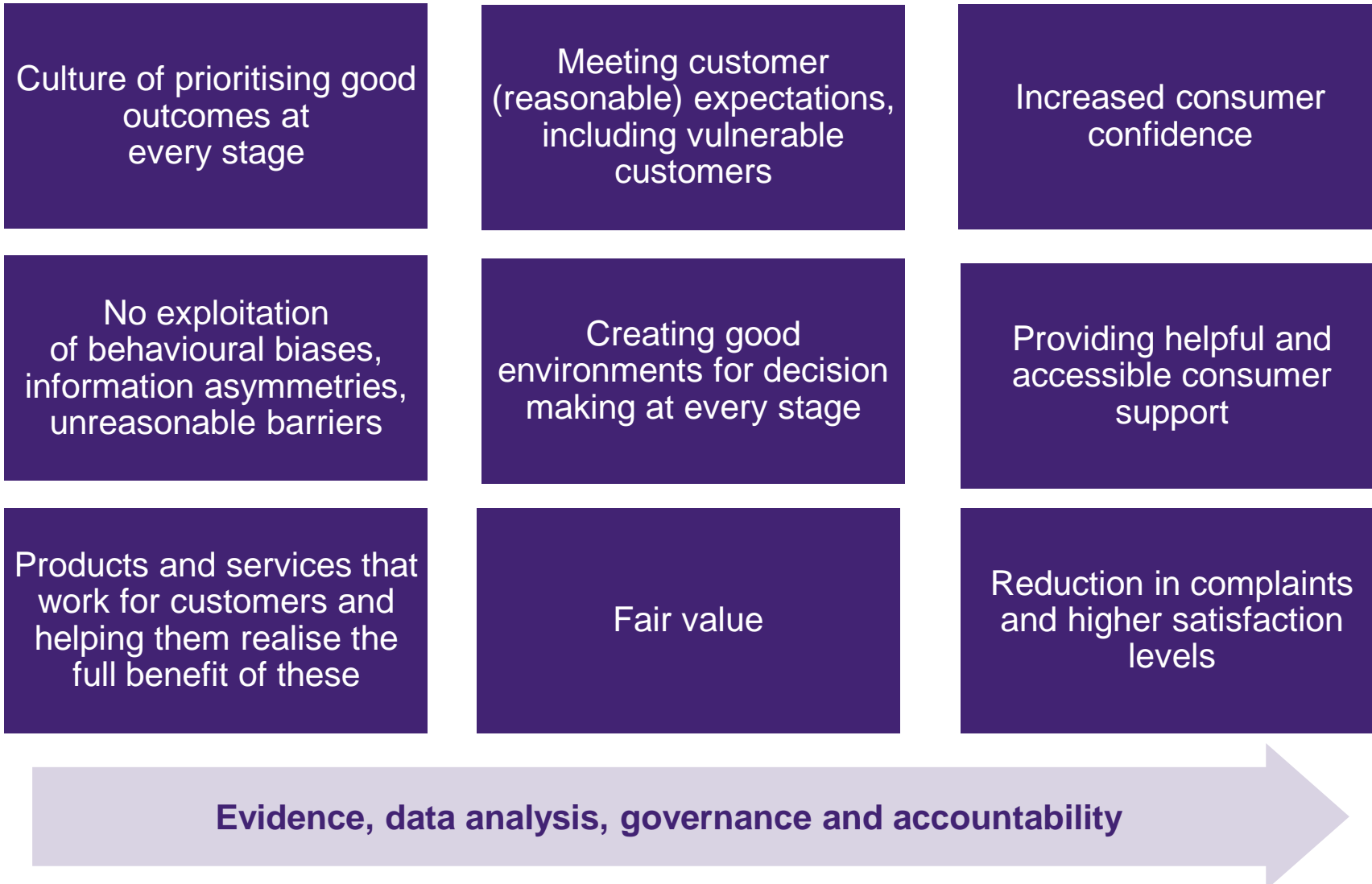


Consumer Duty Toolkit

Board Reports

Key objectives

Key objectives of the Consumer Duty



Implementing the Duty

1. Governance

- Embed in firm business strategy and culture
- Senior management accountability
- Governance, controls and processes: existing products, new products & significant changes / withdrawal – ongoing monitoring of outcomes & root causes
- Risk & internal audit
- People policies, remuneration & incentives

2. Business Mapping

- Regulated activities in the UK
- Retail customers in the chain
- Any exemptions under retail market business
- Manufacturer, Co-manufacturer, or Distributor
- Material influence on customer outcomes – does this change at different stages of the journey?

