



# What does the Consumer Duty mean for firms?

On 27 July 2022 the FCA set out the final rules and guidance for the new Consumer Duty that will set higher and clearer standards of consumer protection across financial services and require firms to put their customers' needs first.

## The Duty is comprised of three components:





The existing 11 Principles for Businesses have been a constant since the FCA's foundation in 2013. The Consumer Duty introduces Principle 12.

# Principle 12 - Consumer Duty - A firm must act to deliver good outcomes for retail customers

The FCA has acknowledged that there is overlap with Principle 6 (Customers' interests) and Principle 7 (Communications with clients). As such, Principles 6 and 7 will be disapplied where the new Consumer Principle applies. The FCA has stated it will retain Principles 6 and 7 as there are circumstances where these will still apply, for example services provided to professional clients.



These represent rules and guidance setting more detailed expectations for firm conduct in four areas that represent key elements of the firm-consumer relationship:

#### 1: Products and services outcome

Requirements include:

 ensuring that the design of the product or service meets the needs, characteristics and objectives of customers in the identified target market,





- ensuring that the intended distribution strategy for the product or service is appropriate for the target market, and
- carrying out regular reviews to ensure that the product or service continues to meet the needs, characteristics and objectives of the target market

#### Interaction with PROD

The FCA confirmed that firms complying with existing product governance rules would satisfy this outcome. Therefore the outcome does not apply to any firm subject to PROD 3 (investments), PROD 4 (insurance) or PROD 7 (funeral plans).

#### 2: Price and value outcome

The focus of the price and value rules is to ensure there is a reasonable relationship between the price a consumer pays for a product or service and the benefits they receive from it.

Fair value is about more than just price. The Duty aims to tackle factors that can result in products or services which are unfair or represent poor value, such as unsuitable features that can lead to foreseeable harm or frustrate the customer's use of the product or service, or poor communications and consumer support.

#### Guidance for distributors

All firms in the distribution chain are responsible for the value of the prices that they control and are not required to re-do or challenge other firms' value assessments. Distributors must ensure their own charges represent fair value and consider if other charges across the chain cumulatively result in the product ceasing to provide fair value.

## 3: Consumer understanding outcome

Firms are required to:

- support their customers' understanding by ensuring that their communications meet the information needs of customers, are likely to be understood by customers intended to receive the communication, and equip them to make decisions that are effective, timely and properly informed,
- tailor communications, taking into account the characteristics of the customers intended to receive the communication – including any characteristics of vulnerability, the complexity of products, the communication channel used, and the role of the firm,





- when interacting directly with a customer on a one-to-one basis, where appropriate, tailor communications to meet the information needs of the customer, and ask them if they understand the information and have any further questions, and
- test, monitor and adapt communications to support understanding and good outcomes for customers

### Vulnerable customers

Firms should consider characteristics associated with the drivers of vulnerability that may be present in their customer base or target market.

## 4: Consumer support outcome

The FCA want firms to provide a level of support that meets consumers' needs throughout their relationship with the firm. This means firms' customer service should enable consumers to realise the benefits of the products and services they buy and ensure they are supported when they want to pursue their financial objectives.

Firms are required to ensure customers do not face unreasonable barriers during the lifecycle of the product, such as when amending or switching, transferring, accessing a benefit, making a complaint, or cancelling. Unreasonable barriers include steps which are:

- unreasonably onerous or time consuming,
- complex for a retail customer to carry out,
- · difficult for a retail customer to understand, and
- · asking retail customers for unnecessary information or evidence.



The Duty includes **three cross-cutting rules** which set out how firms should act to deliver good outcomes for retail customers.

They require firms to:

#### Act in good faith

Acting in good faith is a standard of conduct characterised by honesty, fair and open dealing and acting consistently with the reasonable expectations of customers.

#### Examples

- a firm would not be acting in good faith where it fails to take account of customers' interests, for example in the way it designs a product or presents information.
- seeking to exploit consumers' lack of knowledge and understanding would also be a clear sign a firm is not acting in good faith.





