

14 October 2025

CryptoUK
Formal House
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Submitted by email: cp25-25@fca.org.uk

Dear Sir or Madam,

Response to Consultation Paper 25/25 - Application of FCA Handbook for Regulated Cryptoasset Activities (the “Consultation Paper”)

CryptoUK (“we”) and its members welcome the opportunity to comment on the Consultation Paper regarding the FCA’s approach to regulating cryptoassets with respect to the application of the FCA Handbook. CryptoUK is the UK’s self-regulatory trade association representing the cryptoasset sector. Our members comprise over 100 of the leading companies across the sector and across the UK. Many of our members are also international and engage with regulators and policies on a global basis.

We have provided detailed answers to each question posed in the Consultation Paper within the Appendix. We seek to offer pragmatic and relevant observations about, and suggestions in response to, the content within the Consultation Paper. However, at the outset, we would like to make a number of general/ thematic comments about the Consultation Paper and the FCA’s broader approach to the future cryptoasset regulatory regime, as follows:

- **Appreciation for engagement, consumer protection, and greater regulatory clarity:** Our members are appreciative of the FCA’s clear and consistent willingness to engage with the industry and its participants. We see the regular meetings and consultations demonstrating a commitment to broad and deep public and private sector cooperation. We also welcome the protection of consumers more broadly in the economy, as well as within our industry. Furthermore, our members acknowledge that the Crypto Roadmap and its milestones are evidence of a commitment to truly progress greater regulatory clarity within the UK. Within this appreciation, we also wish to express some of our concerns in the next points that may hinder or slow this progress.
- **Piecemeal approach:** At a high level, feedback from our members has been that the FCA’s recent piecemeal approach to consulting and discussing proposed rules has proven to be frustrating. This approach, in our view, is evidenced by the delayed consultation on custody rules for rSICAs in CP 25/14, the lack of elaboration on how the Consumer Duty may interact with the A&D rules proposed earlier this year, and particularly throughout this Consultation Paper (which we flag in our responses).
 - We appreciate this piecemeal approach comes from a sensible desire to fully understand the benefits, risks, and potential outcomes of specific

technologies, proposed rules, and how these factors may interact, particularly given the myriad variations of technologies in the crypto space.

- However, this approach makes it incredibly difficult for both industry participants and the public to keep track of what rules are being consulted on separately and why, as well as understand what exactly is being proposed in each consultation and the context in which those proposals are meant to exist. Consequently, there is not only a significant risk that consultation responses will be less robust and holistic, but also that the development and the application of the rules will be difficult to understand and comply with where they are drafted in successive batches rather than as a singular set of draft rules.
 - We are also concerned about the application of regulations that are currently under large scale review to the nascent cryptoasset regulatory regime; in our view, these should not be included until the consultations and potential changes are settled.
 - We would urge the FCA to consolidate outstanding points and reduce the total number of separate consultations wherever possible. At the very least, a summary table setting out such outstanding points and the current status or timelines for each would be greatly appreciated as part of the next consultation in the FCA's proposed cryptoasset regulatory timeline.
- **Over-granular rules:** A general comment more specific to this Consultation Paper is the over-granularity of some of the proposed rules, which may make it difficult for smaller firms without significant legal resources to understand and comply with upon implementation. While we appreciate that this detailed approach arises from a desire to ensure rules are proportionate and specific to individual activities and asset types, we note there is a risk that this may ultimately make the overall cryptoasset regime more convoluted and difficult to comply with in practice. Examples of where this arises are flagged throughout our responses, but at a high level include the carve out for qualifying UK stablecoins from the RMMI categorisation, and the needlepoint approach to applying and disapplying individual sections of COBS.
 - **Need for sector specific guidance:** As a result of the two issues flagged above, and also the general approach of applying most of the existing regulatory regime “as-is” onto the cryptoasset space, our view is that there is not enough clarity as to how the FCA envisions some of these rules applying in practice, and consequently how firms would be expected to implement the rules in due course. While the Consultation Paper does feature some excellent examples of such guidance, for example how the FCA envisions the outsourcing rules to apply to different types of cryptoasset service providers, we would urge the FCA to consider providing further sector specific guidance in a codified manner, ideally through inclusion in the PERG manual, or at the very least as separate publications (e.g. Dear CEO letters, etc.).

