Response to FCA Consultation Paper CP25/40 – Regulating Cryptoasset Activities

To: Financial Conduct Authority
Consultation: CP25/40 – Regulating Cryptoasset Activities
From: Bitcoin Policy UK
Date: 29 January 2026
Deadline: 12 February 2026

1. Scope of this response

Bitcoin Policy UK ("BPUK") is a non-partisan, non-profit organisation focused on providing evidence-based and industry-driven expertise to steer Bitcoin policy in the United Kingdom.

This response principally addresses CP25/40 **as its provisions apply to Bitcoin and its attendant industry**, and references other cryptoassets only where necessary to illustrate key distinctions. This approach mirrors BPUK's prior submissions, which have consistently emphasised that "cryptoassets" are not a homogenous category and that Bitcoin is distinct in ways that are directly relevant to regulatory enforceability, consumer outcomes, and market integrity.

We therefore respond **in detail to a targeted subset** of questions where BPUK can add the most value and where category errors would otherwise generate unintended consequences. We respond more briefly (or not at all) where the proposals are broadly aligned with existing good practice for intermediaries and do not materially engage Bitcoin-specific issues. Generally, and in accordance with our previous consultation responses, we continue to recommend that the FCA consider differential calibration for assets like Bitcoin given its unique features, acknowledging that CP25/40 does not explicitly do so.

Questions addressed in detail: 1–7, 11–12, 14, 20, 25–28, 30
Questions addressed briefly (high-level support / minor drafting points): 8–10, 13, 15–19, 21–24, 29

2. Preamble: the core category error CP25/40 must avoid

2.1 "Cryptoasset activities" should be divided into: (i) Bitcoin and (ii) most other cryptoassets

BPUK's longstanding position is that **Bitcoin should not be treated as interchangeable with the wider cryptoasset sector**. Many cryptoassets are effectively issuer-driven products (resembling venture capital backed fintech businesses, or in some cases being more akin to gambling tokens), while Bitcoin has no issuer, no foundation, no company behind it, and no

controlling mind capable of changing its monetary policy or censoring its users. Bitcoin can be most simply understood as a commodity money in digital form. Unlike most other monies in existence, it is not a 'credit' or 'liability money' and exists without counterparty risk.

This distinction matters because it directly affects:

1. **Regulatory enforceability** (who can comply; who can be compelled);
2. **Consumer protection** (where harm actually concentrates); and
3. **Market integrity** (issuer-driven manipulation vs commodity-like global price discovery).

It is a fundamental feature of the Bitcoin system that it enables direct peer to peer transfers of value in digital form and without the involvement of a trusted third party. Understanding this feature is essential to further understanding that in such a system, payments cannot be blocked, prevented or frozen, and the system is therefore incompatible with typical customer protection and enforcement strategies (such as clawbacks or the freezing of accounts). There is in the peer to peer Bitcoin system no party against whom a freezing injunction can be obtained, and no means of reversing a transaction once made on the system and mined into a block. Having said this, such actions and remedies may nonetheless be relevant where Bitcoin is held via custodians or trusted third parties such as centralised exchanges.

2.2 The most important perimeter boundary in CP25/40

In practice, the FCA's framework will succeed or fail based on whether it cleanly separates:

- **Custodial / intermediary activity** (where regulation is effective and appropriate), from
- **Non-custodial tools, open-source software, and decentralised infrastructure** (where firm-style obligations are often impossible, nonsensical, or unenforceable)

BPUK urges the FCA to use CP25/40 to reinforce this perimeter boundary explicitly, including by drafting guidance that avoids inadvertently capturing software developers, node operators, miners, or users of non-custodial tools within activity definitions designed for intermediaries. This is consistent with BPUK's prior warning that attempting to regulate "node running" or de minimis routing activity is neither proportionate nor enforceable.

3. Summary of key recommendations (high-level)

BPUK recommends that the FCA:

1. **Hard-code a custodial/non-custodial distinction** across CP25/40 rules and guidance.
2. Treat Bitcoin as a neutral, global commodity money, **materially distinct** for consumer, market, and disclosure purposes.
3. Ensure location/authorisation rules attach only to **firms with controlling persons** and a meaningful UK nexus, not decentralised infrastructure. NB that in the case of a genuinely decentralised asset or organisation, any such authorisation rules will in any case be ineffective and unenforceable.

