

FCA Consumer Duty

**THE NEW CONSUMER PROTECTION STANDARD
IN RETAIL FINANCIAL SERVICES**

December 2021

INTRODUCTION

The FCA's second consultation on the Consumer Duty confirms the main outlines as proposed in May 2021 – a new Consumer Principle, supported by three sets of cross-cutting rules and four consumer outcomes.

A significant shift in expectations

While the new Consumer Duty is composed of familiar concepts – a customer-centric approach, clear communication, responsibility right through the distribution chain, assessment of fair value – this initiative stands out for its broad scope, the thoroughness of the assessments it requires, and the anticipated intensity of monitoring and supervision. These higher expectations call, in the FCA's words, for "a significant shift in culture and behaviour."

Why is the new Consumer Duty needed?

The FCA point to actions by market participants that are standing in the way of good consumer outcomes. Some of these practices are against the rules as they stand; others are debatable. The regulator is concerned that, if they simply re-write the rules to outlaw current poor practices, some market participants will develop new practices with the same effect of frustrating good consumer outcomes – as well as stealing a march on more scrupulous competitors.

Pre-emptive regulation

The FCA rightly emphasises the pre-emptive role of the new approach. Their current powers punish wrongdoers and provide redress. But these are necessarily remedies after the harm has been done. It would of course be preferable if poor outcomes could be headed off at the pass – or as the FCA put it, "getting it right in the first place."

Outcomes-based regulation

This is another shift in mindset. The FCA want firms to focus less on meeting the letter of the rules and more on the outcomes for consumers, looking for companies to move "beyond narrow compliance and to focus on delivering good outcomes." This will mean that companies have to put themselves in the position of the consumer, be mindful of the diversity of consumers, and be aware that many are vulnerable. Recognising that good outcomes are both subjective and difficult to define, the FCA has provided some helpful non-Handbook guidance as an insight into their thinking.

What it means for firms

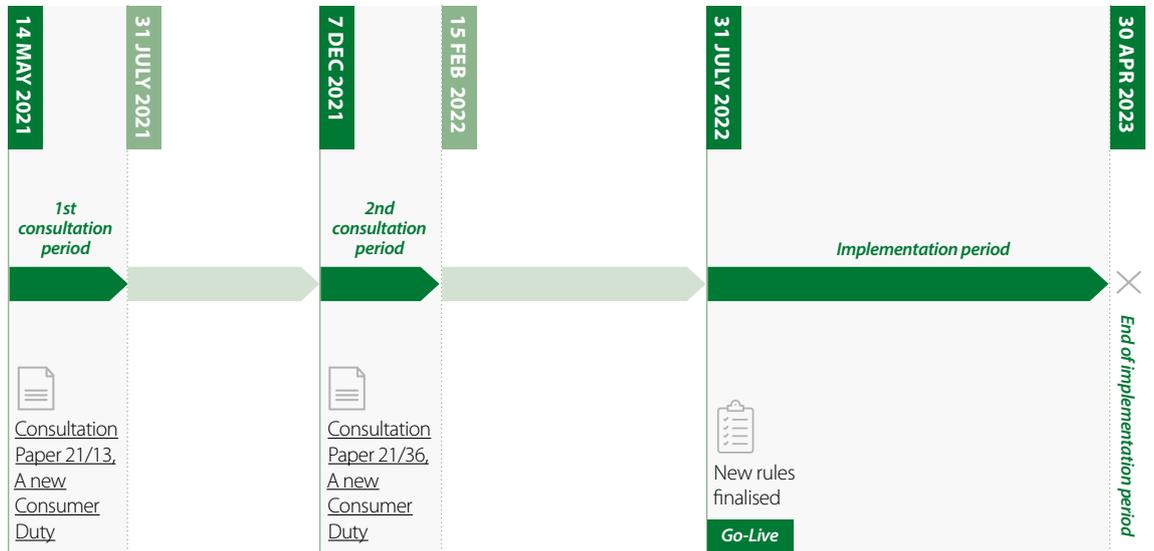
The Consumer Duty will undoubtedly be a lot of work, requiring a re-think of product design and pricing, the customer journey, customer communications and support services. While the Consumer Duty builds on the existing Principle of Treating Customers Fairly, it will involve more judgement than firms may have had to exercise before. A much greater volume of management information and data will be needed to assess fair value and good outcomes. There will inevitably be commercial consequences, and these need to be identified at an early stage. For all these reasons the Consumer Duty is therefore also an opportunity for companies to reflect on and - where necessary - rethink their relationship with their customers.

