



SUBMITTED VIA EMAIL TO cp26-23@fca.org.uk

Subject line: GDF RESPONSE FCA CP26/23 Consumer Duty: Scope and Proportionality September 2026

To whom it may concern,

Re: FCA CP26/23 Consumer Duty: Scope and Proportionality

About Global Digital Finance (GDF)

Global Digital Finance (GDF) is a global membership association advocating and accelerating the adoption of best practices for digital assets and digital finance technologies through the development of conduct standards, policy engagement and collaboration between industry, policymakers and regulators.

Our membership spans the digital finance ecosystem, including financial institutions, market infrastructure providers, digital asset firms, technology providers, payment firms, custodians and other participants in digital markets.

This response has been prepared on behalf of the GDF membership. GDF consents to publication of its name as a respondent and of this response in full. No part of this response is confidential.

As always, GDF, our members and global community remain at the FCA's disposal for any further questions or clarifications and would welcome further engagement on this response.

Yours faithfully,

Adriana Ennab – Executive Director, Head of Global Policy & Regulation

Executive Summary

GDF supports the FCA's objective of addressing the unintended extension and disproportionate application of the Consumer Duty, particularly in wholesale markets and complex distribution chains. The proposals are an important step in the right direction, but in several areas further clarity and safeguards are needed if they are to deliver the FCA's stated objective in increasingly digital, interconnected and cross-border financial markets.

Our concern is that, unless the final framework creates clearer boundaries, firms may continue to take the most conservative interpretation of the Duty. That would preserve the very duplication, over-monitoring and upstream application that the consultation is intended to address.

For digital asset markets, this is particularly important. A single retail proposition may depend on multiple firms performing separate functions across issuance, custody, execution, liquidity, settlement, technology and distribution. The fact that an entity forms part of a chain that ultimately serves a retail customer should not, by itself, bring that entity within the Consumer Duty.

GDF therefore supports the direction of travel, while recommending that the FCA strengthen the final framework in four areas:

1. make the concept of 'material influence' more objective and operationally predictable;
2. create clearer boundaries and presumptions for wholesale and upstream infrastructure activities;
3. make reasonable reliance between regulated firms sufficiently robust that firms are not incentivised to duplicate supervision across the distribution chain; and
4. preserve a clear allocation of responsibility between cryptoasset issuers, UK qualifying cryptoasset trading platforms (UK QCATPs) and other firms, so obligations follow the role and activity each firm actually controls.

Our overarching principle is that consumer protection should remain focused on outcomes, while regulatory responsibility should follow the firm's actual role, control and ability to influence those outcomes.

Q1 and Q2: Territorial scope

GDF supports the FCA's proposed direction on territorial scope, but considers that further clarity is needed to ensure that the usual residence test is workable for digital and cross-border business models.

Digital asset and digital finance businesses frequently serve customers across jurisdictions using common technology, infrastructure and operating models. Applying UK Consumer Duty requirements to genuinely non-UK customers who are already subject to another jurisdiction's consumer protection framework can create overlapping or conflicting requirements without a corresponding improvement in consumer outcomes.

We therefore support limiting the Duty, in general, to retail market business where the retail customer is usually resident in the UK, subject to the FCA's proposed exceptions. Firms should be able to rely on reasonable information available to them when determining usual residence and should not be expected to undertake disproportionate additional investigations solely to establish Consumer Duty scope.

We also recommend that the FCA consider a clearer safe harbour for firms that have taken reasonable, documented steps to determine usual residence. Without this, firms may continue to apply the Duty on a precautionary basis, limiting the practical impact of the proposed reform.

On Question 1, the FCA should also seek alignment, or at least clear signposting, where sectoral rules retain a different territorial scope. Removing business from Consumer Duty scope will have limited

practical value if substantially equivalent obligations are reintroduced through another route without a clear policy rationale.

Q7, Q8 and Q12: Scope of the Duty and material influence

GDF supports the FCA's attempt to clarify 'retail market business' and 'material influence'. However, the proposed framework will still require firms to exercise material judgement, and we do not consider that high-level clarification will, by itself, provide sufficient certainty.

This is one of the most important issues for digital asset markets. Digital asset value chains can involve firms providing infrastructure or services several steps removed from the retail customer, including technology providers, custodians, settlement providers, liquidity providers and other market infrastructure participants.

The presence of a retail customer somewhere downstream should not automatically bring every entity contributing to that ecosystem within the Duty. The relevant question should be whether the firm has a sufficiently direct and substantive ability to determine or materially influence the retail proposition or customer outcome.

We therefore recommend that the FCA supplement the concept of 'material influence' with clearer indicators of when influence is not material. This could include a presumption that a firm is outside scope for a particular activity where it does not design the retail proposition, set the retail-facing terms, control distribution, communicate with the retail customer or otherwise exercise substantive control over the relevant customer outcome.

Without clearer criteria, compliance teams may continue to take the most conservative interpretation and apply the Duty upstream even where the FCA does not intend that result.

