

FCA – a new Consumer Duty Implementation Planning

Elisabeth Bremner, Aidan Campbell, Alison McHaffie, Pippa Tasker, Sarah Brook

22 September 2022

A few practicalities...

During the session, please use the widgets on your screen to:

- Send us your questions
- Get technical help
- Download resources
- Send us your feedback



A brief recap

Consumers can only reasonably be expected to take responsibility for their choices and decisions if firms act openly and with honesty, avoid causing customers foreseeable harm and take proactive steps to empower consumers to make good choices by establishing an environment in which consumers can make decisions in their own interest and realise their financial objectives

Consumer Duty Framework

- Not a 'one-line' duty but a 'package of measures'
- Applies proportionately
- Focus on outcomes, not prescribed steps
- Underpinned by standard of reasonableness
- Applies irrespective of whether have a direct relationship with retail customers

Consumer Principle
A firm must act to deliver **good outcomes for retail customers**

Cross-cutting Rules
Firms must:

1. act in **good faith** towards retail customers
2. avoid causing **foreseeable harm** to retail customers
3. enable and support retail customers to pursue their **financial objectives**

Four Outcomes

1. Products and services
2. Price and value
3. Consumer understanding
4. Consumer support

- P6 & P7 disapplied where the Consumer Principle applies
- Will not apply to unregulated business other than where unregulated activities are ancillary
- Definition of 'retail' aligned to sector sourcebooks

- COCON**
- New Individual Conduct Rule 6 (all staff) - mirrors Consumer Principle and cross-cutting rules – reasonableness embedded
 - Individual Conduct Rule 4 (TCF) disapplied where the new Individual Conduct Rule 6 applies
 - Scope aligned to Consumer Principle

Key Messages

- A “higher standard of care and expectations”
- FCA wants to see firms consistently placing customer interests at the heart of their business – at every stage of the lifecycle

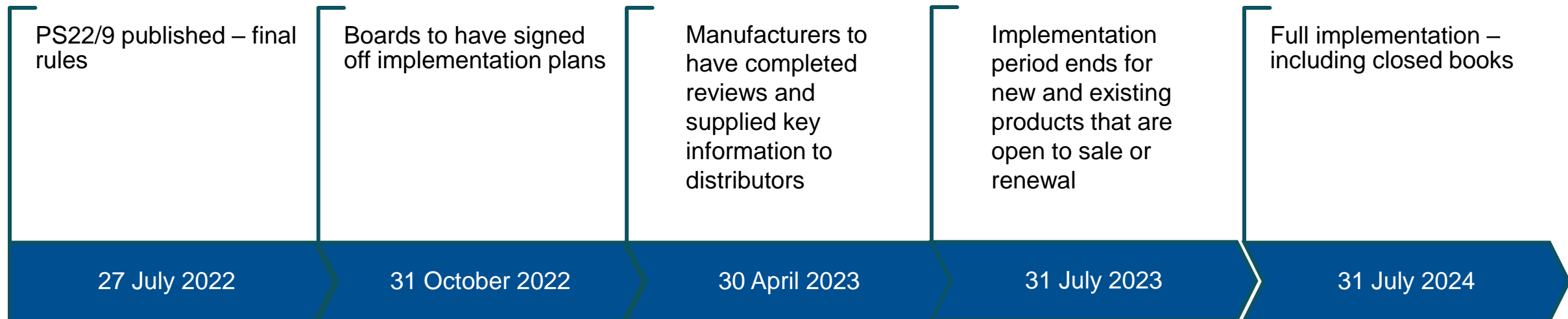


Implementation plans – overview and timetable

Timetable

During the implementation period (27 July 2022 – 31 July 2023 for new and existing products open to sale or renewal, 27 July 2022 – 31 July 2024 for closed books):

- Firms may need to **demonstrate to FCA progress being made** during this time and share plans and underlying documents
- Firms will need to consider existing products and services against rules and non-Handbook guidance – will need to review customer journeys where could pose risk of consumer harm under the Consumer Duty
- FCA will work with firms to mitigate any residual risk of unintended consequences – will consider if need to amend rules and guidance / provide additional guidance
- If decide to withdraw a product/service – need to consider the impact – if due to the implementation of the Duty must inform the FCA



Implementation plan outline (1)

Set out key milestones, objectives, internal reporting requirements, responsibility and accountability

Start up and Project team

- Identify key stakeholders (internal & external)
- Clear lines of responsibility & accountability
- Appropriate resourcing: skill sets & time
- Set objectives

Business Mapping & Gap Analysis

- Business mapping – what's in scope
- Gap analysis – areas of business compliant with equivalent provisions (e.g. PROD, COLL) – NB re-verify can evidence
- Identify where more data/research required (e.g. from distributors and customers) & obtain
- Prioritise by risk to consumers / changes which will have greatest impact

