

CONSUMER DUTY: THE COUNTDOWN BEGINS



On 25 January 2023, the FCA published the findings from its review of firms' plans to embed the Consumer Duty (the "Duty") within their businesses. These implementation plans should have been agreed by firms' Boards by the end of October 2022.

Background

What is the Consumer Duty?

In July 2022, the FCA confirmed plans to bring in a new Consumer Duty to improve consumer protection. Financial institutions will be required to prioritise their customers' needs and will be subject to higher and clearer standards. The Duty is forward-looking and does not have a retrospective effect.

Why do we need this?

Consumers are often the losers of the competition between financial institutions: firms can exploit behavioural biases and rely on sludge practices to manipulate consumer decision-making. Consumers



generally also have a weaker bargaining position, are subject to asymmetries of information and may also have a lower financial literacy.

The Consumer Duty aims to increase consumers' trust that products and services will be presented to them in a way that they understand and that those they choose from are designed to meet their needs and offer fair value. This is especially important in the current economic climate and cost of living crisis.

Who does this apply to?

The Duty applies to the regulated activities and ancillary activities of all firms authorised under the Financial Services and Markets Act 2000, the Payment Services Regulations 2017 and E-money Regulations 2011, in respect of products and services for prospective and actual retail customers.

This includes:

- The distribution chain;
- Wholesale markets;
- Firms dealing with customers, products or services outside the UK; and,
- Unregulated activities.

Firms' obligations under the duty should be interpreted reasonably against the nature of the product, the characteristics of retail customers and the firm's role and to the extent that a firm can determine or materially influence customer outcomes.

Review Outcome

Purpose

The FCA reviewed the implementation plans of large retail financial institutions to understand firms' approach to embedding the Duty within their businesses.

Scope

In conducting the review, the FCA considered the following factors:

- (i) Governance and oversight arrangements;
- (ii) Deliverability of plans within deadlines;
- (iii) Understanding and engaging with third party providers, where relevant;
- (iv) Comprehensiveness of plans in addressing requirements and outcome areas;
- (v) Data strategies to identify, monitor and justify customer outcomes; and,
- (vi) Culture and people strategies for firm-wide adherence.

Findings

The following table outlines the good practices and areas of improvement highlighted by the FCA against the requirements and expectations set out in its Finalised Guidance and Policy Statement:



	Requirements	Good Practice	Areas for Improvement
Governance and Oversight	<p>The Board and senior management will be held accountable for delivering good outcomes for consumers. The Final Guidance specifies:</p> <ul style="list-style-type: none">· A governance structure with an incentive and reward framework should be in place;· Managers will be held accountable through the SM&CR Regime;· A designated individual (INED) should be appointed to support the Chair and CEO;· The Board should review and approve the outcome assessment.	<ul style="list-style-type: none">· Robust governance frameworks with clear accountability and Board oversight;· Adequate scrutiny and challenge through deep dive sessions and entrenching the Duty as a Board agenda item;· Consumer Duty Board champion appointed taking into consideration individual firm needs and structure;· Delivery and effectiveness assessment input by risk, compliance and internal audit teams;· Establishment of central coordinating forums to drive consistency in interpretation.	<ul style="list-style-type: none">· Limited evidence that plans were properly scrutinised and challenged by the relevant stakeholders;· Insufficiently detailed implementation programme and workstreams;· Lack of deliverable timelines and milestones;· No or slow appointment of individual champion;· Input from risk, compliance and internal audit teams absent.
Culture and People	<p>The Duty requires a shift of culture and behaviour to focus on consumer outcomes:</p> <ul style="list-style-type: none">· Strategies, governance, leadership and people policies should prioritise good customer outcomes;· Realignment of priorities for important areas, such as Risk and Internal Audit;· Individual accountability and high standards of personal conduct.	<ul style="list-style-type: none">· Delivery of all-staff interactive training tailored by role and staff engagement through internal communications campaigns· Cultural and training materials updated;· Performance management framework reviewed.	<ul style="list-style-type: none">· Limited information on embedding the Duty in firms' culture and people approach;· Lack of gap assessment and little explanation of tangible action and achievable targets



