure they are able to take proactive steps to change any ineffective cultures in their organisations.

2 The case for change

- 2.1** Most respondents consider that levels of consumer harm are high and change is needed to better protect consumers. But some think we are already on the right track. A key part of our work to understand what change, if any, is required, will be to map evidence of consumer harm and test the options for change against that evidence. This will help us understand whether and how they could be effective in improving consumer protection.

Establishing the evidence

- 2.2** Most respondents, across all our stakeholders, consider that consumer harm in financial services is unacceptably high, and there is a need for change to improve consumer outcomes.
- 2.3** Many of these responses were based on an assumption of consumer harm, or on some stakeholders' experience of the financial services sector, and not on wider sources of evidence. However, a few stakeholders provided new research of their own to support calls for a New Duty or other change. Another group said the volume and persistence of specific conduct issues that we have previously needed to act on, as well as our current focus on issues such as fair pricing, high-cost credit, cash savings, mortgages and pensions, is evidence that levels of consumer harm are problematically high.
- 2.4** A few stakeholders told us there is no case for change. They argued our current approach to preventing harm is working and should continue. Some referred us to recent FCA initiatives which they believe need time to bed in before we can evaluate the need for change. These included the Senior Managers' and Certification Regime (SM&CR), work on high-cost credit and the Fair Pricing discussion paper. Others think that levels of consumer harm are not so high as to require change as significant as a New Duty. However, very few stakeholders making this argument pointed to evidence to support it.

3 A New Duty

- 3.1** As well as changing how we use the existing framework, some think a clearer explanation of the standard of conduct firms owe to consumers is needed, either as a statutory duty or within our Principles.
- 3.2** Others think that the SM&CR is already bringing about the necessary change and that we should wait for the regulatory landscape to settle before assessing whether any New Duty is needed.

For a New Duty: culture and clarity

- 3.3** The main arguments that supported a New Duty on firms, in whichever form, are categorised by four main themes.
- **Culture change:** Stakeholders have told us they think a New Duty is critical to triggering fundamental culture change within firms. They say creating a clear, overarching standard of care would help change firm culture by moving firms to ask: 'is this right?' rather than 'is this within the regulations?'
 - **Regulatory clarity:** Some in favour of a New Duty think it would act as a necessary 'baseline' against which we can take action in cases of new and emerging types of harm that may not be captured by existing rules – conduct that is 'legal, but not right'. They also suggested this clarity would encourage us to act more readily in those cases
 - **Emphasis on prevention:** Most of those in favour of a New Duty suggest it should be written to explain an explicit obligation to avoid harm, which they say is currently missing from Principles. They believe an express duty to avoid harm would incentivise firms to anticipate and evaluate the risk of harm to consumers at every stage of business and to take better preventative action. They suggest this would affect firm decision-making at every level – from development of the business model to product design and frontline service delivery. In particular, some stakeholders think a duty that places emphasis on harm prevention would lead to:
 - improved product and service design
 - development of business models with consumer interests more firmly at their heart
 - regular re-evaluation by firms of a consumer's needs as they evolve across the course of consumer journey
 - **Clarity for consumers and firms:** Stakeholders suggest that an overarching concept of care explained within a single legislative provision, or Principle, would create clarity about the standard of care consumers can expect and demand of firms. They argued that this is currently lost amid a proliferation of rules that is too confusing for either consumers or firms to navigate.

Against a New Duty: evaluating the Senior Managers & Certification Regime

- 3.4** The principal argument given against introducing a New Duty of any kind was the SM&CR. Many industry stakeholders expect the SM&CR to bring about significant cultural change in financial services, and think we should wait to understand its effects on culture and governance before we introduce more change.
- 3.5** Others said that the combination of existing Principles, particularly Principle 6 on Treating Customers Fairly (TCF), rules, guidance and SM&CR, amount to a sufficiently robust duty on firms. They felt that the most effective and proportionate way to reduce harm was for us to continue making targeted interventions aimed at specific risks as we identify them.
- 3.6** Respondents also cited in particular:
- Principle 2 (Due skill, care and diligence)
 - Principle 8 (Conflicts of interest) and
 - the 'client's best interests' requirement that already applies in some other sectors as removing the need for us to introduce any New Duty.