Deliverables

- Identify deliverables on key changes to governance arrangements (internal & external), processes, policies and customer journeys to implement findings of gap analysis & map to Outcomes
- Assign workstreams and workflow tasks
- Set out key risks to deliverables, calibrate and mitigate

Implementation plan outline (2)

Set out key milestones, objectives, internal reporting requirements, responsibility and accountability

Design + develop + test

- Design changes required – map to risks & deliverables & Outcomes
- Consider extent to which need to conduct internal/external testing (e.g. consumers) or further research
- Identify and build in engagement with external stakeholders e.g. distributors

Implement

- As per change control processes
- Embed processes – communication and training: staff and key stakeholders (including external)
- Compliance testing

Governance

- Full audit trail of assigned tasks, what was done and by whom, what was noted, what changed, rationale for changes, evidence relied upon, risks identified, calibrated and mitigated
- Boards (or equivalent management bodies) to maintain oversight and ensure plans remain on track and that work to review compliance with the Duty is sufficient to meet standards

Initial planning stages

Approach

- FCA recognises implementation plans will be iterative
- A living document
 - Appropriately identified involvement of key internal and external stakeholders (including consideration of your distribution chain)
 - Identify key objectives
 - Keep updated, identify key risks and priorities, monitor, mitigate and revise
 - Clear lines of responsibility and accountability – terms of reference
 - Regular reporting to and discussion by the Board during the implementation period and on the occasion of each milestone

What are your aims?

- Ensure the firm can demonstrate and evidence that it has taken a proportionate approach
- Implementation programme will ultimately inform how the firm can evidence delivery of good outcomes for customers and the framework for undertaking testing and monitoring that will in turn inform the regular (*at least* annual) Board assessments

Setting objectives

- Demonstrate to FCA understand what the Consumer Duty means to your Firm – be able to articulate:
 - What good outcomes means for your customers at each stage of the product and service lifecycle
 - How this is embedded in the heart of the business – from high level strategy, to product governance, post sales support, complaints handling and people policies
 - And how this is tested, monitored, evidenced and reviewed.....

Sample objectives

- Culture of prioritising good outcomes for customers
- Suitable products and services
- Suitable treatment – reduction in complaints, higher satisfaction levels
- Delivering fair value
- Increased consumer confidence
- Creating good environments for informed decision making
- No exploitation of behavioural biases (e.g. inertia) or unreasonable barriers
- Meeting customer reasonable expectations
- Providing helpful and accessible consumer support
- Helping customers realise the benefit of products and services
- Making it easy for customers to compare and switch or cancel products
- Catering for real and diverse needs of customers

Cross-check your plans against the Summaries at the end of each chapter in FG22/5

Set key milestones

- Imperative work back from implementation dates – NB manufacturers effectively have an earlier implementation date: April 2023
- Ensure have demonstrably built in sufficient time at each stage to ensure meet deadlines
- Prioritise the areas that will have the greatest impact / are of the highest priority

Project team & governance

Who should be involved?

- Identify who is responsible for and who is accountable for implementing the Duty within the firm
- Consider the full product lifecycle and governance structures
- Identify a Consumer Duty champion if possible, an INED, at Board or equivalent level as per FG22/5
- Identify other key stakeholders, internal and external:
 - Who will need to be kept informed?
 - Who will need to be consulted?
 - Will implementation require further research, evaluation and testing – who will do this?
- Ensure team appropriately resourced and empowered: skill sets, knowledge, seniority, time
- Consider a steering group and sub team structure

Senior Management/Board Oversight

- SMFs accountable for delivery within their own area of responsibility
- Board as a whole responsible for assessing compliance with the Duty
- Have the Board and SMFs received the necessary training?
- Consider what MI will be reported to enable oversight & schedule regular reporting
- Maintain regular oversight, review, assess and challenge throughout implementation period (& beyond)
- Maintain records
- FCA: *'Where actions to bring up to Consumer Duty standards can be completed more quickly than the implementation deadlines, firms should consider doing so, to improve consumers more quickly'*
- Note – some Supervision teams treating firms as though already in force

Business Mapping & Gap Analysis

Business Mapping

- Which of your products/services are subject to the Duty and which (if any) are not?
- Are you conducting any 'ancillary activities'?
- Where do you sit within the distribution chain?
 - Could you be a manufacturer?
 - Do you outsource any activities?
- How much influence do you have over retail customer outcomes?
- How will you determine what a 'proportionate' approach means to your firm?

