

August 2022

# CONSUMER DUTY



# INTRODUCTION

In 2020, the Financial Conduct Authority (“FCA”) conducted a Financial Lives survey. The survey found that only 10% of consumers ‘strongly agreed’ that they had confidence in the UK financial services industry. This highlighted a lack of trust consumers had when dealing with financial services firms.

The FCA raised concerns that their regulatory framework did not go far enough to ensure that firms put positive consumer outcomes at the centre. The FCA have now expanded this scope to create higher standards of conduct which they believe will be “advantageous for individual firms and the industry at large, with a trusted financial services industry that is internationally attractive and competitive” by way of a new Consumer Duty.

In May 2021, the FCA began to act over concerns it raised about the way in which financial markets fail to consistently prioritise positive consumer outcomes. The FCA unveiled their plans for a new Consumer Duty which aims to ensure a higher and more consistent standard of consumer protection and help to stop harm before it occurs.

The FCA’s published consultation papers in 2021 which put forward the regulator’s proposals for new rules to tackle the causes of harmful practices.

At the end of July 2022, the FCA published its policy statement, PS22/9, which set out this fundamental shift for UK financial services.

# KEY DEVELOPMENTS

Many of the themes contained with earlier consultations remain largely unchanged within the final policy statement, there are some key developments:



## **Notification of breaches of the Consumer Duty**

The FCA has introduced a rule that means firms have an obligation to notify the regulator of any Consumer Duty breaches by other parties in the same distribution chain for products and services sold to customers. Additionally, the FCA has also introduced a rule requiring a firm to notify other firms in the distribution chain if it thinks they have caused, or contributed to, harm to consumers.



## **Governance and oversight**

The FCA has set out expectations around governance and oversight of the new Consumer Duty within its consultations. The FCA has clarified that the requirement for an annual board report is not intended to be the only mechanism for governance, accountability and oversight. Importantly, new requirements have been introduced that specify that the Duty should be reflected in a firm's strategies, governance, leadership, and people policies, including incentives at all levels. A Firm's boards and senior management should ensure that they are embedding a culture in which good outcomes for consumers is central.



## **Purchasing of books**

A Firm which purchases a product or service book from another firm, must ensure that it gathers relevant information from the selling firm to be able to comply with the Duty. For example, this means that the purchasing firm must satisfy itself that the products or service book it is purchasing offers fair value.

The FCA is taking forward the vast majority of rules and guidance as consulted on last year, but is giving firms additional time to comply. Instead the proposed shorter implementation period, the FCA is giving firms 12 months (until 31st of July 2023) to implement the rules for products and services currently on sale. For closed books, firms will be given until July 2024 to implement the rules.



# WHAT ARE THE CHANGES?



The FCA have introduced a new Consumer Principle, requiring firms to 'act to deliver good outcomes for retail clients'.

This is underpinned by three cross-cutting rules along guidance and rules relating to four outcomes;

## **Governance and accountability**

The FCA has strengthened its requirements by asking firms to reflect the Duty in strategies, governance, leadership and people policies (such as performance management). It introduces a need to appoint a 'champion' at Board level who, along with the Chair and the CEO, ensures the Consumer Duty is discussed regularly and made a key theme in all relevant discussions.

***"Firms should  
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implementation"***



## Remediation

The FCA is bolstering rules and guidance in its Dispute Resolution (DISP) sourcebook, by requiring firms to proactively consider whether remedial action is appropriate, not just in response to complaints but if they identify that customers have suffered harm because of the firm's conduct. It adds that firms should pay redress promptly, considering relevant decisions by the Financial Ombudsman Service.

## Outcomes monitoring

The FCA provides additional information on the data firms could use to monitor outcomes, including when to use data on an individual or cohort basis, and on frequency. The FCA also reminds firms it processes customers data in accordance with data protection law and the Equality Act 2010.