4. Avoid UK-only execution/price-source requirements that risk **worsening execution quality** for UK consumers by constraining access to global liquidity.
5. Ensure retail protections focus on the real drivers of harm: **issuer-driven tokens, leverage, opacity, conflicts, misselling to retail investors, and rehypothecation**, rather than imposing broad frictions equally to Bitcoin as well as to assets that are in fact much more likely to give rise to such harms.
6. In staking/DeFi, regulate **controlling persons** and custodial intermediaries, while avoiding “protocol regulation” by default.

Responses to consultation questions

Question 1

Do you agree with our proposals on location, incorporation and authorisation of UK CATPs? If not, please explain why not?

BPUK position: Broadly yes, but only if tightly scoped to genuine intermediaries.

BPUK supports the policy objective that firms operating trading platforms for UK customers should be subject to authorisation, prudential expectations, and conduct requirements. This is especially important where a platform:

- holds customer assets (custody risk),
- internalises flow (conflict risk),
- sets admission standards (listing risk), or
- determines market microstructure that affects retail outcomes.

However, BPUK strongly cautions that location and authorisation requirements can become counterproductive if they are drafted (or later interpreted) in a way that implies UK authorisation is required for activity that is not meaningfully intermediated.

Why this matters for Bitcoin:
Bitcoin is typically used and transferred peer-to-peer without reliance on a platform. Many services in the Bitcoin economy are **software tools** rather than intermediaries. The FCA should make explicit that rules for UK CATPs do not imply regulation of:

- self-hosted wallet software developers,
- open-source maintainers,
- node operators, or
- miners,

since such parties have no custody, no agency, and no ability to comply with “firm-style” requirements.

BPUK has repeatedly flagged that imposing regulated-activity logic onto infrastructure of this type is not only disproportionate, but also infeasible given the global and often non-identifiable nature of network participants.

Recommendation (drafting): Include an explicit statement (and examples) that CP25/40 authorisation proposals are targeted at **custodial/intermediary firms**, not protocol infrastructure or non-custodial tools.

Question 2

Do you agree with our proposals on UK CATP access and operation requirements? If not, please explain why not?

BPUK position: Generally yes for platforms; but the proposals should add clarity to avoid perimeter creep.

Operational standards that improve resilience, governance, market surveillance, incident response, and conflicts management are appropriate where a CATP is effectively acting as a market operator. The UK should aspire to be a leading venue for high-quality, well-supervised markets.

That said, the FCA should avoid importing requirements from traditional market infrastructures in a way that assumes the same degree of central control exists across all “cryptoassets”.

Bitcoin-specific point: Bitcoin markets are globally liquid and price discovery is distributed across platforms and jurisdictions. Rules should target clear failure modes:

- custody failures and rehypothecation,
- weak internal controls at CATPs,
- poor disclosure of execution arrangements and fees,
- market abuse controls for venue-based manipulation,

rather than treating Bitcoin as an issuer-driven market.

Recommendation: Add guidance acknowledging that for Bitcoin, **issuer disclosures are not possible as there is no person (natural or otherwise) to make them** and platform/venue responsibilities should focus on custody, execution, integrity and conflicts — consistent with earlier BPUK positions on “no issuer” assets and the need for practical treatment (including grandfathering logic for Bitcoin).

Question 3

Do you agree with our proposals on additional rules to protect UK retail customers? If not, please explain why not?

BPUK position: We support the objective; advise that the FCA calibrate protections to avoid “noise” and misclassification.

BPUK supports retail protections that target genuine sources of consumer harm. The UK retail harm record in crypto has concentrated heavily in:

- highly centralised tokens with insiders,
- opaque token admissions and promotion cycles,

- leverage and lending structures,
- custody failures, and
- conflicts hidden inside “free” execution or marketing incentives.

BPUK has previously provided examples of how retail harm is driven by issuer and influencer dynamics around newly created tokens, and has urged regulators to distinguish Bitcoin from issuer-driven projects. Such projects are commonly launched with significant fanfare, with a sizeable‘pre-mine’ or initial allocation to VC backers, founders and influences, who then effectively collude to run up the price before using retail investors as their exit liquidity prior to a final collapse in price.

Bitcoin-specific calibration:
The FCA’s existing tendency to treat Bitcoin as a “restricted mass market investment” (groups indiscriminately with all other cryptoassets) is, in our view, a category error. Bitcoin is best understood as a unique and emerging monetary commodity with no issuer, global liquidity and a long trading history; most other cryptoassets are not. See also our response above in paragraph 2.1.