3. Good outcomes

- Map retail customer touchpoints
- Determine what 'good' outcomes look like
- How influence and in which business areas
- Proportionality assessment
- Risks and mitigants
- How implement & evidence

4. Products & services

- Manufacturer/Distributor DD
- Product DD: Complexity, risk, target markets, customer needs, scenario testing
- Distribution chains: accountabilities & information flows

5. Price & value

- Processes to assess fair value – different cohorts
- Determining foreseeable period
- Benchmarking
- Complexity & transparency

6. Consumer understanding

- Processes for appropriate testing
- Purpose of information
- Potential impact on customers
- Distribution channel – advised/non-advised
- Likely recipients and capability

7. Customer support

- Understanding & evaluating needs
- Understanding behavioural biases
- Creating environment for good decisions

8. Monitoring & remediation

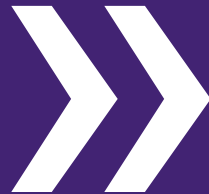
- Ongoing monitoring 4 Outcomes & other data sources
- Processes to adapt and change products/practices to address (or withdraw)
- Identifying where remedial action/redress required – avoiding foreseeable harm



Senior managers



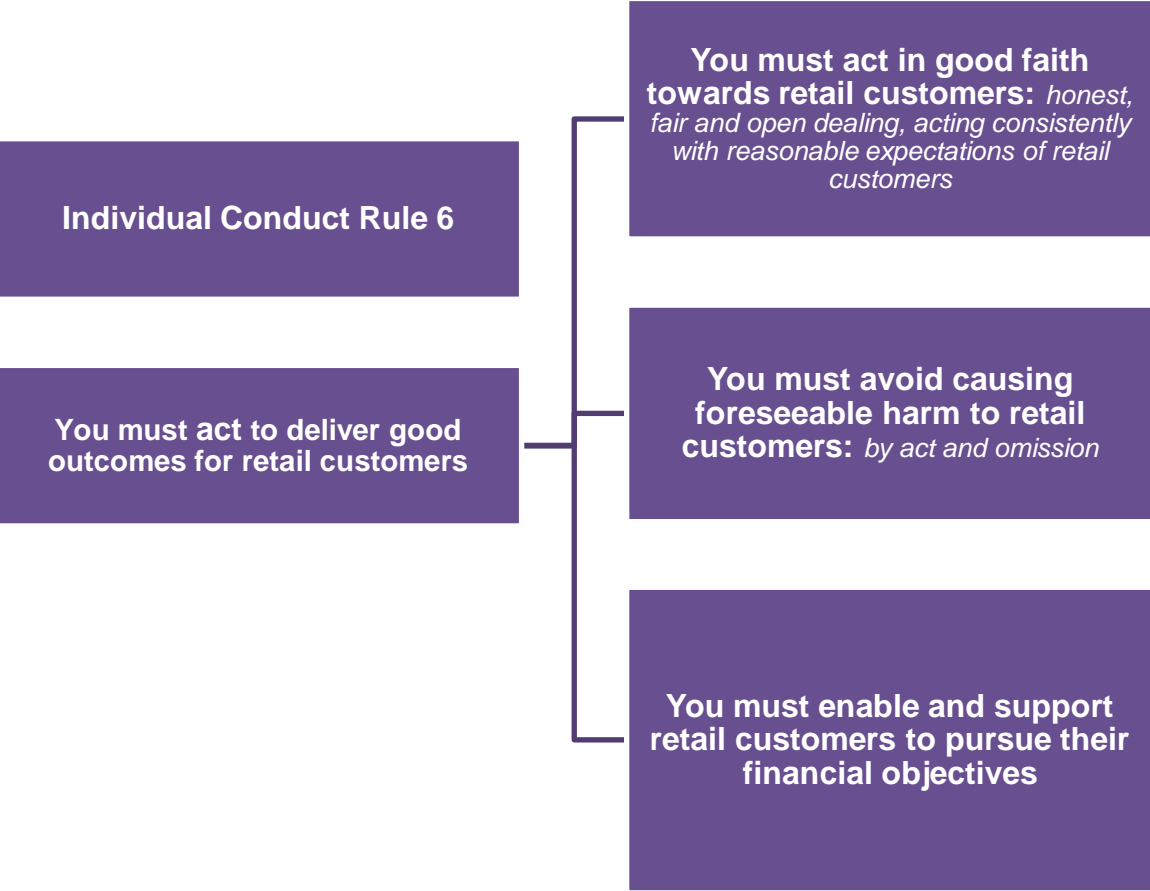
“Every senior manager should be clear about what they are responsible and accountable for, and how they are ensuring that the business of the firm complies with the requirements of the Duty on an ongoing basis.”