We thank you for your consideration of this response, prepared in consultation with our members. We additionally thank CMS for their support and assistance. Finally, we would welcome the opportunity to engage further with the FCA should our response require any further discussion or clarification.

Yours sincerely,

Su Carpenter - Executive Director, CryptoUK

Appendix

Consultation Questions:

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

We welcome effective measures to appropriately protect consumers. We also acknowledge that the idea of applying an established structure such as Duty with additional sector-specific guidance is an understandable position from which the FCA would wish to start. However, overall, most of our members are concerned that, on balance and as described in CP25/25, this approach has serious limitations. The limitations can be described as doubt about how well the Duty is currently working within traditional financial settings, combined with doubt about whether the proposed industry-specific guidance is fully adequate.

The majority of our members consider that applying the Duty is not the most effective way of meeting consumer protection requirements, rather that the FCA should apply sector-specific rules and guidance that is tailored towards the cryptoasset sector. This is because the Duty is:

- **Ambiguity:** the Duty's high-level principles have the potential to be dangerously subjective in a nascent market lacking established practices and case law, creating legal uncertainty for firms;
- **Inapplicability:** some of the Duty's core concepts, particularly product governance (which assumes a known manufacturer) and fair value, are to some extent fundamentally incompatible with decentralised, globally-priced crypto-assets;
- **Cost and benefit:** the steep increase in compliance burden will not be greater than the benefit. A large proportion of the sector will be unfamiliar with FCA regulation and the struggle to adapt to such a heavy regulatory burden may not lead to the desired outcomes, even with the best of intent by the firms attempting to comply;
- **Potential regulator misjudgement:** there is a risk that regulators, who are used to applying the Duty principles to traditional finance firms, may struggle to apply and enforce the rules in an appropriate manner for cryptoassets; and
- **Competitive disadvantage:** the legal and compliance burden of an ambiguous Duty would penalise UK firms, pushing innovation offshore.

Other members however consider that there could be problems with relying on sector-specific rules and guidance over applying the Duty as: 1) the rules may become rapidly out of date and 2) it might make it harder for consumers to have sufficient confidence in the cryptoasset regulatory regime or to understand the differences compared with traditional finance protections that are in place. These members consider that longer-term, the application of the relevant parts of the Duty would enable greater flexibility for firms and accommodate changing business

models, supported by sector-specific guidance. In the short term, sector-specific rules should be implemented (which would at a later date be replaced by the Duty) to help firms transition to a new regulatory regime. This would reduce ambiguity and would make it easier for firms to make the step up to compliance with the Duty after.

All members consider that the FCA should engage with firms (e.g. webinars with plenty of time for Q&A from firms) so that expectations can be understood in good time ahead of the authorisation gateway opening as otherwise, firms may choose not to serve the UK market.

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?

In general, the majority of our members believe that sector-specific rules that are well designed for cryptoassets would better achieve the desired outcomes, than the application of the Duty to cryptoassets. The majority view is that the Duty is not fit for these purposes, as set out by our comments at question 13 above. In particular, a number of firms consider that manufacturer/distributor obligations cannot be appropriately discharged by the cryptoasset sector which would mean that compliance with the Duty would be difficult.

Please see question 13 for additional details of minority member views.

15. Do you consider that not applying the Duty, but introducing rules in the cryptoassets market would achieve an appropriate standard of consumer protection?