Retail protections should therefore prioritise:

- **custody transparency** (segregation, rehypothecation policies, proof of reserves / solvency approaches),
- **leverage constraints**,
- **admissions standards** for newly issued tokens, and
- **clear conflicts rules** for execution and internalisation.

Recommendation: Where CP25/40 proposes additional retail rules, the FCA should add an explicit risk-based differentiation between Bitcoin and issuer-driven assets. This avoids regulatory messaging that pushes retail users toward higher-risk products by treating all assets as equally “restricted”.

Question 4

Do you agree with our proposals to manage conflicts of interest and related risks? If not, please explain why not?

BPUK position: Yes, strongly — conflicts are a key harm vector.

Conflicts of interest are central to the potential for retail harm, particularly where:

- venues internalise client flow,
- principal dealers trade against clients,
- firms route orders based on payments or rebates,
- asset listings are influenced by issuer relationships.

BPUK supports robust governance and disclosure requirements for these conflicts. This is consistent with our broader principle: regulation should target where it can realistically reduce harm; namely targeting intermediaries with discretion and control, and thus with the potential to inflict harm upon customers and market participants.

Recommendation: Require prominent disclosure of (i) internalisation / dealing principal, (ii) routing incentives, and (iii) conflicts in token listing decisions.

Question 5

Do you agree with our high-level proposals on settlement? If not, please explain why not?

BPUK position: Broad support, with an important clarification about Bitcoin settlement finality.

Bitcoin settlement is not analogous to traditional post-trade settlement systems. Finality and reconciliation properties are inherent to the protocol design (probabilistic finality that strengthens with block confirmations). For regulated intermediaries, the relevant risk is not that "settlement might fail" in the traditional sense, but that:

- custodial firms misrepresent settlement status,
- custody arrangements create rehypothecation or shortfall risk,
- withdrawals are delayed in ways inconsistent with disclosures.

Recommendation: The FCA should explicitly orient settlement rules toward:
(a) **truthful representation of settlement status and withdrawal availability by exchanges and centralised actors**, and
(b) **controls that ensure the firm can meet its delivery obligations** in Bitcoin (and other assets), including robust segregation and operational resilience.

Question 6

Is any further guidance on best execution required? If so, what additional guidance can we provide to clarify the scope of and expectations around best execution?

BPUK position: Yes — guidance should avoid UK-only constraints that degrade execution.

Best execution for Bitcoin must recognise:

- global liquidity and multi-venue price discovery,
- 24/7 trading, and
- the risk that geographic restrictions reduce competition and worsen spreads.

Best execution should focus on outcomes (price, costs, speed, likelihood of execution, settlement/withdrawal reliability) rather than prescriptive venue routing.

Recommendation: Provide guidance that “best execution” for Bitcoin is compatible with accessing global liquidity, while requiring transparent disclosure and auditability of execution policies.

Question 7

Do you agree with guidance to check at least 3 reliable price sources from UK-authorised execution venues?

BPUK position: Not as drafted; too rigid and risks unintended harm.

A fixed numerical requirement and an emphasis on UK-authorised sources risks:

- reducing the quality of reference pricing where UK-authorised venues are few,
- increasing market fragmentation,
- making UK venues structurally less competitive.

Recommendation: if the FCA adopts numerical thresholds, we recommend that “at least 3 UK-authorised sources” be replaced with a principles-based standard: firms must use **sufficient independent sources** appropriate to the asset’s liquidity profile and must document why those sources provide reliable price formation.

Question 8–10 (brief)

BPUK broadly supports clearer disclosures and order-handling rules, but reiterates that disclosures must prioritise relevance and avoid generic risk statements that reduce comprehension. For Bitcoin, custody and key-control concepts are more important than boilerplate volatility warnings.

Question 11

Do you agree with our proposed execution venue requirement? If not, what changes do you propose?

BPUK position: Partially. Execution venue requirements should not force sub-optimal routing.

If the FCA’s intent is to ensure appropriate supervision and reduce reliance on poor-quality venues, BPUK supports the direction of travel. However, if requirements have the practical effect of compelling routing to UK-only venues, this could degrade execution quality and unintentionally disadvantage UK consumers.

Recommendation: Allow execution via global venues where:

- execution quality is demonstrably superior,

- the firm discloses venue selection criteria, and
- conflicts are appropriately controlled.