## Implementation period

The FCA have made clear their expectation that a Firm's Board (or other equivalent management body) to have agreed and scrutinised implementation plans by 31 October 2022. Relevant firms must also complete reviews for open products and services by 30 April 2023, and to share information with distributors.

## Review existing products and services

Under the Consumer Duty, firms need to assess their current products and services to ensure that they comply with the outcomes of the Duty. However, the FCA have made clear that firms should not withdraw products/services without considering the impact on customers and engaging with the regulator when assessing value.

## Distribution chains

The FCA has set out the responsibilities of different firms in the distribution chain. It confirms that firms are liable for their own activities but has introduced a requirement for firms to notify the FCA if they become aware that another firm in the chain is not complying with the Consumer Duty.

## Foreseeable harm

The regulator has updated its wording of this cross-cutting rule to require firms to 'avoid causing foreseeable harm'. It clarifies that firms can cause foreseeable harm through their role in the distribution chain and makes clear that what is foreseeable is 'dynamic'. This means that firms need to stay in touch with and respond to new or emerging sources of harm for example through consumer complaints, management information, press reporting, and the FCA's own supervisory communications such as Dear CEO letters etc.

# WHAT DO FIRMS NEED TO DO?

Firms need to create an implementation plan aligned to the FCA's interim and final deadlines. This must be Board approved by October 2022, with evidence of sufficient scrutiny and challenge. Firms should ensure effective Board oversight of the plan's delivery and appoint a 'champion' to the Board.

Firms should prepare for the FCA's 'assertive' approach to implementation, in particular its approach to firms' plans on monitoring outcomes.

Some key initial steps to take to prepare for implementation include:

- Read through the FCA's policy statement and Consumer Duty publications.
- Undertake a gap analysis of the key areas with your business.
- Defining good outcomes for your business and create frameworks for monitoring outcomes and assessing fair value. Firms should take a risk-based approach to implementation and begin with the most complex or high risk areas.



Firms should pay particular attention to the strengthened requirements on governance and accountability. This means firms must incorporate the Consumer Duty in performance management (including potential commission or bonus schemes), consider the Consumer Duty in all relevant discussions and make customer outcomes central to the firms monitoring and audit processes.

Firms need to thoroughly consider processes for identifying and responding to foreseeable harm, including whether remedial action is required.

Firms must also review their processes for withdrawing products or services, ensuring they consider the impact on customers and engage with the FCA.

# KEY CHALLENGES

## 1

### **GOOD CUSTOMER OUTCOMES**

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Positive consumer outcomes should be at the centre of a firm's culture. Creating a framework for defining and monitoring customer outcomes, based on data and MI, can be challenging. Equally important is having the right governance to review data, identify and action concerns to avoid foreseeable harm.

## 2

### **SUPPORTING AND EMPOWERING CONSUMERS**

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Firms need to assess how they support customers through their customer journeys and enable their customers to make decisions in their best interests.



# KEY CHALLENGES

## 3

### SCRUTINY

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Firms are required to make judgments on several concepts, such as 'foreseeable harm' and 'fair value'. Firms need to define these concepts for their business. The outcomes-based nature of the rules gives firms greater flexibility in how they interpret the changes that are required, but the lack of prescriptive guidance can present difficulties.

## 4

### ACCOUNTABILITY

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Firms need to consider the impact of the rules on employees and on how senior managers perform their duties and fulfil their obligations. Firms should be delivering appropriate staff training and embed these changes in governance structures.

# KEY DATES

## OCTOBER 2022

Boards should have agreed implementation plans and oversight of delivery.

## APRIL 2023

Manufacturers of insurance to share key information with distributors three months ahead of the implementation deadline.

## JULY 2023

Date to implement the new rules for new and existing products or services that are open to sale or renewal.

## JULY 2024

Date to implement the new rules for closed book products or services.

