IN THIS WORLD NOTHING CAN BE SAID TO BE CERTAIN EXCEPT FOR DEATH, TAXES AND REGULATORY CHANGES.

Martin Sykes
Compliance & Risk Director
LSL Financial Services

Martin holds a Masters Degree in Behaviour Science (MSc 2016) from the London School of Economics.

CONSUMER DUTY
PRINCIPLE 12

A FIRM MUST ACT TO DELIVER GOOD OUTCOMES FOR RETAIL CUSTOMERS

2023 has arrived and everyone's thoughts are now turning in earnest to "Consumer Duty" and "What do I need to do?" There's many webinars including those from the FCA and information on their website, but do smaller advisory firms need to make many changes? The answer to that lies in whether you've followed general examples of 'good practice' and how good your record keeping is. And even that will depend on whether you're a sole-trader or a firm of 10+ advisers.

We've put together some thoughts on what we think it means for you. Some suggestions might not apply, others may help you to decide what's right for you. It's the same for advisory firms as it is for customers – 'There's no one size fits all'.

Put simply, Consumer Duty is doing the right thing, at the right time so the customer gets a product or service they understand and can enjoy the benefits from when appropriate. In return they're paying a fair price whilst being supported throughout their journey. This extends to any claim, complaint and any other interaction between customers and firms.

Everyone asks about the difference between TCF and Consumer Duty and whilst the FCA explain "it goes further", what does that actually mean? Well now, you also need to act to avoid any harm you can reasonably foresee rather than just act 'fairly'.

So if you find a customer has suffered harm e.g. because you forgot to tell them something or to take some action and they end up missing it, then you must take action to put that that right. This could be helping the customer by intervening with a lender or provider, but it could also mean offering the customer compensation to cover the cost, rather than waiting for them to make a complaint.

FCA underpinned the Principle with 3 rules which is helpful in some respect but they are high level, so they need a degree of thought as to how they apply. There are then 4 customer outcomes which perhaps give most insight. We've organised some thoughts below on the 3 high level rules – open to interpretation by you, but they give a starting point for the types of behaviours that could evidence how you're meeting Consumer Duty in your day to day dealings with customers.

Before we start, there's two things to remember:

First the duty will only apply to you where you have a material influence over the outcome that the customer may receive. This means that 'fair value' being derived from the product is the responsibility of the lender or the insurer, as long as your recommendation for the product meets the customers needs and objectives.

Second, whilst the duty applies to you, customers still remain responsible for their decisions (or actions) as long as you have acted to deliver good outcomes. **For example, if you can evidence:**

a) the product meets the needs and objectives of the customer; and

b) it offers fair value and the customer is within the intended target market; and

c) the risks, features, costs and benefits have been explained to, and understood by the customer

then you're a long way towards meeting the rules and the principles.

Some examples of how the individual Consumer Duty Cross Cutting rules might apply are:

RULE 1 - A FIRM MUST ACT IN GOOD FAITH TOWARDS RETAIL CUSTOMERS

(you must act honestly, fairly and openly with customers)

Customers must be clear as to the benefit they are receiving from any service fee or charge, which must be fairly represented by the fee. Where customers are not receiving an advised service, any fee must be appropriately considered and rationale documented as to why it is reasonable and proportionate.

Even if there is no financial cost associated with your service, customers may need to input time and energy and the effort required by the customer to acquire the product should still be considered.

Customer Interactions should be designed with the customer in mind (i.e. not to suit your sales process). **Perhaps ask yourself, 'are your customers…'**

- Able to take time to reflect on what they are committing to purchase?
- Starting from a low level of knowledge therefore needing additional time, support and explanation (e.g. first time purchasers or customers with other characteristics of vulnerability)?
- Being manipulated into making a purchase through use of certain language or examples designed to disturb or scare them (e.g. examples designed to provoke an emotional response rather than one from logic, in order to complete the sale of a product)?
- Given enough time to reflect and make an informed decision?
- Sign-posted to charities or groups where appropriate, that may help them with wider issues that you are unable to help with (e.g. repairing their credit score (if possible) before starting to apply for a mortgage)?
- Told about all the costs associated with the product, and when they will apply?
- Informed about realistic timescales and not influenced to make a decision because of a sales or performance deadline?
- Made aware of potential and actual conflicts of interest that may affect them during the transaction or because of our involvement with a third party? This includes being told about a fee you might receive for making a referral.