Question 12

Restrictions on the cryptoassets in which an intermediary can deal or arrange deals for a UK retail client

BPUK position: Support a risk-based approach; oppose Bitcoin being treated in the same way issuer-driven tokens. Bitcoin is as a mat

Asset restrictions can be justified where harm concentrates, but the FCA should avoid restrictions that treat Bitcoin as equivalent to newly issued or centrally controlled tokens.

BPUK reiterates: Bitcoin has no issuer, no foundation, no controlling mind, and a long trading history; applying issuer-style assumptions to Bitcoin creates rule designs that are either meaningless or distortive. See furthermore our description of Bitcoin in paragraph 2.1 above.

Recommendation: If the FCA proceeds with retail asset restrictions, it should explicitly recognise Bitcoin's distinct profile and ensure it is not swept into restrictions designed for issuer-driven assets.

Question 13 (brief)

BPUK supports the objective of addressing conflicts during proprietary trading.

Question 14

Approach to PFOF

BPUK position: Support strong constraints; PFOF is structurally misaligned with best execution.

Payment for order flow risks turning retail users into monetised inventory rather than clients. Where permitted at all, the FCA should require:

- clear disclosure of payments/rebates,
- demonstrable best execution outcomes,
- prohibition on structures that systematically worsen execution quality.

Recommendation: In the crypto context, where spreads and fees can already be opaque, a presumption against PFOF is justified unless narrowly carved out and transparently evidenced.

Questions 15–19 (brief)

BPUK broadly supports personal account dealing rules, settlement controls, transparency and record-keeping obligations for intermediaries, provided they are scoped to firms with custody/agency and do not imply protocol-level obligations.

Question 20

Strengthening retail clients' understanding and express prior consent

BPUK position: Support the aim; caution against "consent fatigue".

Repeated "express prior consent" processes can paradoxically reduce consumer understanding by converting risk engagement into a click-through ritual.

Recommendation: Require high-salience, plain-English disclosures at key risk points (custody, leverage, rehypothecation, withdrawal conditions) and focus consent on genuinely material changes rather than repetitive transactional confirmations. An alternative is to explore 'tiered consent', for example at the point of onboarding and after subsequent material changes.

As a general point on lending of cryptoassets, we refer to the joint letter that we and many other industry participants drafted and sent to the Chancellor on 5 February 2025, entitled "**Tax inequality of DeFi lending and staking transactions**"[1]. In this letter, we noted that The current tax treatment of lending Bitcoin and other cryptoassets does not align with the economic substance of these transactions. By contrast with stocks, shares and other securities, Bitcoin and other cryptoassets fall outside the scope of repurchase or "repo" legislation that enables the lending of securities to be tax neutral. The repo legislation was introduced to ensure that the tax rules reflect the economic reality of these transactions, and it has been further amended over subsequent years. The focus of the legislation and changes has been to simplify securities lending and facilitate liquidity in traditional finance markets.

By contrast, the lending of Bitcoin or other cryptoassets is not currently in scope of the repo or stock lending legislation and is, therefore, a taxable event. This does not accurately reflect the economic reality, a point that HMRC and HMT acknowledge, as highlighted in their consultation on the taxation of decentralised finance (DeFi) involving lending and staking. The consultation has led to positive developments, including industry participants recommending a "composite no gain, no loss framework" as a practical approach to making DeFi lending and staking transactions tax neutral. The current tax treatment of lending or staking cryptoassets does not adequately reflect their growing role in our financial system, placing Bitcoin and other digital

[1] https://recap.io/blog/fair-tax-treatment-for-defi-lending-and-staking

assets at a comparative disadvantage to traditional securities. This disparity limits the UK's potential to become a global leader in innovative financial products tailored to the crypto sector.

Ensuring a level playing field for Bitcoin and other cryptoassets is crucial for fostering innovation and positioning the UK as a global leader in financial services, specifically in cryptoasset management. By addressing this tax issue comprehensively alongside other regulatory developments, the UK has a unique opportunity to lead and grow cryptoasset financial services that are exportable worldwide.

Questions 21–24 (brief)

BPUK broadly supports restrictions on structurally high-risk lending practices, including negative balance protections, provided rules are calibrated so they do not unintentionally push activity offshore into less safe channels.

Question 25

Retail staking disclosures, key terms and express consent each time cryptoassets are staked

BPUK position: Support strong disclosures; “each time” consent may be overly rigid.

