

Subject: EMA response to FCA Consultation Paper - Application of FCA Handbook for Regulated Cryptoasset Activities

Date: 10. 10. 2025

Chapter 6 - Applying the Consumer Duty and access to the Financial Ombudsman Service to regulated cryptoasset activities

Question 13: Do you consider that we should apply the Duty (along with additional sector-specific guidance)?

No, a regime built around specific, outcome-focused conduct rules - rather than the wholesale extension of the Consumer Duty - would achieve a better balance between consumer protection and regulatory practicality.

Question 14: Do you have views on where applying the Duty would be an effective way to achieve broadly comparable standards of consumer protection in the cryptoassets market, or where it might not?

Effective (apply the Duty):

- Qualifying stablecoin issuance and redemption by UK-authorised issuers (clear manufacturer, clear target market, measurable service outcomes).
- Custody or safeguarding of qualifying cryptoassets (end-to-end customer journeys, disclosures, support, vulnerability needs).
- Retail-facing distribution and customer support by authorised firms, including financial-promotion approval and ETNs offered to retail.
- Fees and service delivery around brokerage, fiat on/off-ramps, or staking-as-a-service where the Duty can focus on communications, support and fair value of the service.

Less effective / requires tailoring (do not rely on Duty alone):

- Issuer-less or decentralised assets (e.g. Bitcoin or Ethereum) where product-governance assumptions such as manufacturer and target-market oversight do not map neatly.
- Non-discretionary trading on CATPs between participants (which the FCA already proposes to exclude) and protocol-level activities beyond firms' control.
- Price-and-value outcomes should emphasise the firm's charges and service quality, not asset volatility or intrinsic price movements.

Question 15: Do you consider that not applying the Duty, but introducing rules for regulated cryptoasset activities, would achieve an appropriate standard of consumer protection?

Yes. In the context of the cryptoasset market, introducing targeted, sector-specific rules and guidance would likely deliver a more effective and proportionate outcome than applying the Consumer Duty in full. Custom rules can be calibrated to address the distinct structure, risks, and operational realities of cryptoasset activities without imposing obligations designed for traditional financial products.

Tailored rules would allow the FCA to focus directly on the key consumer-protection priorities in this sector - such as disclosure standards, custody safeguards, redemption processes, operational resilience, and conflicts management - while recognising that many crypto activities involve decentralised or issuer-less assets where the Duty's concepts of product manufacture, target market, and fair value do not readily apply.

A custom rules framework would also enable more flexible and risk-based regulation, reflecting the diversity of business models across exchanges, custodians, stablecoin issuers, and service providers. This would ensure consistent consumer protection outcomes while maintaining the proportionality, clarity, and innovation space necessary for the UK's crypto market to remain competitive internationally.

Accordingly, a regime built around specific, outcome-focused conduct rules - rather than the wholesale extension of the Consumer Duty - would achieve a better balance between consumer protection and regulatory practicality.

Question 16: If the Duty was not to apply, do you have views on what matters should be dealt with by sector-specific rules and guidance?

If the Duty is not applied to some activities, sector-specific rules or guidance should cover:

- Product governance adapted to crypto: obligations for distributors where no manufacturer exists, practical target-market expectations, and controls on high-risk features without assuming issuer control.
- Consumer-understanding: standardised, layered disclosures and risk warnings for unbacked assets, clear explanations of wallet types, key-management risks, and redemption mechanics for stablecoins.
- A&D-regime alignment: single-source public disclosures (e.g. via the NSM) with templates for decentralised assets that avoid turning CATPs into de facto issuers.
- Complaints and redress: DISP-style processes calibrated for crypto (clear timelines, eligibility, and incident reporting) with scope limits excluding pure price-movement losses.
- Third-party/outsourcing transparency: clear delineation of responsibility and complaint channels, including for overseas providers.
- Proportionality tiers: obligations scaled by firm size, complexity, and activity risk.
- International alignment: coherence with MiCA and OECD initiatives to reduce cross-border friction.

Question 17: Do you agree with our suggested approach under the A&D regime?

We have reservations. While the EMA supports clear, comparable, and proportionate disclosures, the proposed A&D regime risks placing excessive and misaligned burdens on cryptoasset trading platforms (CATPs) and other intermediaries that do not control the design or issuance of most cryptoassets.

In particular:

- For issuer-less or decentralised assets, there is no accountable “manufacturer” capable of producing and maintaining the detailed disclosures envisaged. Requiring CATPs to assume this role would inappropriately shift liability to platforms for information outside their control and could deter listings or restrict market access.
- Imposing continuous disclosure and audit-style obligations on intermediaries would likely create cost and liability asymmetries that larger firms can absorb but which smaller CATPs cannot, undermining competition and innovation.
- Many CATPs already maintain listing-due-diligence and risk-disclosure frameworks aligned with financial-promotion and Consumer Duty obligations that achieve the FCA’s transparency goals without creating issuer-style liability.

