

The new Consumer Duty: A Quick Guide

The Financial Conduct Authority published its final Consumer Duty rules and guidance for firms on the 27th July 2022. They have clearly stated they expect firms to have implementation plans in place by the end of October this year, to enable implementation by the end of July 2023 for new and ongoing existing business and by the end of July 2024 for closed books.

Whilst many firms may have certain processes and protocols already in place, as part of compliance with existing regulation, including MIFID, PROD and TCF, there will still be a lot of work for adviser firms to do to ensure they comply with the new Consumer Duty. This is certainly a key focus for the FCA and the view is that they will be looking to test compliance with these new requirements at the earliest opportunity.

The counsel is to get ready.

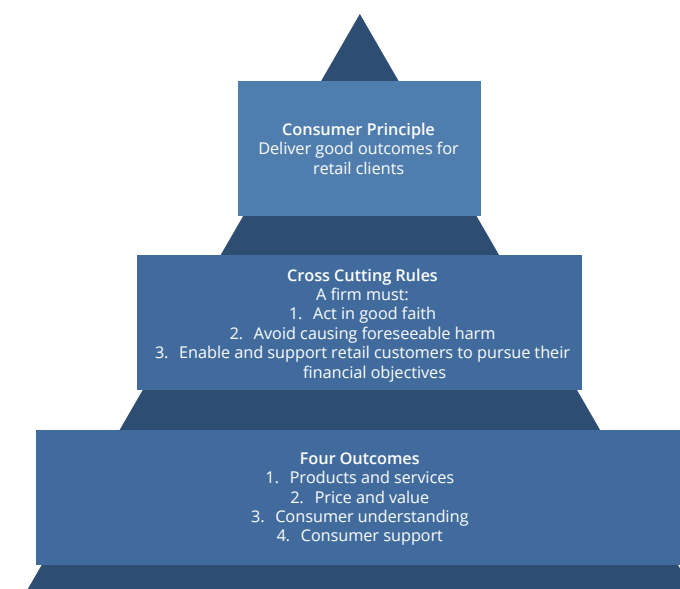
This guide highlights some of the key areas of focus for adviser businesses and provides a range of tips and suggestions to help ensure readiness for August 2023. It is not an exhaustive guide but is designed to illustrate the issues that we believe lie at the core of the FCA's concerns and the key implications for firms of the new requirements.

Structure of the new regulation

At the heart of the new Consumer Duty is a new regulatory principle that requires firms to deliver good outcomes for retail clients. This principle is in addition to the eleven existing FCA principles. Although this only applies to retail customers, it does apply

to firms that both have a direct and an indirect relationship with retail customers, for instance those firms that form part of the distribution chain such as product manufacturers. This is especially important when considering product design and any associated customer communications that are designed for consumption by a retail client audience.

This principle is supplemented by three subordinate cross cutting rules. These are underpinned by four specific outcomes that cover the consumer-firm relationship. This is illustrated below.



Collectively, the new principle, cross cutting rules and the consumer outcomes relating to the consumer-firm relationship should drive both the culture and the behaviours of all regulated firms sitting in the retail client distribution chain, including adviser businesses.

Seven practical implications of the new rules and guidance



Implementation



Requirements imposed by the new Cross Cutting Rules



Requirements imposed by the four outcomes



Documentation updates, initial disclosure and sales processes



Vulnerable customers



Data



'Friction' and 'sludge' practices



Implementation

The FCA require all firms to have an implementation plan for the Consumer Duty in place by the end of October 2022, documenting how they will implement all the new requirements by the end of July 2023. Oversight and implementation of this plan is the responsibility of the firm's board. It should be noted, as described in PS22/9, "firms should expect to be asked to share implementation plans, board papers and minutes with supervisors and be challenged on their contents".

When formulating the plan, it may be wise to start by:

- Considering the four outcomes, how might these be incorporated into a firm's typical user journey for each of their segmented client types and service offerings.
- What and where are the key touch points on these journeys and how well are the outcomes in each case currently complying with the new Consumer Duty? This process should highlight the obvious shortfalls and precipitate the change and actions necessary for compliance with the new regulations.
- Carrying out a formal gap analysis against the requirements contained in the new rules and guidance in order to formulate an action plan.