#### Avoid foreseeable harm

Firms must avoid causing foreseeable harm to customers and must notify other firms in the distribution chain if they believe they have caused, or contributed to, causing harm to retail customers. Firms can cause foreseeable harm to customers through their actions and omissions. This can occur not only when the firm is in a direct relationship with a customer but also through its role in the distribution chain, even where its actions or omissions are not the sole cause of harm.

### Examples

- consumers being unable to cancel a product or service that is no longer right for them because the firm's processes are unclear or difficult to navigate.
- products and services performing poorly where they have not been appropriately tested in a range of market scenarios to understand how consumers would be affected

# **Enable and support retail customers to pursue their financial objectives**

Firms must act to enable and support customers to pursue their financial objectives. This rule is concerned with the financial objectives of the consumer in relation to the financial product or service and applies throughout the customer journey and life cycle of the product or service.

#### Examples

- a firm providing advisory or discretionary services would understand more about the customer's objectives and would need to act on that knowledge.
- by contrast, where a firm provides a product or service on an execution-only or non-advised basis, customers' financial objectives can be assumed to be the enjoyment and use of the product and service.

# **Scope of the Duty**

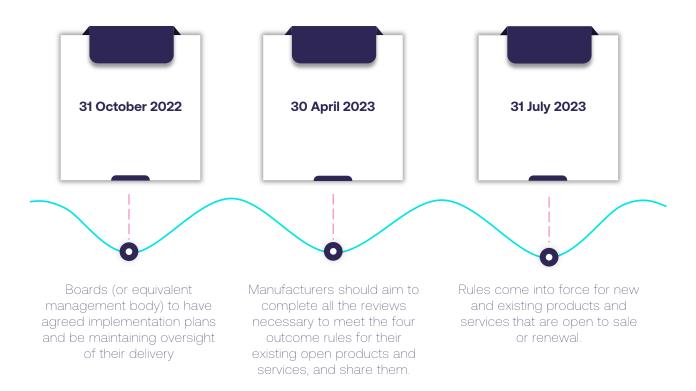
The Consumer Duty applies to 'retail customers', which can include corporate entities such as SMEs. It is not required that the firm has a direct relationship with the customer; the Duty applies across the distribution chain, from product and service origination through to distribution and post-sale activities. 'Distribution chain' means all firms involved in the manufacture, provision, sale and ongoing administration and management of a product or service.

Where it applies, the Duty applies proportionately based on what is reasonable in the circumstances. The extent of a firm's responsibilities will depend on its role and the extent of a firm's influence over retail customer outcomes.



## **Implementation Timetable**

While the new Duty applies from 31 July 2023, the FCA has set a clear expectation that firms should use the whole of the implementation period and be able to demonstrate progress when asked. The FCA has set milestones for when it expects firms to have finished planning their implementation work, reviewing their existing open products and services, and remedying issues identified to ensure they are fully compliant:



## **Monitoring and Governance**

The FCA has warned firms that during the implementation period, they should expect to be asked to share their approach to monitoring the Duty. The rules require firms to:

- monitor and regularly review the outcomes their customers are experiencing to ensure that the
  products and services that firms provide are delivering outcomes consistent with the Duty,
- identify where customers or groups of customers are not getting good outcomes and understand why, and
- have processes in place to adapt and change products and services, or policies and practices, to address any risks or issues identified and stop it occurring again in the future.

## **Board report:**

A firm's governing body should review and approve the firm's assessment of whether it is delivering good outcomes for its customers which are consistent with the Duty and agree any action required, at least annually.



We've already begun supporting firms to understand and prepare for the **new Duty**. If you'd like to know more about how we can help you with your implementation of the Consumer Duty, our specialist team is here to help.

We can help support your business, call us on 0207 436 0630 or email info@thistleinitiatives.co.uk.