# FCA STRATEGY

It is important not to look at the Consumer Duty on its own. Firms must look at the bigger picture to identify the way in which the FCA will expect firms to comply with the shift created by the Consumer Duty and how the FCA will use these new rules to regulate the UK financial services industries.

Within the 'Our Strategy 2022-2025' document, the FCA set out a three-year strategy for the future of the regulator. The FCA place a shift in focus from being process driven to focusing on results. The latest strategy document sets out the outcomes the regulator expects all firms to deliver.

The FCA have stated that they will be 'tougher' on their own performance. The regulator will prioritise its data and adopt an outcomes-based approach which it believes will guard against inconsistent regulation.

***"Firms should take a risk-based approach to implementation, focusing initial work on the most complex and risky products"***



The FCA furthers its commitment focus on three key areas;

- Reducing and preventing serious harm
- Setting and testing higher standards
- promoting competition and positive change



# NEXT STEPS

The FCA has been clear that it will take an 'assertive' approach to implementation of the new rules, in particular to firms' plans on monitoring customer outcomes. Firms should take a risk-based approach to implementation, focusing initial work on the most complex and risky products, and pay particular attention to the strengthened requirements on governance and accountability.

Firms must comply with the FCA's milestones in the build up to the July 2023 and July 2024 implementation deadlines. The FCA plans to issue further communications on implementation expectations and good/poor practices for each portfolio of firms, during the implementation period.



# REFERENCES



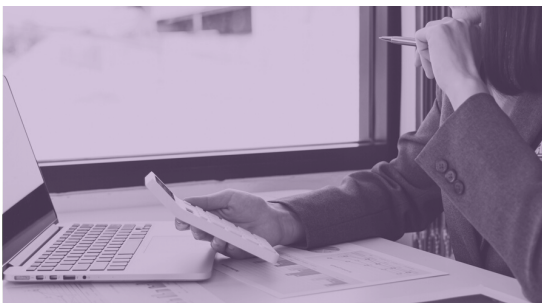
## **FCA Financial Lives Survey**

<https://www.fca.org.uk/publications/research/financial-lives-2020-survey-impact-coronavirus>

## **A new Consumer Duty**

### **Feedback to CP21/13 and further consultation**

<https://www.fca.org.uk/publication/consultation/cp21-36.pdf>



## **CP21/13: A new Consumer Duty**

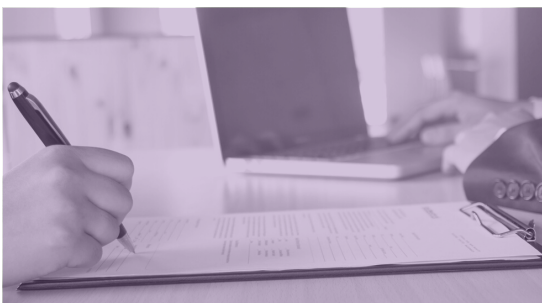
<https://www.fca.org.uk/publication/consultation/cp21-13.pdf>

## **CP21/36: A new Consumer Duty**

<https://www.fca.org.uk/publication/consultation/cp21-36.pdf>

## **A new Consumer Duty Feedback to CP21/36 and final rules**

<https://www.fca.org.uk/publication/policy/ps22-9.pdf>



## **FCA: Our Strategy 2022-2025**

<https://www.fca.org.uk/publication/corporate/our-strategy-2022-25.pdf>

<https://www.pwc.co.uk/industries/financial-services/regulation/understanding-regulatory-developments/fca-proposes-new-consumer-duty-in-paradigm-shift-for-firms.html>



<https://www.pwc.co.uk/financial-services/assets/pdf/fca-fires-starting-gun-on-consumer-duty-implementation.pdf>

<https://www.grantthornton.co.uk/insights/fca-publishes-final-consumer-duty-rules/>





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Call +44 (0) 1423 522 599 or  
email [info@thecompliancecompany.co.uk](mailto:info@thecompliancecompany.co.uk)

