The FCA has backed standards penned by independent body, the Lending Standards Board (“LSB”), that aim to ensure finance companies conduct themselves properly when they offer unregulated products. This is despite some fears in the industry that FCA backed voluntary codes may confuse consumers.

**Purpose of voluntary codes**

The FCA said that it has “…created a process to allow [it] to formally recognise industry codes covering certain unregulated activities” and that it wants to support and encourage the development and use of these industry codes.

Clear advantages of the use of codes include the ability to easily update them within a changing market practice rather than re-drafting an entire regulation; creating standards with specific technical detail and expanding principles to be applied to markets and entities that are outside the regulatory perimeter.

However, the FCA will not supervise firms or individuals directly against these codes in unregulated markets.

LSB’s voluntary code aims to ensure that FCA-regulated lenders provide unregulated
products in a fair way. Twenty-two FCA-registered banks have signed up to the code, which represents 96% of lenders to small and midsized enterprises in the UK.

The FCA will review LSB’s voluntary code after 3 years and will extend their recognition if they think the standards are still relevant.

Industry concerns

By giving formal recognition to these codes, the FCA has not formally extended their remit. Herein lies scope for confusion; consumers may think that it has. The FCA consulted on the recognition of LSB’s voluntary code in September 2019. The feedback from some of the respondents expressed concern that the recognition of voluntary codes may mislead consumers who might assume they are protected by a code because the FCA has recognised it, but they are not because the activity is unregulated.

This could be particularly problematic for the FCA as it is looking to reduce confusion around the perimeter of what it does and does not regulate.

Bridging the gap?

The FCA have previously called on the government to allow it to formally extend its remit to include parts of the market that are currently unregulated. However, in October 2019 the government said that the existing system does not need to change.

These calls came in the wake of the collapse of London Capital & Finance plc (“LC&F”) in January 2019. LC&F was authorised by the FCA but its core activity of issuing high-risk mini-bonds to retail investors was not a regulated activity. This left the majority of consumers without protection of the Financial Services Compensation Scheme who could only pay redress to 1.4% of mini-bond customers.

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