

FCA – a new Consumer Duty

Implementation toolkit – how we can help firms

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Final Rules – what's changed?

On the whole, there have been very few changes in the final rules.

The key changes are:

- » A requirement for firms to notify FCA if they become aware that another firm in the chain is not complying with the Duty, and to notify other firms in the chain if it thinks they have caused, or contributed to, harm to retail customers.
- » New rules requiring regulated firms buying books to gather relevant information from the seller to be able to comply with the Duty.
- » Confirmation that firms complying with certain existing rules will not also be subject to rules under the Products and Services and Price and Value outcomes e.g. PROD and COLL.

- » New rules supplementing the DISP sourcebook, which require firms to proactively consider whether remedial action is appropriate if they identify that customers have suffered harm – including providing redress.
- » A requirement for the Duty to be reflected in firms' strategies, governance, leadership and people policies, including remuneration, and new guidance that firms should identify a Consumer Duty 'champion' at board (or equivalent) level.

Following the consultation FCA has introduced additional guidance on several aspects of the Duty, including its application to different parties in the distribution chain, its application to wholesale markets, what is meant by 'ancillary activities', and firms' approaches to reviews of closed books.



Implementation Timetable

After push-back from industry on the 9 month implementation period originally proposed, FCA has confirmed the following timetable:

- » **By 31 October 2022** – boards (or equivalent bodies) should have agreed their implementation plans and be able to evidence that they have been thoroughly scrutinised and challenged.
- » **By 30 April 2023** – manufacturers should have completed their reviews of existing open products, and have shared key information with distributors in order to enable all firms to comply in time.
- » **By 31 July 2023** – firms are to comply with the Duty in respect of new and existing products and services that are open to sale or renewal.

- » **By 31 July 2024** – firms are to comply with the Duty in respect of all closed books.

Although the extension of the original deadline will be welcome (particularly in respect of closed books), these will nevertheless be very challenging timescales. Firms will need to prioritise their reviews, focusing first on those products and services that pose the most potential risk or will have the biggest impact on customer outcomes. FCA expects any serious customer detriment identified during reviews to be remediated promptly. Any firms considering withdrawing products due to the Duty will be expected to engage with FCA during the implementation period.

FCA will be communicating with firms during the implementation period, highlighting feedback and common issues, and publishing research and examples of good and poor practice to help firms to understand its expectations. Firms can expect to be asked to share their implementation plans, board papers and minutes with FCA supervisors and be challenged on their contents.

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.



How we can help

What is involved in complying with the Consumer Duty will vary by sector, by firm and by the role the firm has and its relationship (direct or indirect) with consumers.

But for all firms to which it applies, the Duty represents a change in regulatory expectations and requires firms to go beyond the current Principles and Rules in putting the retail customer experience at the heart of their business and culture.

Now that the implementation period has been finalised, FCA expects firms to make full use of the time available to implement and embed the new rules. All firms have work to do to ensure they are complying with the new standard and can evidence this. Click on the tiles on the following page to see how CMS can help your business prepare for the new regime.



FCA will be focusing on the outcomes customers experience.

Firms need to *assess and evidence* how they are acting to deliver good outcomes.

Business Mapping

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Next steps

Business Mapping

The first stage will be an assessment of which areas of your business, products and services are subject to the Duty.

Firms conducting retail market business, including those with no direct relationship with retail customers, will need to assess carefully the nature of their products, their customer base and where they fit within wider distribution chains in order to work out whether and how the Duty applies. The Duty applies proportionately to firms through the distribution chain, requiring a degree of judgement. Firms will also need to consider the application of the Duty not only to new and existing products and services, but also to closed books.

The scope of the new rules may be particularly complex for sectors such as wealth management, where the application of relevant exemptions requires detailed analysis.



The Consumer Duty will apply proportionately, taking account of the firm's role in relation to the product or service, the nature of the product or service and the characteristics of consumers.