Gap Analysis

- Where can you rely on existing Handbook provisions i.e. PROD & COLL?
 - NB if you can rely, you should verify that you are compliant, that you can evidence compliance and that you have ongoing monitoring in place
- Where else do you believe you are already achieving good outcomes:
 - How can you evidence this?
 - Do you monitor outcomes?
 - Do you have a process of regular challenge and review?
 - Is this fed back into the design and delivery of products and services?
- Where could you make the greatest impact on customer outcomes – identify priority issues

Deliverables

Products & Services Governance Processes (1)

For each product/service, consider and document:

- What is your role?
 - Manufacturer only?
 - Co-manufacturer?
 - Execution only distributor?
 - Advisory distributor?

- Where indirect customer relationship?
 - To what extent can you influence customer outcomes? Is this a 'material influence'? How have you determined what is 'material'?
 - How might that role/influence change at different stages in the customer journey?

- How are target markets identified and kept under review?
 - What do you know about their resources, financial capability or sophistication, could it include vulnerable customers?
 - Have you identified with enough granularity? More niche/complex – greater the granularity
 - Have you identified which groups will not be compatible with and why?
 - Do associated features make incompatible with target market e.g. charging structures where low investment sum?

Products & Services Governance Processes (2)

For each product/service, consider and document:

- Customer needs and expectations:
 - What is the customer need your product is aiming to meet?
 - How are you currently assessing at the design stage whether the product or service will meet the needs of target customers? And how are you testing that it actually does in practice?
 - Have you identified customers' likely (reasonable) expectations from the product or service: costs, risks, benefits, and operation?
 - How have you assessed if this matches actual customer expectations? Are you meeting those expectations? How do you monitor this?

- Products
 - How risky is the product?
 - How complex is the product?
 - Key features
 - Ability to predict performance / outcomes
 - Layered charging structures
 - What is the relative value to customers v. total cost – including specific options where subject to separate fees and charges
 - How do you determine where a 'significant adaptation' is made? Does this trigger a refresh of governance approval?

Products & Services Governance Processes (3)

For each product/service, consider and document:

- Is the distribution strategy suitable to the target market? How do you know distribution strategies are aligned to target customers? What controls are in place? Are you monitoring this?
- Do you conduct DD on distributors – consider updating to include the Duty
- Do you have in place co-manufacturer and distribution agreements? Do these include the necessary content? E.g.
 - Clear allocation of responsibilities
 - Co-ordination / co-operation across the chain
 - Governance arrangements such as information sharing and monitoring outcomes, ongoing reviews of products, provision of MI and reports, regular reviews/meetings, dispute resolution etc
 - Timely notifications
 - Provisions where remedial steps not actioned
 - Mechanisms to address issues during the product lifecycle

Outsourcing

- Which services are currently outsourced?
- How does that outsourcing impact on customer outcomes?
- How are you currently monitoring your outsourced service provider?
- Do you require further MI in order to monitor compliance with the standards of the Duty?
- What contracts are in place with your outsourced service providers? Do you need to make changes to ensure appropriate service standards, information flows etc.?

Price & Value

- How are you assessing 'value' and are you delivering 'fair value' to target customers? Benefits and costs may not be limited to financial
- Are you actively monitoring whether products or services continue to offer fair value for a 'foreseeable period'? How have you determined 'foreseeable period'?
- Do charges represent fair value to different groups of customers? Can any differences be objectively justified?
- How easy is it for the customer to understand the charging structure; is it complex, opaque, layered? Can customers assess the true lifetime cost? Is there a risk they could have unrealistic expectations regarding the potential benefits?
- Can customers easily assess and compare with other products and services the 'true' cost and benefits across the product or service lifecycle?
- Review FCA findings: *Investment platforms costs and charges review – good and poor practice – May 2022*



Consumer Support

- Does your customer service meet the needs of your target customers? How have you evaluated this?
- How are you helping customers get the full benefit from products and services?
- What communication channels do you offer and are they suitable for your customers?
- Have you identified any undue friction points/sludge practices across each stage of the customer journey that may cause customers to disengage/hinder access?
- Have you considered how processes could be streamlined and simplified where unduly time consuming for customers?
- Are you monitoring customer use and uptake of product benefits and if this is in line with expectations? Are you adequately analysing your complaints data? Are particular groups of customers being disadvantaged?
- How do employee incentives align with continued good customer service after the point of sale?
- Can you evidence your assessments?

