FCA Consumer Duty: Scope and Proportionality – 2 minute read

The FCA has published Consultation Paper CP26/23, Consumer Duty: Scope and Proportionality, proposing targeted changes to clarify where the Consumer Duty applies and how firms should apply it proportionately. The proposals respond to concerns that the Duty has, in some cases, been applied more widely and intensively than intended, particularly in wholesale markets, cross-border business and complex distribution chains. The consultation closes on 18 September 2026, with final rules expected in Q1 2027.

1. Narrowing the Duty to UK resident retail customers

The FCA proposes to limit the Duty to retail market business where the retail customer is usually resident in the UK, based on the customer's residential address or, where the customer is not an individual, place of establishment. Some exceptions will remain, including certain activities connected with non-investment insurance business, pre-paid UK funeral plans and UK pensions.

2. Defining the retail distribution chain

New rules and further guidance are proposed to help firms determine which activities fall within scope of the Duty. This includes confirming certain wholesale activities will be out of scope. The proposals also clarify key concepts such as retail market business, products and services, ancillary activities, excluded business and the meaning of material influence. FCA is moving away from the concept of "co-manufacturing" where more than one firm is involved in the manufacture of a product or service, introducing roles of principal and secondary manufacturers, with obligations calibrated to each firm's role. Firms with substantive control, over the design or operation of the product would be principal manufacturers and other firms, secondary manufacturers. The proposals leave open the possibility that more than one firm could be a principal manufacturer in relation to a product. FCA has provided indicative factors of substantive control.

3. Clarifying proportionate application across the chain

The FCA's central message is that firms are responsible for their own role and activities and are not expected to oversee the conduct of other firms in the chain, unless other regulatory requirements or contracts require it e.g. under outsourcing arrangements. A firm's obligations should reflect the substance of what it does, the extent of its involvement with the retail product or service, its ability to influence consumer outcomes, and the risk of harm arising from its activities.

— Firms with limited or remote roles should not be in scope where they cannot determine or materially influence retail customer outcomes. New examples are given of where a firm's role is more limited and so does not exert material influence.

— New guidance on the cross-cutting obligation to avoid causing foreseeable harm is included on carrying out appropriate due diligence before entering into business arrangements with another firm or accepting introductions in relation to a product. Again, firms are told they can take a proportionate approach to the due diligence they undertake commensurate with the potential risk of consumer harm in the product or service.

- Firms may place reasonable reliance on information or representations from other firms in the distribution chain, unless it would be unreasonable to do so. The emphasis is on proportionality, encouraging firms to focus on requesting information that is genuinely useful to assessing outcomes and to be more targeted in their data sharing. This includes reasonable reliance on others in the chain who interact with customers directly to identify vulnerable customers and provide support. This comes with a warning that firms must not ignore evidence of poor outcomes for vulnerable customers and where those outcomes could be caused by their own activities.
- Board reporting should be proportionate to the firm's size, capabilities, role in the chain, extent of retail market business and risk of harm. FCA proposes to supplement its non-Handbook guidance to help firms take a proportionate approach.

What should firms do now?

Firms should map their current Consumer Duty framework against the proposed territorial limits, distribution-chain definition, exclusions and material-influence guidance. They should identify business lines that may move outside scope and areas where monitoring, information sharing, due diligence or board reporting could be simplified. Firms that have experienced disproportionate burdens under the current framework may want to consider responding to the consultation.

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