“A firm’s board or equivalent governing body is responsible for ensuring that the Duty is properly embeddedand we will hold senior managers accountable through the Senior Managers and Certification Regime”

FG22/5, Chapter 10

Individual Conduct – Rule 6



Applies regardless of whether the person has direct contact or dealings with retail customers

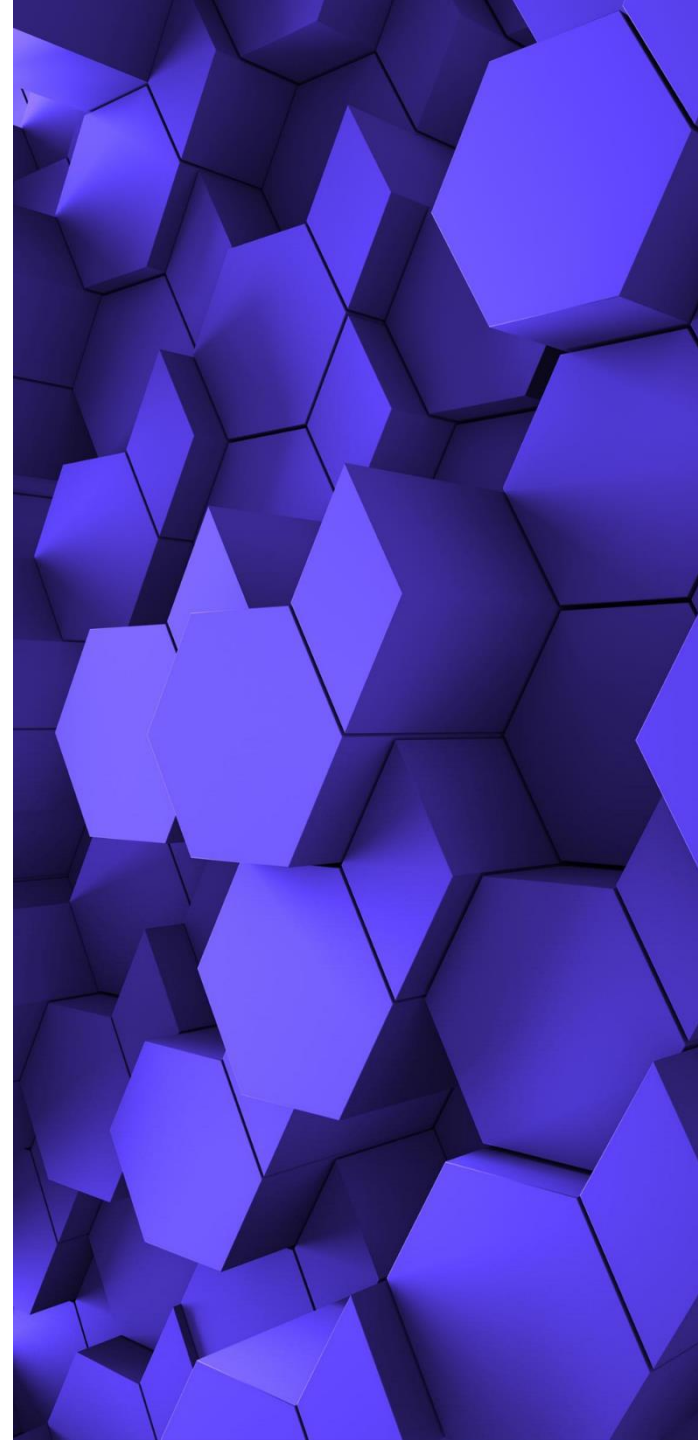
More relevant the role and the more senior the person, the more FCA will expect

