New FCA Consumer Duty Confirmed and Explained

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With a new Consumer Principle, clarified outcomes and phased implementation, the FCA released the final rules and guidance on a new Consumer Duty at the end of July: one of the biggest changes in the retail consumer regulatory landscape in recent years.

This policy comes after initial consultations in May and December 2021, which we discussed in a previous blog post. The Duty’s objectives are to set higher and clearer standards to protect consumers in retail financial services and ensure firms put their customers’ needs first by ensuring effective competition. Readers will recall “Principles-based regulation” and “outcomes” focused supervision. The new Consumer Duty takes the FCA’s thinking to a new level and firms will need to demonstrate they can respond to – and evidence – it.
Rules

The FCA’s new rules can be grouped into three parts: a new Consumer Principle, cross-cutting rules and rules relating to the four desired outcomes under the Duty. All link back to the Duty and encourage firms to take into account customers’ needs, characteristics and goals.

The new Consumer Principle requires firms to act to deliver good outcomes for retail customers.

There are new “cross-cutting” rules which clarify the FCA’s expectations under the newly introduced Principle and link to the four desired outcomes.

- Act in good faith
- Avoid causing foreseeable harm
- Enable and support retail customers.

In line with existing requirements in the FCA Handbook, the FCA has introduced new rules relating to the “four outcomes”, which the FCA hope will result from the observance of the new Consumer Duty:

- Products and services – these rules focus on the “design, approval, marketing and ongoing management of products and services throughout their lifecycle”. The FCA has also clarified that firms can comply with existing rules under PROD 3 and not be subject to both sets of rules, as by complying with PROD, they will be fulfilling this outcome.

- Price and value – firms are required to carry out value assessments to ensure that customers are receiving fair value, in terms of price and overall value (but firms only need to provide qualitative considerations of non-monetary benefits). The FCA have provide examples of good outcomes and firm behaviour, as well as guidance on how the FCA expects fair value rules to apply across the distribution chain.

- Consumer understanding – these rules apply to all communication to ensure consumers can make informed decisions with understandable information. This outcome is broader than other legislative and regulatory disclosure requirements, but should still allow firms to comply with existing obligations.

- Consumer support – firms must ensure they provide support to the customer throughout their relationship and the customer journey to fulfil the Consumer Principle.

These outcome-related rules differ from the overarching cross-sector outcomes laid out in the FCA’s 2022-2025 Strategy: fair value, suitability and treatment, confidence, and access.

Guidance
Scope of consumer duty

Given the new rules to ensure better outcomes for retail consumers, the scope of consumer duty has also been clarified. Firms are only responsible for their own activities and are not obligated to oversee other firms in their distribution chain, unless regulatory requirements or contracts say otherwise. As mentioned earlier, firms cannot delegate their regulatory responsibility where outsourcing or third-party arrangements occur, so firms need to have systems and controls in place to ensure the support provided to customers meets the new Consumer Duty.

Distribution chain

This duty can also apply to firms who can determine or materially influence the outcomes for retail customers, for example firms involved in the design, operation, or distribution of retail products or services. The FCA has further clarified that firms will not satisfy the Duty if they interact with other firms who have a detrimental impact on the four outcomes in their interaction with retail consumers, so firms should still consider their whole distribution chain.

There is some flexibility in the FCA’s guidance: it recognises that distribution chains may look different in each sector including payments and e-money sectors; and there is understanding that it is harder to collect data when non-UK distributors selling to non-UK customers are involved.

There is now a burden – and liability – on firms to notify the FCA if the firm becomes aware that another firm in its distribution chain is not complying with the consumer duty, and to notify other firms if they think it has caused harm to retail customers.

PROD and the new consumer duty - Outcomes

For the Products and services outcome, the FCA has updated guidance to confirm that it is proportionate for firms to comply with existing rules under PROD and that firms are not subject to both sets of rules.

For the Price and value outcome, more examples of good outcomes and firm behaviour have been provided; guidance on how the FCA expects fair value rules to apply across the distribution chain.

Measuring success

The FCA is itself monitoring and measuring the success of their proposals, as well as requiring firms within its scope to do the same. Benchmarks will include Financial Ombudsman Service final decisions on complaints related to fees, charges or inappropriate sales, and consumers’ levels of trust and confidence through its ‘Financial Lives Survey’.

What a firm might have to do to achieve/integrate Consumer Duty
Many key points of implementation have been flagged above. In summary, data collection to satisfy the newly-introduced outcomes, and the discussions with third parties in its distribution chain, are likely to cause firms the most headache.

In summary, there is still much left to an individual firm’s interpretation of the new Consumer Duty which is not surprising given the diversity of firms and their products and services within the financial services market.

**Timeline**

Given the wide application of the rules and guidance, the FCA has updated the proposed implementation period from spring 2023 to a more lengthy two-phased process. The consumer duty rules and guidance will come into force for new and existing products and services on 31 July 2023, and for closed products and services, on 31 July 2024. Additionally, firms will be relieved to know that the Duty will not apply retrospectively.

On the flipside, the FCA expects firms to make use of the extended transition period to make the necessary changes to make sure they have policies and plans in place. The FCA has suggested a stepped process for firms’ senior management to agree implementation plans (October 2022), manufacturers to review existing open products and services and to share this with their distributors (April 2023), and identify and make changes (July 2023).

*Hannah- Mei Grisley also contributed to this article.*

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