RULE 2 – A FIRM MUST AVOID FORESEEABLE HARM TO RETAIL CUSTOMERS

(foreseeable harm may occur because of something done, or because steps have not been taken to prevent harm happening)

“Foreseeable” is something that can be reasonably predicted or expected as a result, because of action taken or no action/ warning being given.

Informing a customer about the timing of actions and how they can affect advice or purchase of a product, is an example of avoiding foreseeable harm. Where possible, this should be in writing (e.g. “next steps”).

Customers need to know where any service starts and ends. They need to be clear on what to expect and be aware of anything that isn’t covered.

In terms of a mortgage, this means ensuring they are aware of risks of being unable to meet monthly mortgage payments due to illness, unemployment, or death. Informing customers they are able to insure for some/ all eventualities and giving an indication of cost, means the customer is informed of their options.

Customers must be made aware of any fee that may be charged in relation to the service, and when payment is expected.

Procedures and Adviser Training (including competence) must ensure advisers and employees have appropriate awareness of how their behaviour can influence customers.

Advisers should understand behavioural bias and ensure they do not exploit customer characteristics that may lead to poor outcomes.

For example this may be because...

- customers are over-confident, thinking they are aware of the subject matter and as a consequence they aren’t actively listening to understand risks fully
- advisers may use language that is ‘leading’ causing a customer to provide a response without fully considering all the risks and benefits of the product
- advisers may use emotional examples of other cases that mean a customer does not fully consider the recommendation against their current circumstances
- customers may be influenced to think they need to buy now for an unsubstantiated future need which of course, may never happen. For example, expectant parents quite rightly may wish to plan for when their child is born, however a couple that may have a family in the next 5 years, shouldn’t be planning for unknown timing without a very good reason
- Information needs of customers must be understood and acted upon. No ‘jargon’ should be used to conceal or confuse the true meaning of a feature, risk, benefit or cost of a product.

Where customers have limited exposure to a product and/ or perhaps a low level of understanding, the customer journey could have appropriate points to check customer understanding.

This is known as ‘positive friction’ which is intended to slow the process and give customers time to reflect before they make their decision.

Where firms undertake telephone sales, appropriate scripts should allow for customers to take time to understand what they are being told and be encouraged to ask questions.

Where possible telephone conversations should be followed up with visual and written explanations.

Where customers need to take action at a certain time they should be told what to look out for, and what to do (“next steps”).

Where potential customer harm or detriment is identified, customer contact should be undertaken as soon as possible where relevant.

Customers should be encourage to understand what the risk/ issue means to them, and what options are being offered to remediate any harm suffered or potential harm that could occur.

RULE 3 – A FIRM MUST ENABLE AND SUPPORT RETAIL CUSTOMERS TO PURSUE THEIR FINANCIAL OBJECTIVES

Customers should only be offered products that are suitable for them, so a clear target market statement must be available for each product you offer. This should clearly identify any group or cohort of customers that would not receive 'fair value' from the product – and such customers should be identified and steered to more suitable products.

When considering which products can be offered to customers, Advisers must consider the information needs of customers, and ensure that product documentation (usually provided by a manufacturer) clearly indicates any risks associated with the product.

Charges must be clearly identified and not hidden in the small print. Products which include terms which could frustrate customers, or could mean they are not able to enjoy the benefits must not be offered or recommended.

ADVISED SALES

Customers who receive advice must be given full support to be able to make an effective, informed decision on whether to purchase. The difference between advice and non-advice is often that the customer feels they are not sufficiently knowledgeable to make their own decision without help. Such customers may be willing to paying a fee for the advice but any fee should fairly reflect the time and research undertaken.

An advised process should give the customer full awareness of WHY the product meets their needs including why it is suitable in every respect, what benefit(s) they will get and when.

Advisers should have a thorough understanding of all customer objectives and circumstances (in line with various FCA rules and guidance) and then act accordingly giving consideration to any documented preferences the customer may have.