Another unfamiliar element for companies will be the intensity of the monitoring FCA expect firms to do, and the "assertive supervision" that the FCA intends to use to ensure that the Consumer Duty delivers on its promises. There are no data requirements to be reported to the FCA, and the FCA has not been prescriptive about how good outcomes are to be monitored. But a quick look at their minimum requirements makes it clear that monitoring will be a significant task in its own right, backed up by a full report to the Board at least annually.

Another wake-up call

While the regulator's emphasis on product governance and fair value will not come as a surprise in sectors where the FCA has already acted decisively (e.g. general insurance), this consultation must act as a wake-up call for those companies who do not have well-progressed programmes to address these issues. In sectors where this has not been as much of a focus there will be significant work to do, and significant challenges ahead.

PROPOSED TIMELINE



SUMMARY

<p>What is the new Consumer Duty?</p>	<p>It is a package of regulatory measures to improve consumer outcomes in financial services, based on a new Consumer Principle, and supported by a set of cross cutting rules, setting expectations of providers in three areas and across four consumer outcomes.</p>
<p>Who and what does the new Consumer Duty apply to?</p>	<p>The new Consumer Duty will apply to all financial products and services sold to retail customers including SMEs where it applies at sectoral level in the Handbook. It applies to all firms involved in retail markets, including firms that may not have a direct relationship with the end customer, when they have a material influence over product design, distribution or consumer communications or have direct contact with retail clients on behalf of a firm.</p>
<p>How will the Consumer Duty be monitored and enforced?</p>	<ul style="list-style-type: none"> Firms are expected to monitor their own performance against the Consumer Duty in considerable detail. They will need to identify the data sources and management information necessary to do this convincingly. The Board is required to receive and approve a detailed report, at least annually, on consumer outcomes and the firm's performance. The FCA is driving individual accountability by proposing a new individual conduct rule for all staff to act to deliver good outcomes for retail customers (new rule 6). The FCA will use "assertive supervision" to hold firms to account against the Consumer Duty at the authorisation stage, in supervision and enforcement, and in new policy initiatives.

CONSUMER DUTY OVERVIEW



WHAT DOES THIS MEAN IN PRACTICE?

Firm behaviours:

The FCA wants firms to be proactive in avoiding foreseeable harm and creating the conditions where customers can make good decisions to meet their needs, and for firms to act in good faith. This means not exploiting customer vulnerabilities, inertia, biases or lack of knowledge, being fair in describing risks and benefits, and not disguising or hiding them.

Outcomes:

There is a lot of material relating specifically to outcomes in the new consultation – around 80 new Handbook rules and guidance and over 40 pages of the non-Handbook guidance.

1. PRODUCTS AND SERVICES

The FCA wants firms to design products and services that do not, intentionally or through insufficient consideration of customer outcomes or biases, make it difficult for customers to make good decisions.

Product providers will be expected to design products that meet identified needs in a target market, with costs, benefits and performance in keeping with customers' expectations. They will also need to provide sufficient information to distributors, and to regularly review how products actually perform.

Distributors will be expected to ensure that the product or service is marketed and distributed in a way that focuses on those in the target market, and to mitigate the risk of the product being offered to other customers. This will require regular monitoring.