Performs duties in their business area in a way that ensures good customer outcomes – at every stage

Considers how their area of responsibility fits into the firm’s overall processes for ensuring good outcomes

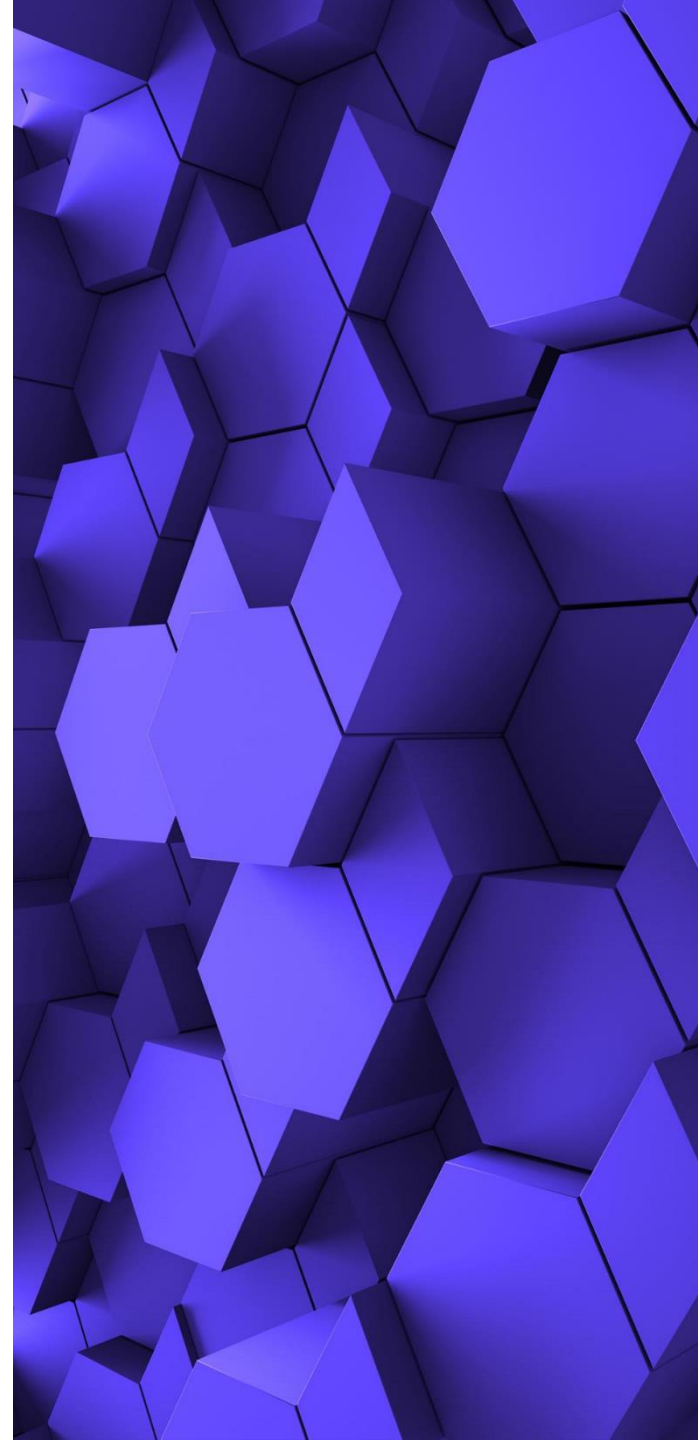
Reasonable steps – how to comply with Senior Manager Conduct Rules 2&3