A New Duty within the Principles for Businesses

- 3.7** Some stakeholders specifically asked for us to revise our Principles to effect a New Duty. They have said that new/revised Principles communicating the concept of a New Duty would help us to take a wider view of how we can use the rest of our tools, such as our supervisory and enforcement powers, to achieve a higher standard of firm conduct and greater harm prevention. They think it would also help to clarify our expectations of firms.
- 3.8** Some stakeholders argue that revising one or more of the Principles would 're-frame' our approach and expectation of firms. They feel this would signal a change from existing Principles, particularly TCF, which some think has not delivered the necessary degree of consumer protection. Most attribute this to problems in defining the concept of 'fairness', and to our application of the Principles.
- 3.9** Some stakeholders provided specific wording for new/revised Principles. Most of their suggestions were designed to enhance the level of protection the Principles give by introducing concepts such as:
- Principle 2 (Due skill, care and diligence): to incorporate a concept of foreseeable harm and/or of consumers' best interests
 - Principle 6 (Customers' interests): to incorporate a stricter requirement to act in consumers' best interests and/or avoid harm
 - Principle 8 (Conflicts of interest): to refer to conflicts of interest between different groups of consumers, and not just between firm and consumer
- 3.10** However, those in favour of revising the Principles are clear that any such change must only be made in the context of a stronger and/or renewed regulatory approach, especially in terms of how we apply the Principles (see Chapter 4). They feel that changes to words alone would not be enough.

- 3.11** It has also been suggested that Principle 4 of the Principles of good regulation, which states that consumers should take responsibility for their decisions, should apply only where firms have complied with the Principles, and only where consumers are reasonably capable of taking responsibility. This principle is derived from section 3B(1) of the Financial Services and Markets Act 2000, which sets out the regulatory principles to be applied by the FCA and the Prudential Regulatory Authority. Any revision of these principles would require primary legislation.
- 3.12** Some stakeholders also suggest extending a client's best interests rule across all sectors.

A statutory duty of care

- 3.13** Many of the responses which dealt specifically with a statutory duty assumed that it would have an attending right of action – that is, the ability for individuals to take court action to recover losses that are the result of a breach of that duty. This means that many - but not all - of the arguments for and against a statutory duty are also about the impact of a right of action.

The case for a statutory duty

- 3.14** Those in favour of a duty of care created in legislation think it would re-set the context in which financial services are delivered and regulated. They feel that an overarching, legislative standard of care, sitting above the rest of the legal and regulatory framework, is a critical step towards restoring consumer trust and to motivating firms to put consumer interests at the heart their business.
- 3.15** Most of those in favour of a statutory duty recognised that the cost, stress and complexity of the litigation process make it unlikely that an actionable duty would result in many consumers being able to take legal action against firms for a breach of that duty.

The case against a statutory duty

- 3.16** Most respondents who commented specifically on this form of duty, including industry and consumer groups, do not support a statutory duty of care, particularly if it were actionable. The main themes from these responses are set out below.
- **Duplication and confusion:** Firms, trade bodies and some consumer groups are concerned about possible duplication with existing obligations, legal complexity and confusion of an overarching statutory duty if it were to be laid on top of the existing framework of principles, detailed rules and guidance.
 - **Legal uncertainty and delay:** A wide range of stakeholders are concerned about legal uncertainty and delay due to:
 - The comparatively slow pace at which precedent would develop. They are worried about the risk that it would be several years before clarity is achieved about how the duty would apply to different categories of firm/consumer relationship within financial services.
 - Difficulties of implementation – particularly training front-line staff.
 - **Regulatory agility:** There is also a connected concern that the pace at which the courts would interpret a duty of care would slow down and hinder the FCA in our

ability to be flexible and responsive to market change. They think this is not in the interests of consumers or firms.