However, this is does not mean that advisers should simply offer a product just because the customer has expressed a preference.

"Supporting" a customer in their objectives requires consideration of the overall suitability of the product, including conversations that highlight where any preferences expressed by the customer might not be the right thing for them.

Additionally, advisers should ensure that the information (fact find) disclosed by a customer is up-to-date, correct and accurate. If an adviser thinks this is not the case, steps must be taken to correct any information held before advice is given.

When giving a recommendation customers should:

- Understand what objective the product will meet, how it works and the benefits it will provide (including add-ons)
- Be eligible for the product and all the elements/ add-ons
- Be made aware of any benefits they won't be able to enjoy (as long as this does not make the product unsuitable)
- Know the cost of the main product, and how much extra they are paying for add-ons (if they choose them)

NON-ADVISED SALES

Where customers are not receiving advice, after they express a demand or need for a product, it can be assumed that their intention is to “purchase, use and enjoy the full benefits of the product in question.”

However, a customer must still be able to make an effective, informed decision on whether to purchase or not i.e. they are able to make a good choice because they:

- Understand the product and the benefits it will provide (including add-ons)
- Are eligible for the product and all the elements/ add-ons
- Are made aware of any benefits they won’t be able to enjoy
- Know the cost of the main product, and how much extra they are paying for chosen add-ons.

CUSTOMERS WITH VULNERABLE CHARACTERISTICS

Regardless of whether advice is given or not given, where we deal with customers who have/ may have characteristics associated with vulnerability, we must ensure that they receive outcomes as good as other customers.

Whether intentional or not, manipulation or exploitation can occur when an adviser fails to take account of customers who in particular:

- need a higher level of protection generally because they aren’t sufficiently knowledgeable or experienced to challenge what they are being told (e.g. customers new to a particular product)
- may not be able to make reasoned decisions because of low understanding or memory issues
- may be in a weaker bargaining position because of their personal circumstances e.g. low credit ratings due to debt or ability to manage day-to-day living, or, there are other competing priorities that mean their attention is diverted from fully understanding the importance of their decision
- have other competing priorities or support requirements that mean they might need a little bit more assistance to complete a journey that has a good outcome
- have any other characteristics which may mean they are unable to understand the product and associated benefits before purchasing.

Detriment can occur when matters are rushed. Therefore any customer should always be given sufficient time to consider any advice and/ or purchase of a product.

COMMUNICATIONS WITH CUSTOMERS

There are many different ways of communicating with customers but whether it’s verbal, written suitability or renewal letters, a reminder or email with general content communications, or a promotion for services and products, they should ALL have the aim of being:

1. In plain English, with no ‘jargon’ or technical terms
2. At the right time i.e. give important messages about risks to customers before they make their decision
3. Clear and concise, highlighting important messaging about risks or benefits that might not apply to the customer
4. Not too short i.e. excluding important information that needs to be conveyed – but not too long so the customer becomes disengaged.

Where possible, advisers should ensure customers:

- are generally aware of when to expect communications that are part of the sales process, and more importantly, whether/ how they are expected to respond; and
- receive communications in a timely manner; and
- understand each communication.

WHAT EVIDENCE DO YOU HAVE?

Most firms are able to evidence that products offered to customers suit their demands, needs and circumstances. This is often done by recording a thorough fact find, including customer preferences (preferences don't always mean the customer has understood the product though!)

However, evidencing a customer's understanding isn't easy, so a few tips…

- After explaining a document (IDD), ask the customer to tell you the main point (make notes of what they say)
- After making a recommendation for an insurance product or mortgage, ask the customer to replay the costs, risks, features, or when they think it will benefit them (again, make notes of what they say).

When you make your notes, include words, reasons and any examples spoken by your customers ("customers own words" = COW). If a customer needs reminding of something later, it's often easier to replay their own words or reasons back to them to trigger a memory.

Recording information on your customer's file is probably second nature to you anyway and I'm sure many already make your own notes.

In the past, you've possibly thought it more for your records, but in the future it could help you demonstrate that you've understood your 'consumer duty' and actively interacted with your customers.