1. Be aware of regulatory requirements and wider environment
2. Investigate and review your area of responsibility
3. Implement, police and review appropriate policies
4. Structure and control day-to-day operations, managing delegations
5. Obtain and monitor appropriate internal management information
6. Raise issues and follow them up



Reasonable steps – how to comply with Senior Manager Conduct Rules 2&3

- 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 of actions, initiatives, decisions and remedies
- 12. Keep a proper record of what you hear, say and do



Governance

Governance



Implementation

Duty to be reflected in firms':

- Business strategies
- Governance, controls and processes
- Leadership
- Culture
- People policies, training, incentives and remuneration



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



Board

- Board responsibility to assess whether firm delivering 'good outcomes'
- Be able to evidence that it has considered whether the firm's strategy is aligned to good outcomes
- At least annually: firm compliance assessments and reporting to Board
 - Results of monitoring
 - New and emerging risks
 - Evidence of poor outcomes, impact evaluation and assessment of root causes
 - Actions taken to address
 - How business strategy is consistent with acting to deliver good outcomes
- Board to agree and sign off:
 - Actions to address identified risks
 - Actions to address poor customer outcomes
 - Any changes to firm's future business strategy



Consumer Duty Champions

- Support Chair and CEO in raising Consumer Duty regularly
- Challenge Board/Senior Management on how embedding Consumer Duty and focusing on consumer outcomes



FCA

- FCA may ask firms to demonstrate at every stage of regulatory lifecycle how business models, actions taken and culture are focussed on good outcomes
- Firm compliance assessments will be used by FCA to supervise firm's compliance
- May request Board report and MI that sits behind it

Board report

Before you get started

- Who will prepare the report?
- Who will review the report before submission to the Board?
- How will it incorporate input from all three lines of defence?
- How will it meet the needs of the Board in evaluating its approval of the report?
 - view as an internal governance tool and not simply an attestation of compliance – explain what is working well and what is not
 - should be outcomes driven and capable of being evidenced in the supporting data
 - explain any gaps in outcomes monitoring/data presented and how these impact the results
 - identify which aspects merit deeper level insights based on degree of risk to good customer outcomes
 - give context to the data – explain the basis on which monitoring data has been gathered and provide qualitative commentary with case studies to illustrate key points
 - consider how you may make use of peer benchmark data.
- Different treatments will be required depending on the complexity of the business, its products and services, its customers and role in the distribution chain. Each firm will be best placed to determine how to present information. You can organise by Consumer Duty rules, thematically according to outcomes, or by function. It may be helpful to include more detail in the first annual report to set the direction and provide explanation as to the initial effort.
- Should build on prior MI generation and reports across the year on customer outcomes monitoring – expect many firms to have been updating their Boards/Management Committees on a quarterly/monthly basis. Include annexures with detailed information and elevate key information and material findings to the body of the report.
- **Remember:** The FCA may ask to see the Board Report, along with the supporting data, as well as the Board minutes. These materials should be sufficiently robust and evidence a developmental mindset – how firms are focussed on customer outcomes, gaps they have identified and necessary actions to improve products and services. This means the report may flag areas of non-compliance or need for improvement. Be clear on this and demonstrate how these will be addressed and overcome.