Requirements imposed by the new cross cutting rules

PS22/9 is very clear in its emphasis of the importance of cross-cutting rules and how a variety of approaches can help firms to meet the 'customer support', 'good faith' and 'foreseeable harm' requirements. These approaches include:

- Assessing the nature of the products and services offered.
- Knowing the characteristics of retail customers (particularly vulnerabilities).
- Knowing the firm's role in the distribution of products and services.
- Applying the same time/effort/standards/capabilities to delivering good customer outcomes as to generating sales and revenue.





Requirements imposed by the four outcomes

The new Consumer Duty focuses on four key outcomes and adviser firms may wish to use these as a starting point in deciding upon what actions are necessary.

1. Product and Services Outcome

- The requirements in relation to this outcome are, not surprisingly, very similar to those that are already set down in the Product and Governance rules (PROD). The FCA referenced this quite clearly in PS22/9 by stating that 'failing to comply with PROD means failure to meet products and services outcome.'
- We would suggest that a re-read of PROD might be timely!
- Firms should also be assessing whether they are currently fully compliant with PROD, liaising with manufacturers of products and reviewing their distribution arrangements.

2. Price and Value Outcome

- This outcome focuses on the relationship between the amount paid by the retail customer and the benefits they can reasonably expect from a product.
- The rules make it very clear that this not only relates to an initial assessment of value, but that continuous assessments are required through the product lifecycle to ensure that clear evidence is gathered on what clients gain and value most from the products and services that they utilise.
- The FCA paper TR14/21 on Adviser Charging and Services would be a good read here.

3. Consumer Understanding Outcome

- Firms need to evidence that clients can identify and understand the information provided to make effective and informed decisions.
- Firms should consider both the actions required by customers and the consequences of inaction and should also consider the key benefits, costs and risks that clients would need to evaluate in order to make an informed decision.
- Again, this is not just about pre-sale information but also what communication should look like throughout the product lifecycle.

4. Consumer Support Outcome

- Firms need to test and evidence that the service and support levels are adequate to meet ongoing client needs.
- Demonstrating flexibility and providing additional support is important, particularly for vulnerable clients.



Documentation updates, initial disclosure and sales processes

As a result of the new Consumer Duty requirements all client facing documents and sales processes should be reviewed and if required updated and refreshed.

All firms will have to carefully consider their suitability and disclosure processes. The FCA is looking for clarity and simplification, without dumbing down. Once again, the FCA may ask firms to evidence how they comply with these new requirements. As ever, documentation will be key.

The review process involved here might well be the toughest nut to crack for many adviser businesses and an early start would be a very good idea.



Vulnerable customers

In simple terms, firms must ensure that vulnerable customers achieve outcomes that are at least as good as those achieved by other consumers and should consider the range of needs in their target market. This has become a prime focus for the FCA in recent years and firms will need to demonstrate and evidence how they have updated their processes to achieve this aim.

This is of particular importance within the revision of suitability and disclosure documentation mentioned above.



Data

The data led approach that has been adopted by the FCA effectively obligates firms to monitor, test, and adapt their practices and processes on an ongoing basis, to satisfy themselves that they are delivering the expected outcomes. The FCA has for some time been moving towards becoming a data-led regulator and firms should consider what data may be required in order to demonstrate adherence to the new regulation and good customer outcomes, if requested.

Two methods to evidence and document data for these outcomes that firms might consider are client surveys and focus groups. The data from these should be analysed and collated to demonstrate that required outcomes are being achieved.



'Friction' and 'sludge' practices

Within the new Consumer Duty, the FCA seeks to deal with a number of detrimental practices that are growing in prevalence in the digital marketing space including:

- 'Friction' - the practice of distorting behavioural biases to encourage clients to take actions that are not in their best interests.
- 'Sludge' - similar in its outcome to friction, but is focussed on the static information on websites or mobile applications.

As this has become a particular focus for the FCA, it would be a wise move to review and update any consumer facing web or App material that may fall under this category.

Next Steps for Firms

1. Ensure you have read and fully understand PS22/9 and the new rules and have taken into account the Finalised Guidance (FG22/5).
2. Determine who within the firm (ideally an SMF) is responsible for ensuring compliance with the new Consumer Duty.
3. Document an implementation plan by 31 October 2022 and ensure that this is approved by the Board.
4. Undertake a gap analysis against the new rules to enable your firm to create a more detailed action plan to ensure compliance by end of July 2023.
5. Ensure staff receive the appropriate training.

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