

Consumer Duty

Vanessa Johnson, threesixty services LLP

January 2023



Consumer Duty – what is it?

- Requirement to put the needs of customers first
- New Principle 12 – A firm must act to deliver good outcomes for retail customers
- Firms will be judged by how they deliver good consumer outcomes

Significant FCA initiative

We are constantly challenging firms to consider their current practices through the lens of the Consumer Duty – I cannot emphasise enough that this is a different lens to what you have been used to and even though the rules are not yet in force it requires your active participation to understand the degree and extent of the cultural shift that it entails. A tick-box approach to detailed regulatory requirements will simply not be good enough as that will never be sufficient to answer the question of whether a firm has secured good outcomes for its customers.

Therese Chambers, Director of Consumer Investments, FCA
1 November 2022

Consumer Duty rules

3 cross cutting rules

1. Act in good faith
2. Avoid causing foreseeable harm
3. Enable and support customers to achieve their financial objectives

4 outcomes

1. Products and services
2. Price and value
3. Consumer Understanding
4. Consumer Support

Foreseeable harm

- Conduct of a reasonable person
- Distribution of products / services for whom they were not designed
- Complexity and risk of product / service not assessed properly
- Long term investment decisions
- Vulnerable clients
- Cost of living crisis



Implementation – Timetable

31 October 2022	Documented implementation plan
30 April 2023	Manufacturers provide Target Market and Value Assessment
31 July 2023	Implementation for new / existing products and services
31 July 2024	Implementation for closed products and services

Governance

- Good consumer outcomes:
 - Centre of firms' strategy and business objectives
 - Receive the same level of ongoing attention as financial performance, risk and strategy
- Board (or equivalent management body) responsible for assessing whether it is delivering good outcomes for its customers
- A firm must consider the Consumer Duty at every stage of its processes and at every level of its organisational structure
- Appoint a Board Consumer Duty champion – NED

Governance – Annual assessment

- Results of **monitoring undertaken** to **assess** whether products and services are delivering the outcomes that they expected
- Assessment of new and emerging risks to delivering good outcomes for consumers
- Evidence of consumers or groups of consumers who are not achieving good outcomes and an evaluation of the impact and the root cause (including vulnerable clients)
- Actions taken to address any risks or issues
- Assessment of whether the firm's future business strategy is consistent with it acting to deliver good outcomes

The products and services outcome



The products and services outcome

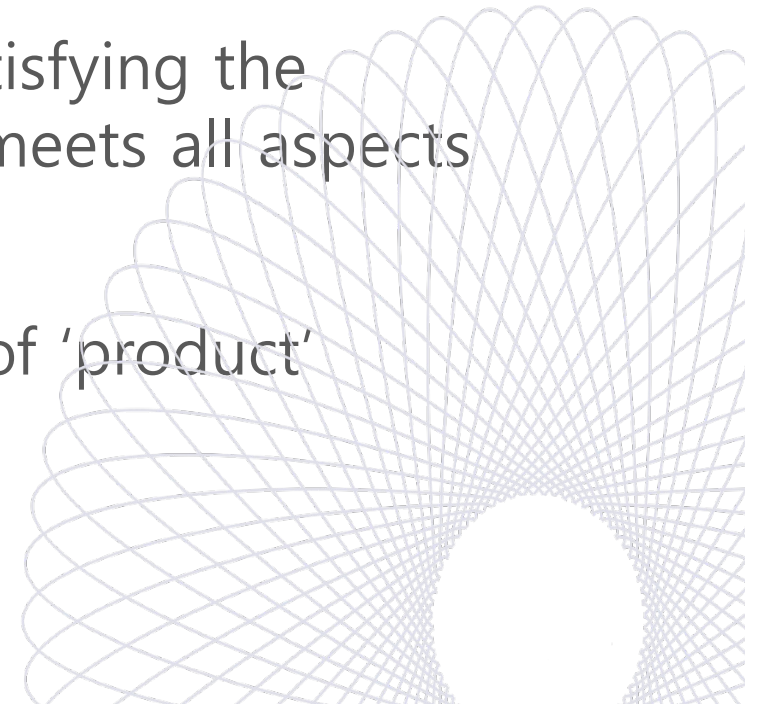
We want all products and services for consumers to be fit for purpose. We want them to be designed to meet the needs, characteristics and objectives of a target group of customers and distributed appropriately. These are essential steps if firms are to act to deliver good outcomes to consumers..

PS 22/9 Para 6.1

Definition of 'product' under Consumer Duty includes a service (eg: discretionary management service)

Interaction with Product Governance

- Where firms comply with existing PROD requirements... this will tend to establish compliance with their obligations under the products and services outcome
- The Consumer Duty as a whole is broader and satisfying the existing rules in PROD is unlikely to mean a firm meets all aspects of the Consumer Duty
- Service (advice) is now included in the definition of 'product'





The price and value outcome

What is the price and value outcome?