As a general note, we agree that more tailored rules would achieve this. We also think that, whilst some rules may need to be more prescriptive and granular, others could be written so as to be more outcomes focused. The latter approach will reflect the fact that cryptoasset services vary and, in some cases, prescription and granularity may not be helpful or applicable across the broader sector. In particular, overly prescriptive rules may not support innovation, and may require more regular review and update than the FCA is able to commit its resources to deliver.

Please see question 13 for additional details of minority member views.

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?

We consider that the sector-specific rules should mirror those already in place in PROD 3, 4 and 7 – with suitable adaptations as appropriate, such as to deal with the issue of the lack of discernible manufacturer for some types of cryptoassets such as Bitcoin. Designing a bespoke regime for cryptoassets will achieve the policy goals underpinning the Duty in the same way as those goals are met for traditional finance firms.

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

Yes, we broadly agree with the FCA's proposals for the A&D regime.

A bespoke A&D regime for cryptoassets would bring a welcome level of consistency throughout the industry and deal with the idiosyncrasies of the cryptoasset industry. It would also help to tackle the current public perception issue regarding the industry's general lack of homogeneity and transparency. Further, bespoke A&D regime rules are the best approach to address consumer protection and understanding and therefore these should remove the need for the Duty to apply here.

However, we believe that the FCA should align with international standards (wherever possible). For example, aligning requirements with those in MiCA so that firms operating internationally won't be deterred by more (potentially) stringent requirements.

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

We had varied member views on this question.

Members that agree with this proposal think that a clear complaint handling and redress process would help to increase consumer confidence and would align the cryptoasset industry with most other retail financial services. They would therefore agree that applying the complaint handling rules in DISP 1 to cryptoassets will help achieve this.

Members that disagree believe that FOS could be ill equipped to understand and fairly adjudicate on crypto related complaints. Their reasons include:

- Potential significant increase in claims; and
- Inadequate technical knowledge required (e.g., lack of relevant cryptoasset knowledge, expertise and resources).

These members also expressed concerns that the availability of the FOS will create a new income stream for claims management firms who may bring unfounded or vexatious complaints, which will require firms to increase their resourcing in order to adequately deal with them. In turn, this would add additional costs to firms (noting that the first 3 complaints are free but thereafter a £650 charge is applied per case). Most complaints, in our members' experience, can be dealt with in-house, without the need to refer them to the FOS.

Members that disagree observed that, although the FCA states that the FOS "will not typically uphold complaints where the consumer complains about investment losses from poor performance", the reality is that these types of complaints would likely represent the greatest in volume and therefore impact FOS resources in identifying and resolving legitimate complaints.

If customer expectations are not appropriately managed, this could lead to customer frustration and a floodgate of claims that FOS may not be able to handle (both from a volume and technological complexity perspective).

Another concern that is shared by all members is whether the FOS has the expertise to deal with cryptoasset complaints (particularly those which are more technical in nature). This could cause problems and lead to a complaints resolution bottleneck or inconsistent outcomes. We understand the FCA has said the FOS will decide complaints based on what is “fair and reasonable in all the circumstances” and based on the relevant law and regulations. However, fundamentally, many cryptoasset activities will not be comparable to the financial services activities currently within FOS jurisdiction. This may reveal a significant gap in skills and expertise that FOS would need to fill – at a time of significant pressure on FOS and its resources.

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)?

As the FCA would be aware, there is a current HMT consultation in relation to proposed reforms of the FOS. Given these on-going discussions, it would not be appropriate to decide on inclusion of cryptoasset activities within FOS jurisdiction before the future shape of FOS is decided. The global and decentralised nature of crypto-assets presents barriers to fair and consistent adjudication by the FOS. As the FCA notes, where the complaint involves activities carried out by overseas firms, beyond the FOS’ compulsory jurisdiction, customers may not be able to bring complaints against these firms to the FOS unless it decides to extend its “voluntary jurisdiction” and the overseas firm also opts in. This could create confusion for customers of overseas firms in understanding whether FOS access is available to them (which may not be easily mitigated through disclosures alone). It may also pose a risk that the FOS may seek to apportion accountability to the UK authorised firm on the basis that it is responsible for the client facing functions, even if the substance of the complaint concerns the actions of the overseas firm.