- **Cost to firms:** Firms and trade bodies had concerns about costs incurred in litigation, including by potentially false claims. Others believed that a statutory duty of care would increase their compliance costs.
- **Restriction of competition, innovation and access:** Firms and trade bodies argued that a duty of care, and attendant risk of litigation, would make firms behave more cautiously. Some think this would cause firms to pull out of certain markets and/or refuse to provide services for groups of consumers they believe are too risky, reducing access for some. Other said firms would become less willing to innovate.
- **Litigation not in consumers' interests:** Firms, trade bodies and consumer advocates said that litigation is not in consumers' interests because of:
 - the cost, delay and stress of the litigation process
 - the perceived risk of a litigious environment making firm/consumer relationships too adversarial
 - the perceived risk of consumers being vulnerable to exploitation by claims management companies
 - consumer confusion about which avenue of redress is best for them
- **Lack of deterrent effect:** Some felt that a statutory duty, actionable or not, would not have any additional deterrent effect on firms that already fail to comply with current regulatory standards

A private right of action based on breaches of the Principles

- 3.17** Only a few respondents commented specifically on whether consumers should have a private right of action for damages based on breaches of the Principles. Many of the arguments for and against were the same as those made about an actionable statutory duty of care.
- 3.18** Additionally, those arguing against a private right of action said the Financial Ombudsman Service (the Ombudsman) is a cheaper and more consumer-friendly avenue of redress than litigation. The expense, stress and complexity of litigation are not in consumers' interests, in their view. They also noted that we had proposed increasing the Ombudsman's compensation limits.
- 3.19** Those arguing in favour of a private right of action for Principles breaches did so on the basis that:
- the Ombudsman's awards have a compensation limit
 - the Ombudsman's decisions are not easily enforced
 - the additional threat of potential legal action could further incentivise firms to have better standards of conduct
 - consumers should have as many avenues of redress open to them as possible
- 3.20** One stakeholder supported making the Principles breaches privately actionable. This was because, if the FCA were to do so, we would ourselves become able to require firms to pay redress to consumers for Principles breaches alone, under section 404 of the Financial Services and Markets Act 2000.

A fiduciary duty

- 3.21** Only a few respondents commented specifically on whether a firm's duty to its customers should be classed as fiduciary.
- 3.22** Those in favour told us that they believed conflicts of interest in financial services must be avoided altogether. They are in favour of a fiduciary duty because they believe it would create an explicit obligation on firms to avoid conflicts and always act in the best interests of their customer.
- 3.23** Those against the idea told us conflicts of interest in financial services cannot be avoided entirely. They pointed to certain types of multi-party transactions where a firm's fiduciary obligation to one customer could not be met without breaching obligations to others. They also gave examples of conflicts of interest they think are inherent to certain sectors. Others told us that the concept of undivided loyalty to a customer is inconsistent with commercial enterprise.

4 How we use the existing regulatory framework

- 4.1** Although stakeholders disagree about whether a New Duty is needed at all, or in what form, almost all respondents feel a key part of the solution lies in how we, as the regulator, apply the tools we already have.
- 4.2** Many stakeholders said that the framework of existing duties on firms is already wide-reaching. There were many different suggestions about how we could use it to better effect. Those suggestions fall into two broad categories:
1. how we apply the Principles
 2. our transparency about what we expect of firms

Our approach to Principles-based regulation

- 4.3** Some stakeholders described our approach to regulation as prescriptive, rule-based, and 'tick-box'. They believe the way we approach regulation encourages firms to focus too much on whether they are likely to break a rule, and not enough on whether the conduct in question is delivering fair outcomes for consumers.
- 4.4** They think that we should broaden our application of the Principles and our appetite for action (particularly supervisory action) in cases where there is no other detailed rule breach. They believe this would change the regulatory culture, motivating firms to 'zoom out' from detailed rules and be led more by the Principles when considering whether their activity is right for consumers.