Customer Understanding

- Applies before, during and after point of sale. Includes interactions between retail customers and the firm *that don't relate to a specific product*
- What do you know about what your customers are reading and when? An opportunity to streamline
- Is the content and format of communications tailored to different channels?
- How are you dealing with technical and complex information to make it understandable *and relatable*?
- Are you giving customers enough time to reflect and consider their options?
- Have you built in touch-points at appropriate intervals to check if customer needs support in understanding?
- Which more critical communications need consumer testing? **where there is potential for consumer harm - proportionality:**
 - Purpose of information
 - Potential impact on customers
 - Distribution channel – advised/non-advised
 - Likely recipients and capability

Customer Journeys & Behavioural Science

- Have you mapped and audited your customer journeys from start to finish? Have you aligned this to customer feedback?
- Are there areas where 'sludges' may be contributing to poor outcomes? Are there areas where 'nudges' or positive friction could improve outcomes?
- What do you know about your target market and why and how they are actually engaging with your firm/products in practice? Are different groups being affected differently? What do you know know about when they stop or give up?
- What do you know about your customers' behavioural biases when purchasing and utilising your products/services? Are there systems/processes etc that exploit these biases and may hinder good outcomes? (e.g. inertia)
- Does your target market include vulnerable customers? Are you taking account of their needs in the customer journey?

SM&CR: New Individual Conduct Rule 6

Identify:

- Which SMF(s) are responsible for implementation of the Duty in each area of the business
 - update statements of responsibilities (if required) and provide guidance on reasonable steps
 - Refresh delegation frameworks
- Governance processes, leadership and people policies that will need to be updated to reflect the Duty, including remuneration
- Which staff/roles/business areas have the greatest scope to impact customer outcomes
- Staff will require training on the Duty/their new responsibilities under COCON, and what does that training need to cover (taking into account their roles)?

In conclusion

Final notes

Reflect on the overall objectives of the Duty as well as compliance with the Principle, Cross-cutting rules, and Outcomes

Remember it applies across the whole product lifecycle

Be able to articulate what 'good outcomes' mean for customers at every stage of the journey and how seek to achieve

Consider how record rationale for changes

FCA expects to identify possible areas for redress and to be notified where products/services withdrawn due to the Duty



Next Steps

- Don't leave it too late
 - FCA expects firms to use the implementation period fully and to be able to demonstrate progress when asked
- Take the opportunity to identify issues for resolution
 - FCA has said it will look to engage with firms and trade bodies to answer questions and discuss issues they raise during the implementation period
- Don't underestimate the extent of the work involved
 - Build in adequate time for design, development and testing
 - Duty includes a strong emphasis on assessment and evidencing of customer outcomes
- Keep up to date
 - FCA will be publishing regular updates on its work with firms and publishing further guidance and case studies
- Notify FCA
 - If intending to withdraw products / services due to the Duty



Questions

Contacts



Elisabeth Bremner
Partner

T +44 20 7367 3356
E Elisabeth.Bremner@cms-
cmno.com



Pipper Tasker
Partner

T +44 20 7367 3411
E Pippa.Tasker@cms-
cmno.com



Alison McHaffie
Partner

T +44 20 7367 2785
E Alison McHaffie@cms-
cmno.com



Aidan Campbell
Partner

T +44 141 304 6112
E Aidan.Campbell@cms-
cmno.com



Sarah Brook
Senior Associate

T +44 20 7367 3424
E Sarah.Brook@cms-
cmno.com



Your free online legal information service.

A subscription service for legal articles
on a variety of topics delivered by email.
cms-lawnow.com

The information held in this publication is for general purposes and guidance only and does not purport to constitute legal or professional advice.

CMS Legal Services EEIG (CMS EEIG) is a European Economic Interest Grouping that coordinates an organisation of independent law firms. CMS EEIG provides no client services. Such services are solely provided by CMS EEIG's member firms in their respective jurisdictions. CMS EEIG and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS EEIG and each member firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term "firm" are used to refer to some or all of the member firms or their offices.

CMS locations:

Aberdeen, Abu Dhabi, Algiers, Amsterdam, Antwerp, Barcelona, Beijing, Beirut, Belgrade, Berlin, Bogotá, Bratislava, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Dubai, Duesseldorf, Edinburgh, Frankfurt, Funchal, Geneva, Glasgow, Hamburg, Hong Kong, Istanbul, Johannesburg, Kyiv, Leipzig, Lima, Lisbon, Ljubljana, London, Luanda, Luxembourg, Lyon, Madrid, Manchester, Mexico City, Milan, Mombasa, Monaco, Moscow, Munich, Muscat, Nairobi, Paris, Podgorica, Poznan, Prague, Reading, Rio de Janeiro, Rome, Santiago de Chile, Sarajevo, Seville, Shanghai, Sheffield, Singapore, Skopje, Sofia, Strasbourg, Stuttgart, Tirana, Utrecht, Vienna, Warsaw, Zagreb and Zurich.

cms.law