Deliverability	<p>The FCA has provided clear expectations for actions firms should take during the implementation period, including:</p> <ul style="list-style-type: none">· Analyse all relevant areas of their business to scope of work required;· Outline workstreams with appropriate resources;· Impose milestones for when firms are expected to have finished planning their implementation work;· Review existing open products and services;· Document key risks, mitigation strategies and dependencies;· Remedy issues identified to ensure full compliance.	<ul style="list-style-type: none">· Detailed workflow mapping with clear breakdown of deliverables, milestones, target completion dates and progress tracking;· Implementation approach centred around key enablers such as policies and standards, consumer journeys and processes, data and monitoring and cultural embedding and training;· Committed resources matching the scale of uplift and challenges with sensible investment in external support and advice from independent experts;· Identification and proposed mitigation strategies of key delivery risks;	<ul style="list-style-type: none">· Gap analyses and project requirements not fully fleshed out;· Vague, generic and broad-brush plans;· Inadequate consideration of risks and dependencies, mitigation strategies and resource planning
Third Parties	<p>Given the wide extent of application of the Duty, firms should work together across distribution chains and outsourcing arrangements:</p> <ul style="list-style-type: none">· Consider the Duty as part of due diligence on distributors and third parties;· Raise concerns with relevant parties and notify FCA in instances of non-compliance;· Assess existence and extent of liability;· Distributors should cooperate in providing information to support manufacturer reviews	<ul style="list-style-type: none">· Good understanding of implementation dependencies with third party providers;· Cross-outcome objectives to work with partners in a transparent way to ensure cooperation	<ul style="list-style-type: none">· No identification of key third party relationships or dependencies nor engagement



Four Outcomes	<p>Outcomes for consumers in the key elements of the firm-consumer relationship should be improved:</p> <p><i>Products & Services</i></p> <ul style="list-style-type: none"> · Ensure that the design and distribution strategy of the product or service meets the needs, characteristics and objectives of customers in the identified target market; <p><i>Price & Value</i></p> <ul style="list-style-type: none"> · Ensure that the price the customer pays for a product or service is reasonable compared to the overall benefits; <p><i>Consumer Understanding</i></p> <ul style="list-style-type: none"> · Ensure that communications are likely to be understood by customers; · Take into account the characteristics of the target audience, including characteristics of vulnerability, complexity of products, communication channels; · Test, monitor and adapt communications <p><i>Consumer Support</i></p> <ul style="list-style-type: none"> · Ensure that customers can use their products as anticipated and do not face unreasonable barriers and costs · Monitor quality of support 	<p><i>Products & Services</i></p> <ul style="list-style-type: none"> · Clear identification of the number of open and closed products held; · Prioritisation of products at greatest risk of causing consumer harm; · Identification of areas for improvement on existing product governance and assessment frameworks <p><i>Price & Value</i></p> <ul style="list-style-type: none"> · Consideration of fair value in the context of individual business models, products, services and consumers; · Contemplation of different groups of customers, including those with characteristics of vulnerability <p><i>Consumer Understanding</i></p> <ul style="list-style-type: none"> · Development of new communication standards, factoring age, comprehensibility, visual accessibility, simplicity, layout, availability in multiple languages; · Greater communications testing capability; · Detailed metrics to measure understanding <p><i>Consumer Support</i></p> <ul style="list-style-type: none"> · Review of customer journeys and processes 	<ul style="list-style-type: none"> · High-level actions with limited evidence of engaging with substantive requirements; · Complacency about improvements; · Non-illustrative methodology or approach for gap analyses or reviews of products, services, communications and customer journeys
Data Strategies	<p>Firms need to assess, test, understand and evidence their customer outcomes by collecting data based on size, client based and type of products & services, which should ensure that firms are able to identify whether they are delivering good outcomes</p>	<ul style="list-style-type: none"> · Exploratory work carried out to understand data and metrics available; · Longer, strategic aims to advance functionality of systems and data collection 	<ul style="list-style-type: none"> · Data strategies which appeared to be based on repackaging existing data with limited consideration of gaps



Key Deadlines

By the end of **April 2023**, manufacturers should complete all reviews necessary to meet the four outcome rules and share information with distributors to allow them to meet their obligations.

The FCA proposes a two-phase implementation period:

1. From the end of **July 2023**, the Duty will apply to all new products and services, and all existing products and services that remain on sale or open for renewal;
2. From the end of **July 2024**, the Duty will come fully into force and apply to all closed products and services.