Business Mapping

- » What is “**retail market business**” in your firm?
- » What is the **territorial scope** of the Duty within your business?
- » To **which customers** does the Consumer Duty apply?
- » Indirect relationships: do you influence “**material aspects**” of:
 - » the design, or
 - » target market, or
 - » performance or operation or price and value of a retail product/service, or
 - » preparing and approving retail customer communications or
 - » customer support for retail customers?
- » Are any unregulated activities in scope i.e. “**ancillary activities**” connected to a regulated activity carried on by a firm in the same distribution chain?
- » What does a “**proportionate**” application look like for your business?
- » **Alignment** – are there areas of your business where your obligations under the Consumer Duty could be hindered by compliance with other FCA Rules or consumer legislation?



We can help you to map your business and establish if, and how, the Duty applies to you.

SM&CR: New Individual Conduct Rule 6

Firms need to embed the Consumer Duty in the day-to-day operation of their business and through the whole product and service lifecycle, making good customer outcomes central to their culture.

The Duty will be supported by the SM&CR. A new COCON rule will apply to all conduct rules staff, regardless of whether they have direct dealings with retail customers.

Senior managers will be accountable for delivering good consumer outcomes within their areas of responsibility and should also

consider how this fits into the firm's overall compliance.

Boards will be responsible for assessing whether the firm is meeting its obligations under the Duty and should require and review reports (at least annually) on whether the firm is delivering good outcomes and agree on any remedial action required. The Duty must be reflected in strategies, governance, leadership and people policies (including incentives at all levels), so firms will need to review their documentation and remuneration arrangements. Firms should have a 'champion' at board (or equivalent) level to ensure, along with the Chair and CEO, that the Duty is discussed regularly and raised wherever relevant.

FCA will expect firms to provide training on the new rules to all relevant staff, and to refresh training and development where necessary on an ongoing basis.



The more senior a person is and the more relevant their role is to the Duty, the more FCA will expect of them.

All senior managers should be concerned with ensuring that the business of the firm complies with the requirements of the Duty on an ongoing basis.

SM&CR: New Individual Conduct Rule 6

- » **Mapping** – we can help you identify which staff roles are likely to carry greater responsibility for compliance with the Duty.
- » **SMFs** – we can review how their area of responsibility fits into the overall systems and processes of the firm to comply with the Duty, and update statements of responsibilities and responsibilities maps.
- » **Reasonable steps** – individual conduct obligations are underpinned by a concept of *reasonableness* – we can provide guidance on what this looks like in different contexts and review oversight frameworks.
- » **Training** – we can provide suitably tailored training on the new Duty to Boards (including the firm's 'champion') and other relevant staff.
- » **Governance materials** – we can assist you in updating your firm's strategies, governance and leadership policies.
- » **SM&CR materials** – we can assist you in updating your internal guidance, policies and procedures.
- » **Incentives** – we can assist you with reviewing your remuneration and incentive arrangements to ensure they are consistent with the Duty.



We can advise on the application of the COCON rules to your business, help update your internal policies and procedures and provide training to staff and senior managers on the new Duty.

Products & Services Governance Processes

The Products and Services outcome will apply proportionately, depending on a firm's role in the distribution chain, the nature of the product or service and the risk of harm.

Firms that are already meeting sector-specific product governance requirements in PROD, will not be subject to both the Duty's Products and Services outcome and PROD. For all other firms, the Consumer Duty introduces new standards for product design and distribution.

Manufacturers will need to thoroughly understand their target market, appropriately test their products and services, make sure distribution is appropriate and consider on an ongoing basis whether changes are needed to meet customer needs. Distributors will need to ensure they consider the needs, characteristics and objectives of the product and target market, ensure distribution is appropriate and share information across the distribution chain.

Where a firm is selling a business book in future, it will need to provide the information to the purchasing firm that it needs to enable it to comply with the Duty.



The Duty applies to existing products and services, to any new products and services launched, and to any significant changes a firm plans to make to existing products or services.

Whether a change is 'significant' depends on the potential impact on consumers.

Products & Services Governance Processes

- » **Interpretation** of the Duty – firms will need to determine what “good outcomes” means for their products and services – we can assist you in benchmarking your approach.
- » **Evidencing** – we can advise you on documenting the rationale for your decision-making in the application of the Duty: how you will apply it to new products and how you will make revisions to existing products and services, and the criteria for determining when a “significant change” occurs.
- » **Testing** – we can advise you on the appropriate level of testing for your products and services and interpreting the outcomes of that testing.