Governance, culture and values

Section	Content
Executive summary	<ul style="list-style-type: none"> – Signpost recommendations that the Board may want to debate and key conclusions
Introduction	<ul style="list-style-type: none"> – What the report covers, who has been involved in preparing it, which committees have reviewed it – Assumptions and key limitations that apply to the analysis
Purpose & Values	<ul style="list-style-type: none"> – A statement on the firm's purpose and values and how this is incorporated in the firm's business strategies and aligns with the firm's obligations under the Consumer Duty
	<ul style="list-style-type: none"> – How the firm ensures that the interests of their customers are central to their culture and purpose and embedded throughout the organisation
	<ul style="list-style-type: none"> – Statement of commitment from the Board to delivering good outcomes to customers
Governance and Culture	<ul style="list-style-type: none"> – Overview of governance framework to ensure compliance with the Consumer Duty
	<ul style="list-style-type: none"> – Articulation of Board oversight responsibility and accountability for overseeing and assessing the firm's compliance with the Consumer Duty
	<ul style="list-style-type: none"> – Articulation of management level committees' responsibilities and accountabilities – clear documenting of delegations and approvals
	<ul style="list-style-type: none"> – How the firm ensures that individuals throughout the organisation – including those in control and support functions – understand their role in delivering the Consumer Duty
	<ul style="list-style-type: none"> – Ensuring appropriate policies and processes are in place and kept under review
	<ul style="list-style-type: none"> – How appropriate skill sets and adequate resources to deliver obligations under the Consumer Duty are reviewed and maintained
	<ul style="list-style-type: none"> – How delivery of good customer outcomes is embedded in people policies and reflected in the way staff are managed and rewarded
	<ul style="list-style-type: none"> – Inclusion of appropriate risk management systems to identify, assess, manage and remediate risk to Consumer Duty compliance, allowing for continual improvement
	<ul style="list-style-type: none"> – How compliance is assessed across the three lines of defence

Monitoring outcomes

Section	Content
Context	<ul style="list-style-type: none"> – Overview of range of customer cohorts for whom the firm is providing products and services e.g. range of knowledge and experience, vulnerabilities needs and objectives
	<ul style="list-style-type: none"> – Overview of the good outcomes the firm is seeking to deliver
	<ul style="list-style-type: none"> – Overview of the potential harms customers could be exposed to and steps taken to mitigate
	<ul style="list-style-type: none"> – Overview of actions taken prior to 31 July 2023 to embed the Duty
	<ul style="list-style-type: none"> – How external environmental factors during the period may have impacted customer circumstances and current/future needs and how the Firm has factored this into its assessment of good outcomes
	<ul style="list-style-type: none"> – Overview of regulatory expectations including any FCA guidance/ publications since 31 July 2023 that are relevant to in scope products and services
	<ul style="list-style-type: none"> – Overview of any interactions with the FCA on the Consumer Duty since 31 July 2023 – both sector letters and any direct communications between the FCA and the firm
Approach to monitoring	<ul style="list-style-type: none"> – Summary of monitoring activities during the year across the three lines of defence – Summary of how monitoring outputs are fed into the Board and other management committees
Delivering appropriate MI	<ul style="list-style-type: none"> – Overview of the approach taken to developing effective MI – outcomes metrics and risk indicators – How the firm ensures an appropriately broad range of data is built into the MI framework and covers different points of the customer journey – How MI includes sufficiently qualitative as well as quantitative data – ensuring meaningful insights – Approach to review and assessment of MI including reporting to the Board and relevant management committees and how it is acted upon
Reporting on customer outcomes achieved in the year	<ul style="list-style-type: none"> – Summary of outcomes achieved aligned to the Cross-Cutting Rules and the Four Outcomes – Consider distribution of outcomes across different segments e.g. by customer characteristics – including specifically vulnerable customers; by product usage/persistence; by stage of the customer journey – Include trend analyses – Evidence how the MI supports/aligns with results reported. If there were limitations to information gathering, state this as it will help to contextualise the particular finding to which the MI relates. – Note FCA is anticipating a process of continuous improvement – so where reporting is all ‘good’, challenge the basis for this – it is unlikely firms will be achieving 100% ‘good’ across the board

Emerging risks

Section	Content
Outcomes monitoring	<ul style="list-style-type: none">– Identify any gaps in the delivery of good outcomes/risk of poor outcomes to customers, or particular cohorts of customer– Explain and evidence where the firm considers that different outcomes for distinct customer cohorts is compatible with the Consumer Duty
Foreseeable harm	<ul style="list-style-type: none">– Identify any actual or potential indicators of foreseeable harm that could be caused to customers – financial and non-financial
Root causes	<ul style="list-style-type: none">– Evaluation and assessment of root causes of poor outcomes
Business strategy	<ul style="list-style-type: none">– Assessment of how any future business strategies may impact future compliance with the Consumer Duty e.g. significant changes to existing products and services, changes in distribution chains, launch of new products and services, withdrawal of products and services
External environmental factors	<ul style="list-style-type: none">– Identify any external factors that may impact future compliance with the Consumer Duty and delivery of good outcomes e.g. the economic climate, changes in regulatory expectations, political and legislative changes

