CMS Financial Services Regulation Bitesize Briefings:
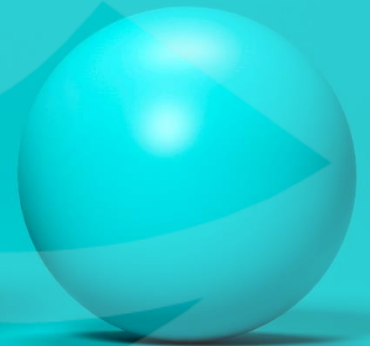# **Consumer Duty**

Consumer Duty - SMCR and Governance

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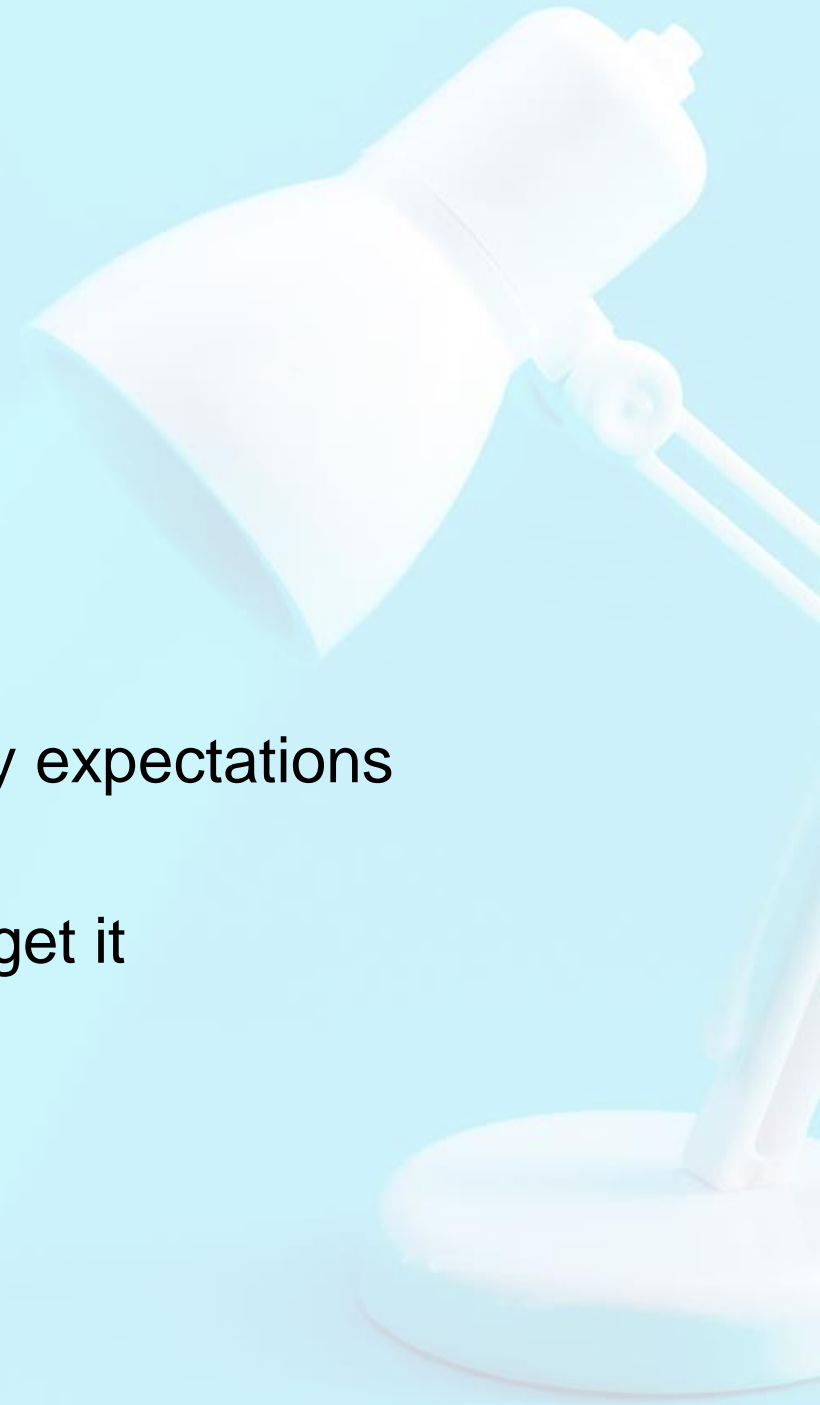
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Overview

In this session we are going to cover:

- The Board's responsibility

- Personal accountability and how to meet the regulatory expectations

- Effective governance – the MI you need – and how to get it

- The role of the Champion in practice

The Board's responsibility

We recognise that the benefits we expect will only be delivered by firms making lasting changes to their culture, behaviour and processes, which needs to be driven from the top with strong senior championing and oversight.

PS22/9

We expect a firm's board or equivalent governing body to ensure that the Duty is being considered in all relevant contexts, such as considering the impact of their governance and remuneration policies on delivering good outcomes for customers and ensuring that customer outcomes are a key lens for risk and internal audit functions.

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Board Responsibilities

- **Board ongoing responsibility to assess** whether firm delivering 'good outcomes'
- At least annually: A firm's board, or equivalent governing body, should review and approve an
  - assessment of whether the firm is delivering good outcomes for its customers consistent with the Duty should include (provided to FCA on request):
  - Results of monitoring
  - New and emerging risks
  - Evidence of poor outcomes and assessment of root causes
  - Actions taken to address
  - How business strategy is consistent with acting to deliver good outcomes
- Before signing off the assessment, the board should agree actions required to address any gaps or risks
- Duty to be reflected in firm's strategies, governance, leadership and people policies, including remuneration

Questions from the Board

What do good outcomes look like at every stage of the journey?