We therefore suggest excluding cryptoasset activities from FOS jurisdiction and consulting on it at a future date, once the outcome of the current HMT consultation and the new FOS framework is clear.

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

We do not believe any cryptoasset activities should be within FOS jurisdiction.

This is particularly the case for claims relating to purely technical issues (e.g. failure of the underlying protocol or any non-conduct related issues). In these circumstances, determining who is the responsible party will require technical expertise.

However, in the event that the FCA proceeds with its proposal to bring cryptoasset activities within FOS jurisdiction, we believe that this jurisdiction should:

- Exclude investment performance, protocol-level failures, and losses from user error (e.g., private key mismanagement). These are unrelated to the cryptoasset service provider’s activities; and

- Provide limits to available redress for losses resulting from third party failures outside of the control of the authorised firm.

Please also see our answer to Question 19.

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?

We agree with the proposal, as it reflects the materially lower risk profile of stablecoins particularly as a means of payment, relative to other cryptoassets. This would remove unnecessary friction in marketing UK-issued stablecoins and in turn could foster innovation in the space. Classifying stablecoins as RMMI would create a disproportionately onerous barrier for stablecoins to overcome in order to be used for payments.

Some members noted that their final opinion would depend on whether the FCA's proposed rules for UK-issued stablecoins are implemented as currently envisaged or whether those initial proposals are modified/attenuated.

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?

Yes, we agree with this proposal. In our view, this would put customers on notice as to the unregulated status of qualifying stablecoins issued by an overseas person. Additionally, we agree that would not result in too much of an increased compliance burden for non-UK issuers as non-UK cryptoasset service providers marketing into the UK will already be familiar with disclosure requirements under the financial promotions regime.

However, we would reiterate our general comment about overgranularity here. In order to avoid potential confusion about how certain assets are classified under COBS 4.12A and COBS 4.12B, we would urge the FCA to create a clear and definitive list of how different assets apply, rather than having firms rely primarily on the click-through definitions of the FCA Handbook and disparate explanations set out in policy statements and consultation papers.

Additionally, while the FCA has made clear it is considering reclassifying UK issued stablecoins such that they are not RMMIs, it is unclear whether this decision would also apply to overseas stablecoins (and, as a result, how the rules in COBS 4.12A would apply to overseas stablecoins). While it is understood that the activity of issuing overseas stablecoins will not come within the regulatory perimeter, UK authorised firms may still promote them. As such, we would be grateful for clear guidance on how the financial promotions regime will apply in this context.

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?

As noted in Question 13, we had varied member views on the proposals regarding implementing the Duty.

Some members do not believe applying the Duty is appropriate to cryptoasset activities, preferring bespoke guidance instead. As part of this guidance, the rules covering distance marketing in COBS 5 could also be tailored for cryptoasset firms.

Other members supported the approach of applying the Duty and additional guidance. These members agreed that COBS 5 should not be applied.

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 have varied views among our members on this question.

A minority of members agree with the approach to the appropriateness test. We have already seen the inconsistent approach firms have taken in relation to the implementation of the guidance in COBS 10, Annex 4G and would welcome the Annex 4G becoming a rule, as this would ensure that firms design their questionnaires to cover all the essential topics.

A majority of our members do not agree with making COBS 10 Annex 4G a mandatory rule.

While these members recognise the FCA's findings regarding the inconsistent approach to the application of COBS 10 Annex 4G, they believe that changing this requirement from guidance to a rule is overly prescriptive, especially when combined with other expectations (e.g., the FCA's good practice recommendations to cover each of the 12 matters). Some flexibility should remain so that the appropriateness assessment can be tailored to the particular type of cryptoasset products offered.