We therefore urge the FCA to ensure that:

- The A&D regime is proportionate, risk-based, and targeted, distinguishing between assets with identifiable issuers and those that are issuer-less or decentralised.
- CATPs are required only to verify that material information is publicly accessible, not to originate or guarantee disclosures they cannot reasonably validate.
- The regime includes safe-harbour protections for firms acting in good faith based on publicly available information.

A phased or tiered implementation would allow realistic compliance timelines and protect competition among smaller platforms while ensuring high-quality, relevant disclosures for consumers.

Question 18: Should customers be able to refer complaints relating to cryptoasset activities to the Financial Ombudsman?

We support limited access to the Financial Ombudsman Service (FOS) where this is clearly appropriate and fair, but not a blanket extension. Complaints should only fall within FOS jurisdiction where:

- The activity is a regulated cryptoasset activity conducted by a UK-authorised firm, and
- The loss or detriment is clearly attributable to that firm's conduct (for example, custody errors, redemption failures, misleading promotions, or execution mistakes).

Extending FOS access indiscriminately could invite complaints about market volatility or price losses beyond any firm's control. The FOS's remit should therefore exclude complaints arising from asset-price movements, blockchain-protocol issues, or other events outside the firm's operational influence.

A carefully delimited approach - mirroring complaint eligibility for investment firms - would enhance confidence and consistency without creating disproportionate liability exposure for new or smaller crypto firms.

Question 19: Are there any additional factors that we should take into account when considering if it is appropriate for the Financial Ombudsman to consider complaints about cryptoasset activities (eg complaints where a firm is based overseas or where a third party is acting on behalf of an authorised firm)?

Several factors warrant attention before extending FOS access:

- Overseas firms: Many cryptoasset businesses serve UK customers from abroad. If not operating from a UK establishment, they fall outside of the jurisdiction of FOS. Extending FOS access to them would be impractical. Instead, the FCA should require prominent disclosures clarifying that FOS coverage does not apply and encourage Voluntary Jurisdiction participation where feasible.
- Third-party arrangements: Where an authorised firm uses an agent or technical partner (for example, a stablecoin issuer engaging a service provider), the authorised firm should remain ultimately responsible for complaint resolution, and customers should receive clear information on complaint routes.
- Jurisdictional and data challenges: FOS decisions depend on access to business records; cross-border and blockchain-based models require coordinated data-sharing and evidentiary guidance.

- Proportionality and transparency: To prevent duplication or confusion, a tiered complaints framework scaled by activity type and firm size would maintain accessibility while containing compliance costs.

Question 20: Are there specific activities the Financial Ombudsman should not be able to consider complaints for? Please explain.

To preserve proportionality and regulatory clarity, the FOS should not consider complaints relating to:

- Market or price-performance losses where firms have complied with disclosure and conduct requirements.
- Trading between participants on CATPs (non-discretionary execution models), except where the platform itself breaches FCA rules or its own published procedures.
- Blockchain or protocol failures, including forks, halts, or technical defects, beyond the firm's control.
- Decentralised or peer-to-peer transactions not intermediated by an authorised firm.
- Wholesale or institutional activities, where parties possess contractual remedies and sophistication to resolve disputes privately.

Chapter 7 - Conduct of Business Sourcebook and Product Intervention and Product Governance Sourcebook

Question 21: Do you agree with our proposal that UK-issued qualifying stablecoins should not be classified as Restricted Mass Market Investment (RMMI), which will not be subject to marketing restrictions? Why/Why not?

Yes, we agree with this approach. Removing UK-issued qualifying stablecoins from the RMMI category is a proportionate step that recognises their distinct risk profile relative to unbacked cryptoassets and supports prospective retail payment and settlement use cases. Lifting RMMI marketing restrictions (while retaining the core fair, clear and not misleading standards) would reduce friction for credible, UK-authorised issuers and intermediaries without diluting consumer protections.

We recommend pairing reclassification with: clear eligibility criteria for what constitutes a UK-issued qualifying stablecoin; ongoing disclosure on backing, redemption processes and incident handling; and supervisory guidance on fair value for issuer and distributor fee structures. This combination preserves consumer understanding and market integrity while enabling practical adoption.

Question 22: Do you agree with our proposal that financial promotions for qualifying stablecoins not issued by an FCA-authorised UK issuer should include additional risk warning information? Why/Why not?

We agree with the overall direction, but any additional risk warnings must be proportionate and context-specific. Clear, factual signposting can help consumers understand when an issuer is outside the UK's regulatory perimeter, but the language should remain neutral and accurate to avoid implying that all non-UK-issued stablecoins are inherently high-risk or unregulated.

