

CONSUMER DUTY

THE RULES ARE HERE...

What is the Consumer Duty?

The Consumer Duty is a collective term for a new FCA Principle and set of rules and guidance, which FCA have designed to improve the focus of firms on customer outcomes and to reduce instance of customer harm.

The Consumer Duty will take effect in respect of open products and services from July 2023. The Consumer Duty represents one of the biggest regulatory rule implementations of recent times and will likely have a significant effect on the way the market works and on how the FCA approach regulation over the coming years.

Why did FCA decide to make the new rules?

In short, the FCA felt that there were practises in various parts of the financial services industry which were acting counter to customer interests, but which weren't definitely outside of the letter of the pre-existing rules.

Classic examples would be:

- historic practises in relation to GI renewals (where some firms had profiled customers, and charged much higher levels of renewal premiums to those who they knew were least likely to shop around).
- 'Sludging' practises – where firms deliberately make processes hard for customers to do things that the firm doesn't want them to do (like cancelling a plan).

What do the rules look like?

The pyramid below is the way that the FCA like to show the structure of the new rules and guidance.

The new Principle says:

'Firms must act to deliver good outcomes for retail customers'. Underneath that there are new rules which require all firms to act in good faith towards retail customers, avoid foreseeable harm to retail customers and to enable and support customers to achieve their financial objectives.

At the bottom of the triangle there are four 'outcomes' relating to Products and Services, Price and Value, Consumer Understanding and Consumer Support. The FCA has published expansive guidance in respect of the outcomes it expects to see in respect of each of these.

Consumer Duty Structure



Source FCA

This doesn't look too tough – I already act to deliver good outcomes, act in good faith etc. So is there nothing for me to do?

We would certainly hope that most brokers in our market are meeting the high level requirements in the Principle and cross cutting rules.

But, as always, the regulators will call on us to prove it – which will mean completing some level of structured work.

The more detailed guidance in respect of the outcomes will also require gap analysis across the regulated activities that we undertake. See the information about implementation elsewhere on this page.

Are there certain things that the FCA are particularly focused on in our market?

We know (from other FCA industry publications) that they have certain areas of focus in our market. These include:

- The price of products and services in more niche advice areas – like second charges, bridging, equity release and, to some extent, debt consolidation. Here they are concerned that the industry might not always be meeting the 'fair value' tests in the new rules and guidance.
- The quality of customer communications (like adverts and materials issued as part of the advice or sales process). Social Media is also an area where some practises or and promotions in the industry might not always be meeting the new (or existing) principles or rules.

- Practises of quoting insurance prices with add-ons included as the default (this is called out specifically in the Consumer Duty Guidance).

It is likely that the Consumer Duty will be used to progress their agenda in these areas.

What are the timelines?

Pretty tight. Implementation plans need to be completed by October – with relevant changes to processes and procedures to be in place by July next year.

IMPLEMENTING THE CONSUMER DUTY – WHAT DO YOU NEED TO DO?

The FCA Publications

The immediate challenge with the Consumer Duty changes is - there is a lot of them; 282 pages by our count in the Policy Statement and the Finalised Guidance. So there is a fair amount to digest.

If you have an appetite for it you can read the whole of the Consumer Duty Policy Statement and Final Rules here. <https://www.fca.org.uk/publication/policy/ps22-9.pdf>

However, most accessible of the documents (i.e.the least Compliance Technical) is the Final Non-Handbook Guidance. <https://www.fca.org.uk/publication/finalised-guidance/fg22-5.pdf> . It's still 121 pages – but it provides a simple(ish) explanation of the duties and of what FCA are expecting from firms.

An Implementation Plan

Although the rules don't come into force until July 2023 for existing products and services (and July 2024 for closed products) the FCA have laid down interim deadlines for completion of various implementation steps.

The most pressing of these is for a sufficiently detailed implementation plan to have been agreed by firms' boards by the end of October 2022.

This plan should outline how you intend to approach the implementation and key dates in respect of it. The plan should be proportionate to the size and complexity of your firm. If you are a small business then the FCA will not be expecting you to produce a highly complex or detailed plan. But they will still expect you to be able to show that you have considered your business, services and practises in line with the Consumer Duty.

Structuring an Implementation Plan

This depends a bit on the size and complexity of your business. But we would suggest that it is structured so that it recognises the key areas likely to be impacted by the Consumer Duty and the four outcomes:

- Products and Services;
- Customer Understanding;

- Customer Support and
- Price and Value.

You could also identify separate elements in respect of how you will monitor adherence to the Customer Duty Rules and, for larger businesses, whether you need to make any changes to your governance arrangements.

For each of these, the plan could capture a high level description of the activities you plan to take and by when.

In general it might make sense not to set completion timescales that are very short: a lot of work and learning will be taking place in the industry over the coming months – which might help you to shape and understand what you should do in more detail. You don't want to have to do the work twice!

How to go about implementation

Consumer Duty is focused on Consumer Outcomes rather than on compliance with individual, specific rules. So, in implementing, you should look at your services through a customer lens; for example:

- Map out the various stages of the mortgage and protection journey and consider at each stage whether they act to deliver good outcomes and comply with the cross-cutting rules. Look particularly for areas where the process might be structured for your convenience or benefit at the expense of the customer. Be honest in this assessment.
- Consider what services you provide and what your total remuneration is for these. Is the remuneration clear and do the total charges appear reasonable? The FCA's fair value test is whether there is a reasonable relationship between the price the consumer pays and the overall benefits of a product. Are there any circumstances where your remuneration or charges might impact this? You will need to consider the lenders assessments of where their products offer fair value as well, once they are published in April 2023.
- Look at the ways in which you communicate with customers (e.g. in advertising, in the advice process, on social media). Do these meet the requirements of the cross-cutting rules and the more detailed guidance in relating to the outcomes?
- Do a hygiene check of how you deal with customers outside of the advice process (the Customer Support outcome). Consider whether any of this makes it difficult for your customer to do what they want. Are you placing any barriers in the way of this?

Document the completion of your plan and any changes that you have made. This will provide the audit trail should the FCA ever ask you to show how you implemented the Consumer Duty.

KEY DATES