- » **Distribution and co-manufacturer arrangements** – we can review your agreements and advise you on changes that may need to be made to ensure:
 - » appropriate allocation of responsibilities
 - » ongoing monitoring and notifications
 - » routine information sharing requirements
 - » provisions on responding to different scenarios e.g. an FCA enquiry, customer complaints and root cause analysis – ensuring access to ad hoc information
 - » requirements to co-operate and cease or adapt products and services, target markets, distribution etc where there is a risk of the Duty not being met
 - » sufficient protection is in place for the parties



We can advise on what exactly these requirements mean for your business, at what points you need to apply them, and how to evidence compliance and make sure you're prepared.

Price & Value

The Price and Value outcome requires firms to focus on delivering fair value. Firms must assess the relationship between the price the consumer pays and the overall benefits of the product.

“Value” means more than just the price. The offering as a whole needs to represent fair value, taking into account all the financial and non-financial benefits a product offers or doesn’t offer. And it means not exploiting behavioural biases or customer inertia.

You will need to consider whether your product or service will continue to offer fair value for a “foreseeable period”, ensure customers can understand, assess and benchmark costs and charges, and be able to demonstrate to FCA what assessments you have done.

The Price and Value outcome will apply to all participants in the distribution chain.

In its finalised rules, the FCA has confirmed that firms that are meeting fair value rules set out in sector-specific sections of the handbook (including PROD 4 and parts of COLL) will meet the Price and Value outcome. Firms complying with the value rules in PROD 7 will also meet the outcome.



The Duty tackles factors that can result in unfair or poor value, such as unsuitable features that can lead to foreseeable harm or frustrate the customer’s use of the product or service, or poor communications and consumer support.



Price & Value

- » **Value assessments** – we have worked with clients in the insurance and asset management sectors on their fair value assessments and can use our experience to advise you on carrying out your assessments under the Duty.
- » **Evidencing** – we can advise you on documenting your approach to your value assessments and the rationale for determining which factors to include.

- » **Transparency** – we can provide guidance on the presentation of costs, fees and charges – providing clarity of the total cost and comparability.



We can advise firms on their approach to building and evidencing their value assessments and how the Price and Value outcome interacts with other aspects of the Duty.



Customer Understanding

The Duty sets a new, higher standard for customer understanding at every stage of the product or service lifecycle.

Firms must be satisfied their communications can be understood by target customers and equip them to make effective decisions.

Firms need to help customers navigate the data they provide – make it easy to find key information, and make communications engaging and relatable to customer circumstances. Focussing not just on the ‘what’, but the ‘when’ and the ‘how’.

For the first time, firms will be required to have processes to test customer understanding where

there is potential for consumer harm. Not just before and at the point of sale but also in after sales support.

They will need to consider how suitable their communications are for different channels and enable customer facing staff to tailor communications to individual needs when interacting one-on-one. One in seven adults have literacy skills at or below those expected of a nine-to-11-year-old and the FCA’s Financial Lives Survey found that 17.7 million adults (34%) have poor or low levels of numeracy involving financial concepts. But the readability of a document does not necessarily correlate with customer comprehension. Firms may want to explore other means of communicating important information that can aid customer understanding. Testing and evaluating customer comprehension is likely to be new to many firms but getting it right could bring considerable benefits to the firm itself as well as consumers.



FCA wants consumers to be given the information they need, at the right time and presented in a way they can understand, creating an environment in which they can pursue their financial objectives.

The obligations apply to all firms involved in the production, approval or distribution of consumer communications, regardless of whether the firm has a direct relationship with the end customer.

Customer Understanding

- » **Risk assessments** – we can help you identify which of your communications may require customer testing.
- » **Testing communications** – we can guide you on taking a proportionate approach to testing and advise you on the design of your testing strategies.
- » **Alignment with other legislative and regulatory requirements** – firms will still need to continue to follow these requirements but also need to consider obligations under the Duty – we can advise you on how to manage any apparent conflict.

- » **Behavioural biases** – firms need to understand how customers make decisions and the contexts in which they make them. Working with behavioural scientists known to us, we can help ensure your information is presented in a way that doesn't exploit consumers' behavioural biases and identify more creative ways to communicate such as through personalised illustrations, infographics, and videos etc.