2. PRICE AND VALUE

The FCA wants firms to be able to evidence that they have made a value assessment, and to be able to explain why they consider that the relationship between the price and benefits of the product or service is reasonable. This is an ongoing commitment to balance the expected consumer benefits against the overall price to consumers - any changes at all should trigger a re-assessment. The FCA is not prescriptive about value assessments, but expects them to cover, as a minimum, the nature of a product or service, any limitations, the expected total price, and any vulnerability in the target market. Specific roles in the assessment of value are assigned to product manufacturers and distributors, with distributors expected to make the overall assessment at the point of sale. Where the price is not reasonable, the FCA would expect firms to withdraw/amend the product or service. This is an area where there is little by way of detailed examples, so it will be a challenge for firms to be confident they are doing this, and documenting it, in a way that will meet the FCA's expectations.

3. CONSUMER UNDERSTANDING

The FCA wants firms to put themselves in the shoes of customers when considering whether communications provide the right information at the right time to enable customers to make good decisions. Firms would be expected to take steps to review and where appropriate test and adapt their communications. Collecting data evidencing how well communications have been understood and received will be key. The Consumer Duty follows a lot of work on cognitive and behavioural biases at the FCA, and they will want to see firms raise their practices in this area, alongside more consumer research and testing.

4. CONSUMER SUPPORT

The FCA wants an end to processes getting in the way of customers enjoying the benefits of their products or from making decisions in their interests - including by causing unreasonable additional costs. This could be due to complex claims processes, processes that make it difficult for customers to switch, or unreasonable additional costs - for example unreasonable delays or inconvenience when the customer interacts with the firm.

They want firms to design processes that work for and consider the needs of consumers, including their communication needs. They also want firms to monitor customer service performance and remedy issues and to regularly review their processes to ensure they remain fit-for-purpose and do not disadvantage certain groups of customers.

KEY ACTIONS FIRMS SHOULD TAKE

	Key actions	Action details
1	Understand and disseminate the new Consumer Duty requirements	Firms need to move towards a Consumer Duty mindset, including in the way they use terminology as part of their governance and controls. This should start with the Board and executive/senior teams, with wider training part of a wider implementation plan.
2	Conduct a high-level assessment to identify priority issues	It is essential to undertake high-level assessments of customer journeys and key products and services in order to identify priorities for action - and key commercial implications. Firms must identify now where they may need to invest to meet the new standards. We recommend working backwards from what the FCA guidelines are asking.
3	Review customer outcomes framework and management information	Firms need to make sure that the Consumer Duty outcomes are reflected in conduct frameworks and processes, and that there is specific management information that aligns with the new Consumer Duty. A good starting point is to document exactly when and how a firm has responded and re-focussed on the quality of consumer outcomes.
4	Review product governance framework and processes	Ensuring that the Consumer Duty is embedded in the way a company works, and how it documents frameworks and processes is key. This includes how an organisation plans to approach product development, product reviews and fair value assessments. For insurers and insurance distributors, the starting point is likely to be the work undertaken to map products and services as part of the implementation of the new product governance and pricing rules and supporting product governance and review processes. For the funeral plan sector, the implementation of PROD 7, and for asset management firms COLL 6 will also provide a good stepping off point on fair value and value assessments. For other sectors, this exercise is likely to be longer journey, and a steeper learning curve.
5	Develop an implementation plan	Producing a draft implementation plan with timings, well before the rules are finalised in July 2022. The plan needs to be agreed with the whole company, not generated just in the Compliance Team.
6	Develop and socialise a template for the Board's annual assessment of whether the firm is delivering good conduct outcomes	Get an early idea of what the assessment might entail as well as the results, and get Board buy-in for the process. We suggest piloting this exercise as a preliminary assessment, and to help finalise a template for the subsequent formal assessments.



HOW CAN SICSIC ADVISORY HELP?

Sicsic Advisory is uniquely placed to help firms embed the new Consumer Duty into a sustainable business model that works for them and their customers.

Our strong team of senior consultants have a blend of expertise, and includes financial services practitioners, former regulators with leadership roles in supervision and policy, and former trade body lobbyists. Together, they can help firms make sense of this initiative, its likely direction, and what it means for the future.

Sicsic Advisory has done extensive work on pricing and value, one of the most challenging outcomes of the new Consumer Duty across all financial services retail products.

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