- Products and services must represent **fair value**
- Key point is relationship between price and benefits
- Value does not mean cheap
- Products and services do not represent fair value where the benefits consumers receive are not reasonable relative to the price they pay
- Advisers in a chain need to consider total price
 - Need data from other parties in the chain

How to perform a value assessment

- No rules - 'assessment criteria'
- Distributors must:
 - Obtain information from manufacturers on the value assessment for a product or service.
 - Understand the value the product or service is intended to provide
 - Understand the impact that their distribution arrangements, including any remuneration for distribution, have on value.
- Firms' senior management must determine how best to perform a value assessment. (Responsible and accountable)
- Document fair value assessment and regularly review it

The consumer understanding outcome



The consumer understanding outcome

Communications

- Consumer centred / outcomes-based approach
- Support and enable consumers to make informed decisions
- Put yourself in the client's shoes when designing communications
- Information given at the right time, and presented in a way consumers can understand
- Be fair in describing the benefits, risks and charges of products and services
- Presentation – layering / prominence / risk summaries

Key requirements to support understanding

- Firms need to:
 - Review, test and adapt communications to ensure their communications are reasonably likely to be understood by the target consumers and facilitate customers' decision making
 - Have a 'reasonable basis' to believe that their communications are likely to be understood by consumers
- Requirements apply to all firms involved in the production of consumer communications, regardless of whether the firm itself has direct consumer relationships

The consumer support outcome



The consumer support outcome

Outcome required

- Firms provide a level of support that meets consumers' needs throughout their relationship with the firm
 - Complaint handling
 - Vulnerable clients
 - Efficient administration systems
 - Resource



Current considerations for adviser firms

- Agent as client v reliance on others – has anything changed?
- Are we a co-manufacturer and if so what are the implications for us?
- Do we need to change our research and due diligence procedures?
- What should a Target Market Assessment from an Investment Manager look like?
- What data / management information do we need to share?
- When should we be receiving value assessments from investment managers?

Agent as client v reliance on others

- Updating threesixty / PIMFA / DFM Connect guide through lens of Consumer Duty
- Aim to publish February 2023
- No significant changes
 - Direct look through from DIM to underlying retail client
 - Unpicking FSCS position and covering in more detail FSCS coverage for adviser firm / DIM and custodian
- Review of threesixty templates

Definition of manufacturer and distributor

Manufacturer

- A firm which creates, develops, designs, issues, manages, operates, carries out ... a product

Distributor

- A firm which offers, sells, recommends, advises on, arranges, deals, proposes or provides a product

Co-manufacturer – same as manufacturer

FCA indicators a co-manufacturing arrangement exists (MPS)

PS 22/9 para 2.24	<i>It is also possible that intermediaries may be co-manufacturers, for example if they set the parameters of a product and commission other firms to build it</i>
FG22/5	<i>A firm would be considered a co-manufacturer where they can determine or materially influence the manufacture of a product or service. This would include a firm that can determine the essential features and main elements of a product or service, including its target market.</i>

Co-manufacturing – typical scenario (DIM)

- DIM partners with adviser firm to run a series of models specifically for the clients of the adviser firm
- Adviser firm sets the mandate for each portfolio and has influence over asset allocation and fund selection
- DIM has an inbuilt majority on the investment committee and power of veto on investment management decisions
- DIM responsible for all decision making
- Proposition co-branded

Adviser firms: co-manufacturer implications

- 'Manufacturer' responsibilities
 - Price and value
 - Consumer Understanding
 - Target Market Assessments
- Co-manufacturer agreement must be in place
- Roles and responsibilities – clearly articulated
- Complaints/dispute resolution
- Improved record keeping on DD / PROD / rationale for solution

Research and due diligence - relevant factors

- Investment approach / philosophy / target market
- Investment processes – trading / rebalancing / reporting
- How arrangements are structured (AAC v ROO)
- Fees
- Custodian
- Leadership and governance
- Operational resilience / resources / financial strength
- DD hub
- Threesixty Annual Risk Assessments – qualitative assessment

Target Market Assessment

- Applies at level of customer base (collective v individual)
- Identify group of customers sharing common features whose needs, characteristics and objectives the product / service designed to meet
- Identify groups of customers who might suffer harm (vulnerability)
- **Sufficiently granular level** – avoid causing foreseeable harm
- Relevant factors
 - Degree of financial capability or sophistication / vulnerability
 - Risk / capacity for loss / holding period
- Process for checking product / service distributed within the target market
- Annual review

Data / Management Information

Manufacturers (fund / investment managers)

- Obtain relevant information about customer outcomes
- Reasonable steps
 - Periodic survey to distributors/co-manufacturers
 - Examples of questions to be asked (FG 22/5 para 6.74)

<https://www.fca.org.uk/publication/finalised-guidance/fg22-5.pdf>

Distributors/co-manufacturers (adviser firms)

- Required to share information to support manufacturers when reviewing products / services
- Confirmation products / services distributed to target market

Consumer Duty - Implications for advisers

- Client outcomes / suitability
 - CGT
- Distribution / manufacturing agreements
- Target Market Assessments (TMAs)
- Communications – meet consumer understanding outcome
- Value assessments / charging structures / disclosure
- Research and due diligence (platforms and discretionary managers)
 - Avoid causing foreseeable harm

Consumer Duty - Implications for DIMs

- Consider impact of distribution channel on client outcomes
 - Appropriate on-boarding checks
 - Knowledge, expertise and competence of distributor
 - How they explain the structure of arrangements to investors
- Review Target Markets
- Check agreements updated to meet Consumer Duty requirements
 - Co-manufacturers
- Communications - provide client friendly information on target market / product or service
- Procedures for data exchange
- Look through to underlying retail investor (AAC)

FCA Dear CEO Letter – December 2022

- <https://www.fca.org.uk/publication/correspondence/portfolio-strategy-letter-for-financial-advisers-and-intermediaries-2022.pdf>
- Suitability
- Foreseeable harm
- Ongoing services to provide fair value



Questions