Staking services often obscure critical facts: custody status, slashing risk, rehypothecation, validator selection, lock-up and liquidity constraints, and whether “rewards” are contractual or discretionary.

BPUK supports robust, standardised disclosures and a requirement for express consent to key terms. However, requiring renewed express consent “each time” may create consent fatigue without materially improving understanding.

Recommendation:

- Require express consent at onboarding and when material terms change.
- Require clear periodic statements of staking status, risks, and reward attribution.
- Require explicit disclosure where staking is effectively a lending arrangement.

Question 26

Should these requirements apply only to retail clients and not non-retail clients?

BPUK position: Yes. Retail clients warrant stronger protections.

Professional counterparties can negotiate bespoke terms and pricing. Retail protections should be stronger and more standardised, while professional-client requirements should remain principles-based.

Question 27

Record-keeping requirements on regulated staking firms

BPUK position: Yes.

Record-keeping is essential to enable supervision of whether firms have matched customer entitlements, avoided prohibited rehypothecation, and complied with disclosure and consent processes.

Question 28

Apply rules and guidance to DeFi where there is a clear controlling person(s)

BPUK position: Yes — but definitions must be tight to avoid accidental protocol regulation.

BPUK supports the principle that where there is a clear controlling person (or group) operating an activity that is functionally equivalent to a regulated service, regulation should apply.

However, the FCA must define “controlling person(s)” precisely to avoid dragging genuinely decentralised software and open-source development into regulated activity by default. This is especially important because decentralised protocols often have no entity able to comply, and trying to regulate such systems tends to produce superficial compliance burdens for peripheral actors without reducing core risks.

Recommendation: Provide a clear test for “control” that focuses on: custody, discretion, unilateral governance powers, and ability to change user-facing terms — rather than broad notions such as “influence” or “development”. Where there is a clear controlling entity carrying on a regulated activity, rules should apply; otherwise the perimeter should not capture decentralised infrastructure.

Question 29 (brief)

BPUK cannot validate the quantitative assumptions of the CBA without access to the FCA’s underlying data and modelling inputs, but supports cost-benefit approaches that account for: (i) compliance burden concentration on intermediaries, and (ii) the risk of driving activity offshore where UK consumers are less protected.

Question 30

Views on cost benefit analysis including costs/benefits to consumers, firms and the market

BPUK encourages the FCA to include within its CBA:

1. **Offshore displacement risk:** Over-prescriptive rules can push UK demand to offshore venues, reducing consumer protection and UK tax revenues (a concern BPUK has previously raised in relation to disproportionate frictions).
   Consultation Response to HM Tre…
2. **Innovation cost of perimeter creep:** Capturing non-custodial or open-source actors imposes costs without improving outcomes and may chill domestic innovation.
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3. **Differentiated consumer benefit:** The consumer benefit of regulation is significantly higher where applied to custody, leverage, conflicts, and issuer-driven token markets than where applied uniformly to Bitcoin.

Bitcoin Policy UK has for a number of years been providing evidence orally in Parliament and in writing as to the 'chilling effect' that the UK's slow and misguided approach to regulating this sector has had and continues to have on the industry in the UK. We cite our report prepared for the All Party Parliamentary Group on Crypto and Digital Assets as an example[2]. The consequence of the FCA's positioning, approach to the sector, and in many cases active hostility, are likely to be an increase in customer harm (owing to the relative ease with which retail customers can access off shore and unregulated routes into the sector, if they find their onshore route is blocked) and a corresponding failure of the FCA's growth mandate at the same time, as firms end operations in the UK market or decide not to enter in the first place.

Conclusion

BPUK broadly supports the FCA's objective of reducing consumer harm and improving market integrity through a clear UK framework for cryptoasset activities. CP25/40 will carry the most weight if it:

- draws a hard line between custodial intermediaries and non-custodial infrastructure,
- avoids category errors that treat Bitcoin as equivalent to issuer-driven tokens, and
- focuses regulatory effort where it is enforceable and most likely to reduce harm.

We would welcome ongoing dialogue with the FCA as these proposals develop.

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2 https://img1.wsimg.com/blobby/go/aea8e937-fd18-400f-afd9-c3513112c757/downloads/d6b1787a-e392-4821-9c27-75ef4a95632b/APPG%20on%20Crypto%20Digital%20Assets%204Mar24.pdf