Q10, Q11, Q17 and Q18: Wholesale and upstream infrastructure

GDF strongly supports the FCA's proposed exclusions for activities that are genuinely remote from retail customer outcomes. In particular, we support the proposed exclusions for market making and for safeguarding cryptoassets where the firm does not directly interact with, or provide the service directly to, a retail customer. These exclusions provide useful certainty for wholesale and infrastructure firms.

The same functional logic should apply to other upstream activities. A firm providing settlement, liquidity, execution infrastructure, technology or other wholesale services should not inherit retail-facing Consumer Duty obligations merely because its services ultimately support a product accessed by consumers.

The relevant test should be functional, not technology-specific. For example, digital asset custody may involve wallet infrastructure, cryptographic key management and interaction with distributed ledger networks. Those technical characteristics should not, in themselves, make the activity more or less likely to fall within the Duty.

Where an infrastructure provider does not design the retail proposition, control distribution, determine retail terms, communicate with the customer or otherwise exercise substantive control over the relevant retail outcome, there should be a rebuttable presumption that the activity is outside the Duty. This would also provide a principled basis for considering additional exclusions under Question 18.

We would also encourage the FCA to include digital asset-specific worked examples covering custody, settlement, liquidity provision, token infrastructure and technology services. This would help firms distinguish genuine material influence from mere participation in the wider value chain.

Q7, Q10, Q12, Q13 and Q17: Cryptoasset issuers, admission and distribution

GDF considers it important that CP26/23 preserves the role-based allocation already reflected in the FCA's final cryptoasset framework, including FG26/5 and the Admissions and Disclosures (A&D) regime.

FG26/5 recognises that cryptoassets manufactured by unauthorised persons based outside the UK may fall outside the Duty, while a UK QCATP is the manufacturer of its trading-platform service and a distributor, rather than the manufacturer, of the cryptoassets traded on that platform. GDF supports retaining these distinctions in the final CP26/23 application framework.

Accordingly, the mere fact that an overseas issuer's asset is admitted to trading or made available by a UK QCATP should not, by itself, cause that issuer to assume Consumer Duty responsibilities for the downstream UK customer relationship. Where the issuer does not seek admission, control the platform's distribution decisions, set retail-facing terms or communicate with UK retail customers, those customer-facing responsibilities should remain with the regulated firm undertaking and controlling those activities.

This approach is also consistent with the A&D regime. For qualifying cryptoassets other than UK-issued qualifying stablecoins, the FCA has already placed admission due diligence and qualifying cryptoasset disclosure document (QCDD) responsibilities on the person seeking admission and on UK QCATPs, and FG26/5 excludes the relevant A&D designated activities from the Duty. CP26/23 should not unintentionally recreate parallel issuer obligations through an expansive interpretation of 'distribution chain' or 'material influence'.

For UK-issued qualifying stablecoins, a different position appropriately applies because the issuer is a UK-authorised manufacturer and the Duty applies to the A&D regime. Even here, FG26/5 recognises that an issuer with no direct interaction or contractual relationship with retail buyers will mainly influence outcomes through the design of the stablecoin. GDF supports this role-based calibration: issuers should be accountable for issuer-controlled product features and obligations, while UK QCATPs and other distributors should remain accountable for their own admission, distribution and customer-facing activities.

Q10, Q11 and Q20: Distribution chains

GDF strongly supports the FCA's proposal that firms should be responsible for their own role in a distribution chain rather than being expected to supervise the chain as a whole.

This is particularly important in digital finance, where a customer proposition may involve several independently regulated entities. For example, an infrastructure provider may supply technology to a platform, a custodian may safeguard assets, another firm may provide execution or liquidity, and a separate regulated entity may own the direct relationship with the retail customer.

Requiring each participant to independently assess the entire customer journey creates duplicated compliance processes and can blur rather than clarify accountability.

However, the final rules and guidance should make clear that responsibility cannot creep back upstream through broad expectations to monitor, challenge or obtain information from other firms. A firm should only be required to act outside its own sphere of responsibility where there is a clear regulatory or contractual basis for doing so, or where information reasonably available to it clearly indicates a material risk of consumer harm.

Q20: Reasonable reliance between regulated firms

GDF supports the FCA's proposed clarification that firms may reasonably rely on information and representations provided by other regulated firms. We believe this principle should be strengthened if it is to change behaviour in practice.

In the absence of a meaningful presumption of reliance, firms will continue to duplicate due diligence, request large volumes of information and effectively supervise activities for which another regulated entity is responsible.

We recommend that the FCA state clearly that, where another regulated firm is responsible for a particular part of the customer journey, an upstream firm may ordinarily rely on information and representations from that firm unless information reasonably available to the upstream firm clearly indicates a material concern requiring action.

This would not permit firms to ignore clear evidence of consumer harm. It would, however, create a workable threshold that prevents defensive compliance from recreating supervisory functions throughout the chain.

Q22: Information gathering and outcomes monitoring

GDF supports the FCA's move towards more targeted and proportionate information gathering, but believes the final guidance should be clearer that firms should not be expected to obtain data they do not ordinarily possess and cannot meaningfully act upon.