We can assist with assessing communications and reviewing the customer journey from start to finish, across all communication channels, to ensure you are ready for the new regime.

Consumer Support

The Duty requires firms to ensure that their consumer support is geared towards the needs of their customer base, including a renewed focus on the quality of post-sales support. The Duty also has the effect of elevating to rule status, FCA's guidance on the fair treatment of vulnerable customers.

For some this may involve extra resource and staff training and re-imagining customer journeys.

Consumers may need prompts to remind them to get the most out of the benefits a product or service has to offer – or to switch where a product no longer meets their needs. Single channel firms need to carefully consider their target market and if they should make alternative contact options available.

Customers shouldn't face unreasonable barriers when seeking support such as unreasonable additional costs or charges, time, distress and inconvenience or unreasonable provision of personal data.

Your customer support arrangements will be a vital source of MI on how your products and services are performing against the Duty requirements.



FCA expects firms to give support to consumers enabling them to realise the benefits of the products and services that they buy, pursue their financial objectives and ensure they can act in their own interests.

The Duty imposes a minimum level of acceptable consumer support that all firms must provide, regardless of their size, resources or business model.

Consumer Support

» **Consumer needs** – we can guide you on assessing the needs of consumers in your target market, particularly where this may include the vulnerable.

» **Operational resilience** – many firms will already have implemented effective operational resilience plans to carry on supporting customers through unexpected events and cater for surges in support needs. Where this isn't the case we can help you in sharing our extensive experience in advising firms on effective planning.

» **Monitoring** – we can help you identify appropriate metrics for assessing your consumer support outcomes.

» See also **customer journeys**.



We can help you assess whether your consumer support arrangements are likely to meet regulatory expectations, what the key indicators and MI will be for your business, and ensure you have – and can demonstrate that you have – the right arrangements in place.

Customer Journeys & Behavioural Science

The Consumer Duty requires firms to put customer outcomes at the centre of their business. Firms need to carry out a holistic review of the entire customer journey to consider whether they are delivering good outcomes, including to vulnerable customers, and make changes where necessary.

While reviewing customer journeys, firms will need to keep in mind the behavioural biases of their customer base and what they know about how customers actually engage with them and use their products or services in practice. The FCA expects firms to consider what pro-active steps they might take to improve the customer experience and support customers to make good decisions.

What this means for you and your customers will depend on the nature of your business, but could include identifying 'sludge' practices that cause consumers to disengage and hinder their ability to act in their best interests as well as introducing 'nudges' or 'positive friction' within your processes to help foster good decision-making.



The steps in a customer journey must have a purpose aligned with the Duty. This can include positive friction, e.g. to make customers aware of risks or alternative options. Unreasonable barriers are those which frustrate the customer's use of the product or service without reasonable explanation.

Customer Journeys & Behavioural Science

» **Literature review** – we can support you in reviewing and calibrating behavioural science literature to highlight behavioural barriers and drivers of consumer conduct relevant to your business.

» **Consumer workshops** – working with behavioural scientists known to us, we can help you design consumer workshops, feedback and surveys to inform where changes might be made to your customer journeys.

» **Customer Journey audits**

We can help you identify and address:

» **'Sludges'** – which can add friction and, in some cases, may prevent customers from pursuing their financial objectives.

» **'Nudges'** – which can prompt customers to take action enabling them to make better decisions.

» **'Customer inertia'** – which may inhibit customers in pursuing their financial objectives or leave firms exposed to being seen to benefit from inaction.

» **Engagement and accessibility issues** – consider how processes could be streamlined and simplified and made more engaging and relatable.

» **'Information asymmetries'** – which hinder consumers' trust and confidence and their ability to make well-informed decisions.



We can help you to fully review your customer journey across all business channels, making sure that your firm has put itself in its customers shoes in the way the FCA expects and ensuring your business is properly focused on customer outcomes. We can identify areas where you risk not meeting the new standards, and advise on appropriate remedial action.

Outsourcing

Firms outsourcing their activities remain responsible for ensuring that those activities comply with the Consumer Duty. Firms need to consider the impact their decision to outsource may have on customer outcomes.