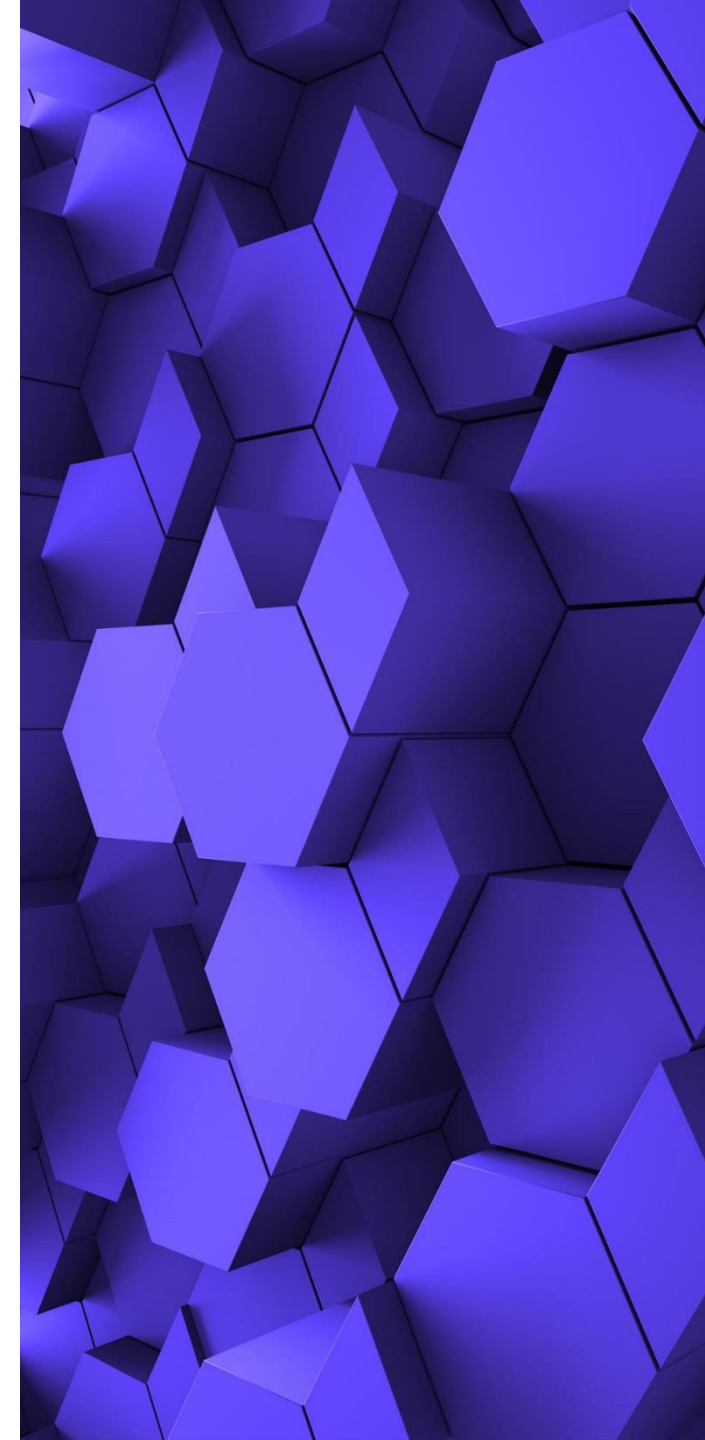
Remedial actions

Section	Content
Action points	<ul style="list-style-type: none">– Set out specific steps being taken to tackle gaps in delivery of good outcomes to customers and/or particular customer cohorts, and explain how these will address root causes identified e.g.:<ul style="list-style-type: none">• Adapting, amending or discontinuing a product/service• Adapting product or service design, delivery channel, fees or charges• Upskilling staff resources• Making changes to the firm’s operations, policies and procedures• Updating customer support processes and modifying customer communications and contact channels• Making improvements to the generation of MI– State the outcomes the firm expects to see as a result of these changes and how the effectiveness of these action points will be measured and monitored
Prioritisation	<ul style="list-style-type: none">– Ensure clear prioritisation of actions to mitigate foreseeable harm to customers with clear accountability and timeline for delivery
Customer redress	<ul style="list-style-type: none">– Overview of redress offered/made where customers have suffered harm (including financial and non-financial redress)

Board attestation

Before submitting the Board attestation

- Ensure clear and thorough supporting papers presented and strong minutes of discussion and challenge
- Identify if any gaps in data that need to be addressed or caveated
- Review and ensure improved revenue and profitability is not driven by client behaviours or decisions that are not aligned to the delivery of good outcomes
- Identify if any changes required to firm's future business strategy
- Review FCA guidance, including:
 - Key questions for firms: Culture and Governance, Customer Outcomes: section 10.15 FG22/5 [FG22/5: Final non-Handbook Guidance for firms on the Consumer Duty \(fca.org.uk\)](#)
 - FCA 10 Key Questions: [One month to go for the Consumer Duty | FCA](#)
 - Inside FCA Podcast: Explaining Consumer Duty outcomes monitoring: [Inside FCA Podcast: Explaining Consumer Duty outcomes monitoring | FCA](#)
 - Portfolio and sector communications: [Consumer Duty resources | FCA](#)