In complex digital markets, distribution chains may involve numerous entities and jurisdictions. Requiring extensive customer-level information to travel through the chain can increase cost, operational complexity and unnecessary data handling without improving outcomes.

Firms should focus on information that:

- relates to activities for which they are actually responsible;
- is reasonably available to them;
- is capable of identifying a material risk to an outcome they can influence; and
- can reasonably lead to action by that firm.

The objective should be useful information flowing to the entity capable of acting on it, not maximum information flowing to every participant in the chain.

Q21: Vulnerable customers

GDF supports maintaining strong protections for customers in vulnerable circumstances. However, expectations should reflect a firm's role, proximity to the customer and access to relevant information.

A retail-facing firm will generally have significantly greater visibility of an individual customer's circumstances than a wholesale infrastructure provider several stages removed from that customer.

An upstream firm should not be expected to identify or assess individual vulnerability where it has no direct customer relationship and does not ordinarily receive customer-level data. Consistent with the FCA's proposal, it should be able to rely reasonably on customer-facing firms to identify and support individual customers, while remaining responsible for product- or activity-level matters within its own control that could affect customers in vulnerable circumstances.

Q23: Board and governing body reporting

GDF supports the FCA's proposal to make board reporting proportionate to a firm's circumstances and actual Consumer Duty exposure.

For firms whose activities are predominantly wholesale or infrastructure-based, board reporting should focus on the limited activities that genuinely fall within scope. Firms should not be required to create extensive reporting frameworks simply to demonstrate compliance in areas where they have little or no influence over retail outcomes.

Q24 and Q26: Interaction with other product governance and cryptoasset requirements

GDF supports the FCA's objective of reducing unnecessary duplication between Consumer Duty requirements and other product governance and disclosure obligations. Chapter 5 is focused on retail investment products and the interaction with PROD 3 and disclosure requirements, but the same anti-duplication principle is relevant where the Duty interacts with the FCA's final cryptoasset framework.

Where another FCA rule or sector-specific process substantively addresses the same risk or customer outcome, firms should be able to use that process to support evidence of Consumer Duty compliance, subject to addressing any genuine gaps. Firms should not be required to operate parallel processes solely because the obligations arise under different parts of the Handbook.

For cryptoasset firms, this is particularly relevant to the final A&D, conduct, safeguarding and stablecoin rules. For example, where the A&D regime already allocates disclosure and due-diligence responsibilities through the QCDD framework, CP26/23 should avoid requiring duplicative Consumer Duty documentation that does not add a distinct consumer-protection benefit.

Proportionality should therefore be considered across the regulatory framework as a whole, rather than within each rulebook in isolation.

This is also consistent with FG26/5, which already recognises that the extent of a cryptoasset firm's Consumer Duty responsibilities depends on its role and influence, and that sector-specific rules can operate alongside the Duty. GDF recommends that the final CP26/23 guidance cross-refer clearly to that framework so firms can understand how the regimes fit together.

For UK-issued qualifying stablecoins, GDF supports the approach already set out in FG26/5 to the price and value outcome. The assessment should reflect the stablecoin's actual uses, such as payments, settlement, store of value and access to other cryptoassets, and should focus on fees, charges and non-financial frictions within the firm's control rather than external market factors outside its control.

Q17 to Q19: Digital asset worked examples

GDF recommends that the FCA include worked examples specific to cryptoassets and digital finance in the final guidance. These should not create a separate standard, but should demonstrate how the same principles apply to technology-enabled market structures.

Examples would be particularly useful for:

- a digital asset custodian providing services to a retail-facing platform;
- a technology or infrastructure provider supporting a regulated cryptoasset service provider;
- an issuer whose asset is subsequently made available through third-party platforms;
- trading, execution or liquidity providers operating upstream from a retail platform;
- DLT-based settlement or wallet infrastructure with no direct retail customer relationship;
- arrangements involving several independently regulated firms; and

- cross-border digital asset services involving UK and non-UK customers.

Conclusion

GDF supports the FCA's objective in CP26/23 and agrees that the Consumer Duty should be applied more proportionately. However, the success of these reforms will depend on whether they materially change firms' incentives to apply the Duty defensively and upstream.

The final framework should therefore do more than restate that responsibility is proportionate. It should provide sufficiently clear boundaries, presumptions and reliance standards to allow firms to conclude with confidence when an activity is outside scope.

For digital asset and technology-enabled markets, four improvements are particularly important:

1. clearer and more objective criteria for 'material influence';
2. a stronger presumption that genuinely wholesale and upstream infrastructure activities are outside the Duty where the provider does not control the retail proposition;
3. a robust reasonable-reliance standard that allows regulated firms to rely on each other without duplicating supervision; and
4. clear allocation of responsibility between issuers and downstream admission and distribution firms, preserving the role-based distinctions already reflected in the FCA's final cryptoasset framework.

Consumer protection should remain focused on outcomes, while responsibility should follow the firm's actual role, control and ability to influence those outcomes.

These changes would strengthen accountability, reduce unnecessary duplication and make the Consumer Duty more effective in increasingly interconnected financial markets.