In particular, the extent and tone of any warning should reflect the regulatory status of the issuer's home jurisdiction. Where a stablecoin is issued in a jurisdiction that applies comparable or higher standards, requiring warnings equivalent to those for unbacked cryptoassets would be disproportionate and potentially misleading. In such cases, a short factual statement (for instance, "This stablecoin is not issued under the UK regime but is authorised in [jurisdiction]") would suffice.

For issuers from jurisdictions without equivalent oversight, more detailed warnings could remain appropriate. This tiered approach, based on recognised international standards such as the FSB recommendations for global stablecoins, would promote consumer understanding while maintaining regulatory coherence and fair competition across markets.

We also recommend allowing firms flexibility to use layered disclosures so that key messages remain prominent while fuller contextual information is available on click-through, ensuring balanced communication without overstating risk.

Question 23: Do you agree that applying the Duty and additional guidance would be sufficient to achieve clear distance communications for cryptoassets or whether we should consider more specific rules such as those set out in COBS 5?

Applying the Consumer Duty with targeted, up-to-date guidance is the better route. COBS 5 is anchored in legacy distance-marketing concepts and channels that do not map cleanly to modern, app-based crypto journeys. Crypto-specific guidance on clarity, layering, timing, friction points (eg, cooling-off prompts) and prominent risk disclosures, will yield clearer, more future-proof outcomes than porting COBS 5's prescriptive language. If the FCA sees recurring harm patterns, these can be addressed through specific, activity-focused rules rather than wholesale application of COBS 5.

Question 24: Do you agree with our overall approach to the appropriateness test? Are all 12 matters in COBS 10 Annex 4G relevant? Why, why not?

We support strengthening appropriateness assessments for crypto promotions but caution against turning Annex 4G wholesale into inflexible rule text.

A rigid checklist risks box-ticking, frequent re-paperying as products evolve, and poor user experience that does not actually improve comprehension. We propose:

- Retain Annex 4G as the core reference, elevate certain foundational topics to rule level (eg, volatility, irreversibility, custody and key-management risks, fees and charges, conflicts and counterparty risk), and keep the remainder in guidance to preserve tailoring by product type.

- Provide a supervisory template or question bank as a safe harbour firms can adopt or adapt, coupled with expectations for outcome testing (eg, fail thresholds, cooling-off steps, and targeted re-education for failed assessments).
- Allow pragmatism for repeat customers and lower-risk services and permit dynamic question sets that respond to user behaviour and prior answers.

Question 25: Do you think there should be cancellation rights for distance contracts related to cryptoassets products or activities whose price is not driven by market fluctuation such as staking and safeguarding?

We do not support generic post-execution cancellation rights, but we support limited, pre-activation cooling-off mechanisms where technically feasible. For staking, once assets are bonded or delegated on-chain, reversal may be impossible or may expose other users to risk; a cooling-off window before on-chain commitment is the appropriate safeguard.

For safeguarding, a short pre-funding cooling-off period on new account activation is workable, but once assets are deposited, cancellation should not retrospectively unwind custody; instead, firms should enable straightforward withdrawal subject to security checks. Any regime should avoid arbitrage risks (eg, market-timed cancellations) and be proportionate to operational realities, with clear disclosures about when services become irrevocable.

Question 26: Do you agree with our overall approach to Conduct of Business requirements? If not, why not?

Broadly yes, with emphasis on proportionality and activity-specific calibration. Applying core COBS chapters on conduct duties, communications, client categorisation, appropriateness, client agreements and periodic statements is sensible if - and only if - adapted to crypto contexts and sized to firm scale and risk. Priorities for our members include:

- Clear scoping for CATPs so that conduct rules apply to the CATP's services to retail clients, while non-discretionary participant-to-participant trading is treated consistently with MTF analogies.
- Appropriateness that is outcomes-driven, with safe harbours and room for product-specific tailoring.

- Reporting that leverages online portals and best-efforts pricing sources, with frequency calibrated to activity type (eg, staking or lending) and avoiding duplication with custody disclosures.
- Avoidance of duplicative MiFID-style obligations that do not translate to crypto or would unduly burden smaller firms.
- Transitional arrangements and templates to help new entrants operationalise the rules efficiently.

Question 27: Do you agree that applying the Duty and additional guidance would be sufficient to achieve adequate product governance for cryptoassets or should we consider more specific rules such as those set out in PROD?

Bespoke crypto guidance is preferable to mapping PROD across in full. Traditional PROD constructs assume an identifiable manufacturer with granular control over design, distribution and target markets—assumptions that often do not hold for issuer-less or decentralised assets. We recommend:

- Duty-anchored outcomes for governance; targeted rules for activities where a manufacturer does exist (eg, UK-issued qualifying stablecoins); distributor-focused expectations where there is no manufacturer; and
- practical controls to limit retail access to products designed for non-retail users without turning CATPs into de facto issuers.

A proportionate, activity-based governance framework will better protect consumers while preserving competition and innovation.