 - Consumer Duty implementation: good practice and areas for improvement: [Consumer Duty implementation: good practice and areas for improvement | FCA](#)



Board attestation

Board Attestation	Content
Approval of assessment	– Board to review and approve assessment of whether the firm is delivering good outcomes for its customers, consistent with the Consumer Duty
Risk mitigation	– Board to review and sign off agreed actions to address identified risks to delivery of good outcomes
Poor customer outcomes	– Board to review and sign off agreed actions to address poor customer outcomes
Business strategy	– Board should consider if the business strategy is consistent with the delivery of good customer outcomes and state how the firm's future business strategy is consistent with its obligations under the Consumer Duty

Contact details



Elisabeth Bremner

Partner
CMS London
Tel: 0207 367 3356
Email: elisabeth.bremner@cms-cmno.com



Alison McHaffie

Partner
CMS London
Tel: 0207 367 2785
Email: alison.mchaffie@cms-cmno.com



Pippa Tasker

Partner
CMS London
Tel: 0207 367 3411
Email: pippa.tasker@cms-cmno.com



Sarah Brook

Partner
CMS London
Tel: 0207 367 3424
Email: sarah.brook@cms-cmno.com



Cassandra Heugh

Senior Associate
CMS London
Tel: 0207 367 2062
Email: cassandra.heugh@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. It was prepared in co-operation with local attorneys.

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; details can be found under "legal information" in the footer of cms.law.

CMS Locations

Aberdeen, Abu Dhabi, Amsterdam, Antwerp, Barcelona, Beijing, Belgrade, Bergen, Berlin, Bogotá, Bratislava, Brisbane, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Cúcuta, Dubai, Dublin, Duesseldorf, Edinburgh, Frankfurt, Funchal, Geneva, Glasgow, Gothenburg, Hamburg, Hong Kong, Istanbul, Johannesburg, Kyiv, Leipzig, Lima, Lisbon, Liverpool, Ljubljana, London, Luanda, Luxembourg, Lyon, Madrid, Manchester, Maputo, Mexico City, Milan, Mombasa, Monaco, Munich, Muscat, Nairobi, Oslo, Paris, Podgorica, Poznan, Prague, Reading, Rio de Janeiro, Riyadh, Rome, Santiago de Chile, São Paulo, Sarajevo, Shanghai, Sheffield, Singapore, Skopje, Sofia, Stavanger, Stockholm, Strasbourg, Stuttgart, Tel Aviv, Tirana, Vienna, Warsaw, Zagreb and Zurich.