What do good outcomes look like over the short, medium and long term?

What are the drivers of poor outcomes?
What have we done to remediate?

Is the Consumer Duty being discussed regularly in the right contexts: strategy, product development, sales data, remuneration & incentives?

What are the key risks to delivering good outcomes? Areas of concern? Internal & External factors?

What internal data gaps do we have in assessing good outcomes?

Does the Firm culture support good outcomes?

Are we sharing / receiving all necessary information?

What testing has been done?

Are we meeting customer expectations? How do we know?

Are some customer groups receiving different outcomes? Why? How regularly are we reviewing this?

What insights have been gained from benchmarking to competitor products?

Personal accountability
what this means for you

"Every senior manager should be clear about what they are responsible and accountable for, and how they are ensuring that the business of the firm complies with the requirements of the Duty on an ongoing basis."

"…the more senior a person is and the more relevant their role is to the Duty, the more we expect from them in delivering good outcomes for customers."

Individual Conduct Rule 6

You must act to deliver good outcomes for retail customers

Obligations:

- You must act in good faith towards retail customers: *honest, fair and open dealing, acting consistently with reasonable expectations of retail customers*

- You must avoid causing foreseeable harm to retail customers

- You must enable and support retail customers to pursue their financial objectives

New conduct rule

- Duty supported by the SMCR
- All conduct rules staff
- Mirrors Consumer Principle and Cross-Cutting Rules – reasonableness embedded
- Applies regardless of whether the person has direct contact or dealings with retail customers
- Scope of person's job and seniority will affect scope of their obligations under the consumer duty
- More relevant the role and more senior the person, the more FCA will expect
- Consider how actions can affect interests of customers or result in them not obtaining a good outcome
- Those in management positions *"likely to have a greater ability to influence [customer] outcomes"*

Senior management responsibility

- **Individual and collective responsibility:**
  - SMFs should perform duties in their business in a way that seeks to ensure good customer outcomes
  - SMFs - *wide duty* to understand, manage, control and oversee business area for which responsible
  - SMFs expected to also consider how their area of responsibility fits into the firm's overall processes for ensuring good outcomes

- **Senior manager conduct rules 1-3 and statutory duty of responsibility**
  - Importance of Statement of Responsibility
  - The requirement for reasonable steps

- Firms which are **not subject to the SMCR** still expected to ensure that they have senior management oversight and accountability for the Duty, and to ensure that their staff are acting in accordance with the requirements of the Duty

Reasonable steps & consumer duty – how to comply

1	Be aware of **regulatory requirements** & **keep up to date**
2	**Understand & review** your area of responsibility with a consumer duty lens
3	**Review and police** appropriate policies
4	**Structure and control** day-to-day operations and oversee **delegations**
5	**Obtain & monitor** appropriate internal management information
6	**Be alert, raise issues** & follow them up
7	**Take pre-emptive action** to prevent breaches
8	**Adequately respond** to any breach
9	**Seek and obtain** appropriate expert advice or assurance
10	**Deploy adequate resources**, especially for control functions
11	**Maintain an audit trail and record** of actions, initiatives, decisions & remedies
12	Above all **maintain a customer focus**

**Effective governance –
the MI you need – and how to get it**

Governance

The two-step implementation

1	2
The documented project	The owned deliverables

The three levels of governance

1	2	3
Board oversight	Engaged executive management	Empowered Risk function

The four steps of application

1	2	3	4
Define and apply	Decide "what good looks like"	Create the flow of information	Test and act, scan & adapt

MI – what does it look like?

Monitoring

Firms must:

- Monitor and regularly review customer outcomes to ensure consistent with the Duty

- Identify where customers or groups of customer not getting good outcomes and understand why

- Have processes to adapt and change products/services/ policies/practices to address risks or issues identified

- Be able to demonstrate and evidence how have addressed issues leading to poor outcomes

- But … how will you know?

…you harvest the data

Customer Feedback

Business Persistence

Customer Testing

Outsourcing – trends & insights

Complaints

Culture Audits

File reviews / compliance reports / internal audit

Claims Data

Other external sources – customer financial lives

P&L Data

Behavioural Insights

FCA messaging

FOS messaging

Welcome calls/test trades

Four Outcome Reviews

Staff Feedback

The champion
in practice

Consumer Duty Champion – practicalities

- **Who?**

  - At board (or equivalent governing body) level

  - An INED where possible

  - More flexibility in smaller firms

  - Sufficiently senior to invoke confidence that they would be able to effectively challenge the firm's implementation and approach

  - Not shared but Groups may have more than one

Consumer Duty Champion – practicalities

Role

- Support the Chair and CEO in raising the Duty regularly in all relevant discussions
- Challenging the governing body/management on how it is embedding the Duty and focusing on consumer outcomes
- **Not a prescribed responsibility**
- Asking the right questions and holding management to account – for example:
  - Does our purpose and culture align with our obligations under the Duty and support the delivery of good outcomes for customers?
  - Is the Duty being considered in all relevant discussions such as strategy, remuneration and risk?
  - Do our remuneration and incentive structures drive good outcomes for customers?
  - Are we prioritising delivering good outcomes for customers in light of any changes in the external environment?
- Ensuring the duty is on the agenda of all key governance forums
- Ensure written records to evidence role

This does not affect the Board's collective responsibility under the Duty or individual's roles in complying with the Duty under existing governance procedures

Any questions? Please contact us…

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