The FCA will continue to engage with firms on implementation progress and internal governance papers and minutes, focusing on the methodologies, progress and outputs of the firm's baselining and gap analysis against the Duty outcomes, and on the approach and progress of the firm's evolving outcome measures, monitoring and associated data strategies.

Next Steps

In addition to the areas of improvement discussed above, the FCA has outlined three key areas of focus for ongoing implementation:

- (i) Effective prioritisation – The focus of implementation work should lie on reducing the risk of poor consumer outcomes.
- (ii) Embedding substantive requirements – The ability of existing policies and processes to meet the new standards should not be over-estimated.
- (iii) Information sharing – Firms in the distribution chain must work together in order to implement the Duty on time.

It is also crucial that firms are not complacent about the customer outcomes they currently provide or what the Duty requires, ensure adequate resourcing of their implementation programme and adequately assess the extent of the data needs associated with the Duty.

We believe that the journey for enhanced consumer protection has only just begun. As banks navigate these new expectations, Avantage Reply can assist firms in responding to emerging requirements, particularly the challenging task of implementing a complex, far-reaching programme in a tight timeframe. For more details, please reach out to the authors of this briefing note.

Resources:

- Financial Conduct Authority, 'Dear CEO' letter: Implementing the Consumer Duty in Retail Banks and Building Societies sector, 3 February 2023.
- Financial Conduct Authority, FG22/5 Final non-Handbook Guidance for firms on the Consumer Duty, July 2022, available at <https://www.fca.org.uk/publication/finalised-guidance/fq22-5.pdf>, accessed 1 February 2023.
- Financial Conduct Authority, PS22/9 A new Consumer Duty, July 2022, available at <https://www.fca.org.uk/publication/policy/ps22-9.pdf>, accessed 1 February 2023.
- Financial Conduct Authority, Consumer Duty implementation plans, 25 January 2023, available at <https://www.fca.org.uk/publications/multi-firm-reviews/consumer-duty-implementation-plans>, accessed 1 February 2023.
- Financial Conduct Authority, CP21/13 A new Consumer Duty, May 2021, available at <https://www.fca.org.uk/publication/consultation/cp21-13.pdf>, accessed 1 February 2023.



Vishwas Khanna, Partner

Vishwas has international financial services consulting and risk management experience across Europe, US, Middle East and SE Asia, leading a multitude of risk transformations and change programmes.

Vishwas is a trusted advisor to the C-Suite across a number of financial institutions with strong working relationships with industry associations and academia and is a speaker at industry events and forums.

Vishwas has led large scale operating model designs, credit and credit risk programmes, bank authorisations, capital and liquidity programmes and regulatory remediations at PRA, FCA, ECB and FINMA regulated banks and asset managers.

vi.khanna@reply.com



Rohan Wilson, Senior Manager

Rohan is an experienced Senior Project Manager and Regulatory SME with an excellent track record of delivering FS regulatory change and risk management projects in the UK and EU.

He has been working with challenger banks, neo banks and banking license applicants on programme management / project management matters, including for clients owned by PE firms. These projects have included IRB application (self-assessment), prudential regulation, ESG and Operational Resilience.

He has also worked extensively with investment banks, custodians and retail / commercial lenders. He is a former trader (Head of Desk), able to balance regulatory demands with commercial realities.

r.wilson@reply.com



Mahesh Gopal, Manager

Mahesh is a credit and mortgage product SME with over 20 years' experience in core consumer duty topics such as product structuring, pricing, affordability and vulnerability assessments, risk modelling and operating model structuring.

In his previous experience, Mahesh has led internal credit committees, pricing discussions, risk assessments and credit strategy development. He has an in-depth understanding of consumer products, customer risk profiles and alignment to key regulatory requirements such as COBS, MCOBS, PRIN and now Consumer Duty.

m.gopal@reply.com



Kavisha Sharma, Consultant

Kavisha is a lawyer with proven experience in regulatory interpretations, high-quality documentation production and strategic consulting.

She joined Advantage Reply after graduating from the London School of Economics with a Masters in Law (Banking Law and Financial Regulation). She has over 3 years of financial services experience, including as a Singapore-qualified lawyer who worked as a legal counsel in a MAS-licensed asset and wealth management firm. At Advantage, her feedback from clients and internal colleagues on various programmes has been exceptional.

kav.sharma@reply.com