The Consumer Duty applies proportionately, and its impact on your outsourcing arrangements will depend on the nature and scope of those arrangements and the risk of harm they may pose to your customers.

Firms will need to consider and review their outsourced activities and may need to amend their outsourcing agreements – building in new service level and reporting requirements.



Where firms outsource activities to third parties, they remain responsible for compliance. They should also consider the impact the decision to outsource activities could have on consumer outcomes.

Outsourcing

- » **Risk assessments** – we can help you identify and calibrate the risks involved in your outsourced activities and help you ensure they are appropriately addressed and managed.
- » **Outsourcing agreements** – we can review your agreements and advise you on changes that may need to be made to ensure compliance with the Duty.
- » **Due diligence** – we can assist you in reviewing your due diligence processes for outsourced providers to ensure they remain effective.

- » **Monitoring** – we can assist you in identifying appropriate MI to be reported by your outsourced service providers to ensure you maintain adequate oversight.
- » **Training** – we can help you build a training programme for your outsourced providers to build a mutual understanding of how to meet the Duty.



Our outsourcing specialists can help advise on how the Consumer Duty will affect your outsourced activities and ensure your arrangements are compliant and appropriately documented.

Monitoring & Evaluation

The Consumer Duty requires firms to assess compliance on an ongoing basis. FCA has made clear it expects firms to be able to evidence the work they have done to comply with the new rules, and to be able to demonstrate how they are monitoring customer outcomes.

It will be essential for firms to identify and capture the right MI to show how their products or services are actually performing, how their customers are actually behaving, and the reality of their customer outcomes. What this involves will vary between businesses and between sectors, but may require considerable work (including putting in place the right arrangements to share information across the distribution chain and in outsourcing arrangements).

Firms will need to report at least annually to the Board (or equivalent) on the results of their monitoring, new and emerging risks, identification of any poor outcomes and assessment of root causes and actions taken to address.



FCA expects firms to monitor, assess, understand and be able to evidence the outcomes their customers are receiving. Where firms identify that consumers are not receiving good outcomes, FCA expects them to take appropriate action to rectify the causes.

Monitoring & Evaluation

» **Metrics** – we can advise you on the identification of appropriate metrics for measuring delivery of customer outcomes.

» **Root cause assessments** – we can assist you in conducting and calibrating your root cause assessments where metrics indicate customers may be receiving poor outcomes or risk of harm.

» **Remediation** – we can advise you on taking appropriate remedial steps to address issues identified.

» **Evidencing and reporting** – we can advise you on documenting your approach to your assessments and the rationale for decisions on delivery of good customer outcomes, appropriate interventions, and demonstrating how any concerns identified have been addressed.

» **Reasonable steps** – the Duty is underpinned by a concept of reasonableness – we can provide guidance on what this looks like in different contexts and review the firm's oversight frameworks.



We can help your firm to identify and put in place the right MI and monitoring arrangements, and advise on what you need to do to meet FCA's expectations for your ongoing reviews of customer outcomes.

Next steps

- » **Don't leave it too late to commence your implementation programmes.** FCA expects firms to use the implementation period fully and to be able to demonstrate progress when asked. Boards (or equivalent bodies) must have signed off implementation plans by the end of October 2022.
- » **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.** The 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.
- » **Build awareness raising early on.**
- » **Identify involvement of key stakeholders.**
- » **Set up an internal project committee.**
- » **Start with a comprehensive gap analysis.**



Contact us



Elisabeth Bremner

Partner

T +44 20 7367 3356

E elisabeth.bremner@cms-cmno.com



Paul Edmondson

Partner

T +44 20 7367 2877

E paul.edmondson@cms-cmno.com



Aidan Campbell

Partner

T +44 141 304 6112

E aidan.campbell@cms-cmno.com



Pippa Tasker

Partner

T +44 20 7367 3411

E pippa.tasker@cms-cmno.com



Ash Saluja

Partner

T +44 20 7367 2734

E ash.saluja@cms-cmno.com

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[cms-lawnow.com](https://www.cms-lawnow.com)

CMS Cameron McKenna Nabarro Olswang LLP
Cannon Place
78 Cannon Street
London EC4N 6AF

T +44 (0)20 7367 3000
F +44 (0)20 7367 2000

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