



Front of mind

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A new Consumer Duty – summary

As of May this year, the FCA has new guidance on Consumer Duty setting out further standards of consumers protection in the retail markets for firms to adhere to. This also forms part of the FCA's Transformation programme.

The new guidance is to counteract against firms misleading consumers with often difficult to understand information and thus hindering consumers ability to properly assess the product or service on offer.

The FCA clarifies:

“We want firms to be putting themselves in the shoes of consumers and asking ‘would I be happy to be treated in the way I treat my customers?’. We want consumers to be able to advance their financial wellbeing and build positive futures for themselves and their families.”

The Consumer Duty, which firms will have to follow or face regulatory action, including enforcement investigations if they fail to do so, will have three key elements:

The Consumer Principle, which will reflect the overall standards of behaviour the FCA expects from firms. The wording being consulted on is: ‘a firm must act in the best interests of retail clients’ or ‘a firm must act to deliver good outcomes for retail clients’.

Cross-cutting rules which would require three key behaviours from firms, which include taking all reasonable steps to avoid foreseeable harm to customers, taking all reasonable steps to enable customers to pursue their financial objectives and to act in good faith.

It will also be underpinned by a suite of rules and guidance that set more detailed expectations for firm conduct in relation to four specific outcomes – communications, products and services, customer service and price and value.

Who does this apply to?:

- firms in relation to their regulated activities.
- products and services sold to ‘retail clients’.
- all clients other than professional clients (such as large corporate entities and government bodies) and eligible counterparties.
- firms that are involved in the manufacture or supply of products and services to retail clients, even if they do not have a direct relationship with the end customer.

Some key elements to the guidance:

Consumer protection – by stopping the sale of products that are not fit for purpose or do not offer fair value, and to reduce the practices of firms preventing consumers from making effective choices or acting in their own interest.

Competition – Where consumers are put in a position to make informed decisions and act in their interests, and there is a range of products and services that are designed to meet their needs, this creates the conditions that drive effective competition to the benefit of consumers. So, the Consumer Duty would increase the level of consumer protection and also help to ensure that competition works in consumers’ interests.

What's the scope?

The Consumer Duty would apply across all of a firm's activities – from high-level strategic planning to individual customer interactions.

The FCA proposes:

“To embed a concept of reasonableness in the Consumer Duty, applying to the interpretation of all of its elements, including the Consumer Principle. This will clarify the objective standard of conduct that firms would need to meet.

We intend to set out factors that influence what is reasonable. These are all factors that have a significant impact on what the Consumer Duty means in practice for firms’ conduct.

Don't forget vulnerabilities:

The FCA clarifies:

“Our view of vulnerability is as a spectrum of risk which is increased when consumers have characteristics of vulnerability. These could be poor health, such as cognitive impairment, life events such as new caring responsibilities, low resilience to cope with financial or emotional shocks and low capability, such as poor literacy or numeracy skills. Not all consumers who have these characteristics will experience harm. But they may be more likely to have additional or different needs which, if firms do not meet them, could limit their ability to make decisions or represent their own interests.

“So, firms may need to provide an additional level of care to vulnerable consumers to enable them to carry out their responsibilities, avoid harm and achieve outcomes that are as good as for other consumers. Our recent guidance on treatment of vulnerable consumers provides more detail on our expectations of the level of care that is needed.”

The FCA proposes to set expectations for each of these four outcomes in a suite of rules and guidance under the headings of Communications, Products and Services, Customer Service, and Price and Value.

The FCA's consumer duty puts more pressure on firms to consider what other information may be needed for customers to make the right decision. This type of pre-contract information may have to be in a prescribed form of a “tick box” type exercise to satisfy its Consumer Credit Act obligations.

Firms will have to consider how much ground work is necessary for customers to make informed decisions. Additionally, factoring in customer behavioural biases at every stage of the customer journey will also mean firms will have a complicated and tough road ahead. ■

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