Our transparency

- 4.5** Many firms asked us to communicate more clearly and often about what we expect of them in their day-to-day business practice, and how and when we will act to ensure our expectations are met.
- 4.6** Firms have told us that if we were to tell them more often and more explicitly what 'good' looks like, that would give them more insight into how they are performing, and a greater understanding about how to improve. Some of the specific suggestions we received for improving transparency are:
- publishing a greater volume of 'good' and 'bad' practice guidance
 - regularly revising the TCF Consumer Outcomes so they reflect and respond to current best, and worst, practice
 - publishing supervisory intelligence about firm conduct trends and risks
 - publishing lessons learned or anonymised case studies from our supervisory work
 - having closer supervisory relationships with smaller firms
 - publishing summaries and lessons learnt from enforcement action

- publicising enforcement action earlier and with a higher profile
- greater Continuing Professional Development and learning opportunities, especially for smaller firms, including online resources

4.7 Stakeholders also told us that one way in which we could better communicate our expectations about firm practice is by changing our appetite to intervene. If we act earlier, more decisively, and more often, then firms and consumers alike will have a better understanding of where we expect standards to be.

5 Culture change: beyond the reach of the regulator?

- 5.1** Many stakeholders said the roll-out of the SM&CR was a significant regulatory shift, which they expect will yield real improvements in culture and governance.
- 5.2** However, others have told us that SM&CR will not be enough because real culture change can only come from within firms, and cannot be driven by a threat of regulatory sanction or litigation.
- 5.3** Some pointed to the efforts of professional standards boards and to voluntary industry initiatives to improve standards. They argue these have a unique 'stickability' because they are borne of a genuine desire in some sectors to improve standards, as opposed to change made in response to a threat of sanction, which might only result in 'window-dressing'.
- 5.4** However, some of these stakeholders also told us we have an important role to play in driving and sustaining the debate about culture change in financial services.

6 Next steps

- 6.1** The amount and quality of responses have given us a strong foundation on which to advance our consideration of the issues in the Discussion Paper. These are about how we can further our statutory objective of securing an appropriate degree of protection for consumers while balancing it against our other objectives (to promote effective competition and enhance market integrity). They also get to the heart of what our role is as regulator, and will play an important part in our work on two Business Plan priorities: considering the future of regulation following our Mission and as the UK leaves the EU, and exploring issues of culture and governance in financial services.
- 6.2** The questions we need to consider are weighty and complex. It is important that we make progress. But it is also important that any changes we ultimately decide to make have a lasting impact, so we need to give these questions the careful consideration they demand.
- 6.3** A key part of our consideration of issues in the Discussion Paper is to understand consumer harm in all its different forms, so we can best assess how to address them using the options this debate has produced.
- 6.4** We know that consumer harm can be caused by different things. There is unlikely to be a one-size-fits-all solution to any deficiencies in consumer protection. We also need to consider how existing protections might already address some of the perceived gaps in consumer protection.
- 6.5** As a result of the feedback we received and our early analysis, we have identified options that are, alone or in combination, most likely to address gaps in consumer protection. These will be our primary focus.
- 6.6** They are:
- reviewing how we apply the regulatory framework – particularly how we apply the Principles in our authorisations, supervisory and enforcement functions, and how we communicate this to firms
 - new/revised Principles to strengthen and clarify firms' duties to consumers, including consideration of whether a potential private right of action for Principles breaches is appropriate, and what any unintended consequences of this might be.
- 6.7** We recognise that some stakeholders have argued that a duty of care created within primary legislation would be more effective than one created with our existing rule-making powers. They feel that a legislative duty would have greater visibility because it would sit above our Principles and rules. We do not consider that this is a sufficient basis for making changes to primary legislation, which Parliament would need to make. However, if, as part of our analysis, we take the view that there are substantive reasons for supporting a statutory duty, we will consider this further.
- 6.8** We will start a programme of further internal work to examine the options we think are likely to be the most effective and proportionate. This will enable us to understand their potential impact on our operation, industry and consumers. We will continue to engage with stakeholders during this work, including our three statutory panels.

- 6.9** We will publish a further paper in the autumn seeking detailed views on specific options for change, as part of our work on the future of regulation more generally. We have included this commitment in our Business Plan 2019/20.
- 6.10** We will also continue our work around culture in financial services, to help firms develop a clear understanding of what a healthy culture looks like, understand its benefits and ensure they are able to take proactive steps to change any ineffective cultures in their organisations.

Annex 1

Abbreviations used in this paper

FCA	Financial Conduct Authority
TCF	Treating Customers Fairly
SM&CR	Senior Managers and Certification Regime

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