

Response to the discussion paper on a duty of care and potential alternative approaches

Surviving Economic Abuse (SEA)

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Introduction to SEA

Many women experience economic abuse within the context of domestic violence. It limits their choices and ability to access safety. Surviving Economic Abuse (SEA) is the only UK charity dedicated to raising awareness of economic abuse and transforming responses to it. We advocate for and support the development of new approaches to economic abuse, working with organisations such as banks to review their existing systems, policies and procedures in order to address/remove barriers to economic safety.

Response to consultation questions

1. Do you believe there is a gap in the FCA's existing regulatory framework that could be addressed by introducing a New Duty, whether through a duty of care or other change(s)?

Surviving Economic Abuse (SEA) does not believe that introducing a New Duty is about filling a 'gap' in the FCA's existing regulatory framework. Rather, it is about enabling the FCA to properly fulfil its existing statutory consumer protection objectives. Consequently we believe that the wording of principle 6 should be strengthened so that a firm must act in the best interests of its customers.

We also believe that principle 4 on consumer responsibility should be amended so that 'consumers should take responsibility for their decisions where they are capable of doing so.' This is crucial in cases of domestic violence where a consumer's partner dictates their choices through coercive control. Refusing a demand is dangerous, compelling them to act in accordance with the abuser's wishes, rather than their own.

2. What might a New Duty for firms in financial services do to enhance positive behaviour and conduct from firms in the financial services market and incentivise good consumer outcomes?

A New Duty will contribute to greater consistency in behaviour across the financial services market. The women who contact SEA tell us of good practice by some financial services. Sadly we more often hear that they experience barriers in getting the support they need. This means that consumers in the same position get different outcomes. A New Duty will increase the level of protection available to consumers by making all firms think more carefully – moving away from 'tick box' compliance and compelling them to think about the impact of their policies.

3. How would a New Duty increase our effectiveness in preventing and tackling harm and achieving a good outcome for consumers? Do you believe that the way we regulate results in a gap that a new Duty would address?

A New Duty has the potential to be preventative, creating responses that not only take into account the needs of consumers who require extra support in crisis, but raising the standard of care for all customers. For instance, if all financial institutions were compelled to ensure that staff are mindful of taking time to set out the implications of joint financial arrangements to customers then this might encourage individuals to put in place safeguards – for instance, not applying for a joint overdraft, keeping a personal bank account. Providing certainty for customers that their financial provider is obliged to act in their best interests should also encourage them to ask for support sooner.

4. Should the FCA reconsider whether breaches of the Principles should give rise to a private right for damages in court? Or should breaching a New Duty give this right?

Any breach of statutory consumer protection – in whatever form – should give rise to a private right for damages in court.

5. Do you believe that a New Duty would be more effective in preventing harm and would therefore mean that redress would need to be relied on less?

As noted in our response to question 2, SEA believes that a New Duty has the potential to prevent harm. It would follow that redress would need to be relied on less.

At the same time, not all consumers are in position to complain to the Financial Ombudsman and, as such, they do not benefit. The current system places a burden on victim-survivors of abuse to seek redress at the same time they are seeking to survive.

Moreover, the Financial Ombudsman cannot compel financial institutions to be consistent in approach. Those who do find the strength/are able to access support to complain can be left feeling that they have been treated unfairly. For instance, we recently supported a woman seeking to remove two defaults from her credit history. When presented with evidence of physical, psychological and economic abuse, one financial institution removed the default – the other refused. When the case went to the Financial Ombudsman, it recommended that the second default be removed too. Yet the financial institution declined to do so. We believe that such recommendations must be actionable.

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