In these members' view, the FCA should review the 12 matters in COBS 10 Annex 4G against their intended final crypto regime rules to ensure that they do not overstate the risks once the authorisation regime is in place.

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?

Yes. We agree with the imposition of cancellation rights for consumers for distance contracts, but only where these relate to safeguarding cryptoassets. However, it should be clear that the cancellation rights only apply to the contract for the safeguarding services rather than providing protection from losses in relation to the underlying cryptoasset which is being safeguarded.

However, we think the position with staking is more complicated and requires further consideration and implementation, particularly because of the nature of on-chain staking. Where cancellation rights are required by regulation, such regulations will

need to contemplate and allow for various staking-specific situations, for example, where a customer may receive fixed rewards from a staking service provider prior to the actual completion of the on-chain staking cycle and then cancel their contract with the service provider. While there are likely various solutions to such situations (in this example, allowing the service provider to withhold the payment of rewards until the cancellation period expires could be a solution), regulations must allow for such flexibility to avoid creating difficult situations for service providers.

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

We have varied member views on this proposal, however our members generally agreed that the proposed approach of applying the majority of non-MiFID, general conduct requirements under COBS will help align the crypto industry to the standards applied to traditional financial services and will likely improve consumer confidence. Members also agreed that the FCA's decision to disapply certain elements of COBS represented a practical and proportionate approach to regulation.

However, the currently proposed approach raises two concerns (as set out in our general comments) of over-granularity, as well as a piecemeal approach.

One major concern raised by our members was that the highly specific implementation of individual sections of COBS would have a disproportionate impact on smaller cryptoasset firms, particularly those without a dedicated in-house legal resource. As such, these members feel that a phased implementation of the COBS rules, along with specific explanatory guidance on how which rules may apply when (e.g. as currently set out in the PERG sourcebook for many other regimes), would be welcome.

Additionally, a separate concern raised was that the piecemeal approach to consulting on separate parts of COBS, and how individual COBS chapters may apply, might create confusion as to how firms are expected to apply these rules in practice, particularly given the high-upfront cost of implementing new compliance systems when the regime comes into force.

These members would refer you back to the answer to Question 13, and reiterate that implementation of the Duty (and any specific guidance published) would only work if the limitations of the product/services outcome for cryptoasset sector are properly addressed. As we set out above, any rules for cryptoasset product and service governance must be bespoke to cryptoasset sector.

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?

See our answer to Question 13. The majority do not believe that applying the Duty and additional guidance would be sufficient for any element of the new requirements.

As elaborated upon in our prior answers, the majority of our members strongly believe that a bespoke set of rules such as those in PROD would better achieve adequate product governance for cryptoassets.

28. Do you agree with our assumptions and findings as set out in this CBA on the relative costs and benefits of the proposals contained in this consultation paper? Please give your reasons.

No, we do not agree with the CBA assumptions or findings. We believe the estimates to be relatively low and consider that there could be a more significant financial impact than is identified by the analysis. Implementation costs and ongoing costs for firms are all understated.

Examples of additional costs or costs that are either not well specified or are understated in the CBA include the:

- costs of compliance familiarisation;
- costs of implementing technical infrastructure or hiring (e.g. SMF roles) necessary for compliance;
- costs of compliance consultants, legal advisors;
- impact of such immediate and upfront costs to comply with the wide suite of rules; and
- impact of the period of uncertainty until final rules are available on a firm's strategic business decisions/ choice of business models.

However, our members also noted that the reduced risk aversion from the wider financial sector has been correctly recognised as a potential benefit (paragraph 135) of the proposals. On behalf of the industry more broadly, as well as on behalf of our members, we hope that this will also be reflected in the FCA's approach to the fair treatment of authorised crypto firms.

Please also see our answer to Question 13.

29. Do you have any views on the cost benefit analysis, including our analysis of costs and benefits to consumers, firms and the market?

Please see our responses to Questions 13 and 28.

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