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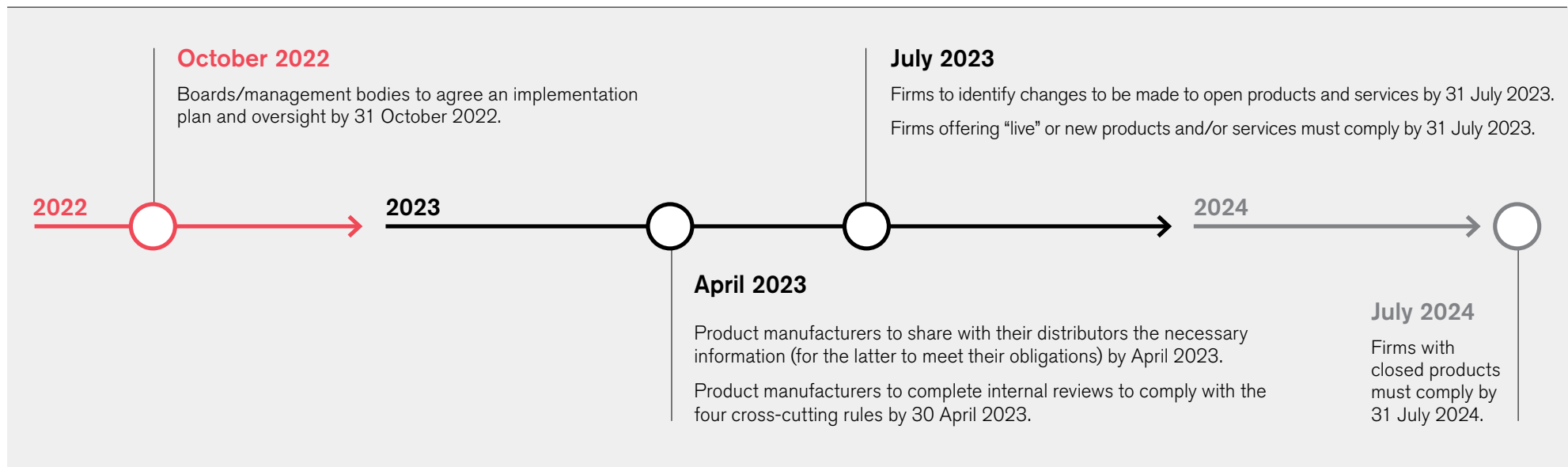
Implementing the Consumer Duty

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The FCA published its Consumer Duty **final rules** on 27 July 2022 (see **our guide** for more details) heralding new, more stringent, standards for firms conducting retail market business in the UK.

The timetable for implementation is aggressive. Whilst the FCA has given firms an additional three months to implement the Consumer Duty as a whole compared with initial expectations (open products and services must comply by 31 July 2023 rather than by the end of April 2023, as originally anticipated) the milestones which must be met before this final deadline are extremely tight. The first deadline is the creation and approval (by the Board, or top-level management) of the firm's implementation plan by 31 October 2022.



Given the very short timeframes, we have created this short guide to the Consumer Duty implementation plan. This document gives you an overview of the components of a good, comprehensive plan for compliance and encompasses the relevant areas of your business, including governance, marketing and operations.

Overleaf you will find an overview of the components of a comprehensive plan, and later in this document we explain what each of these components mean in practice.

To assist firms with the implementation of the Consumer Duty, we have prepared a package of resources including a template plan, inventory of required documents and training slides. To discuss pricing of this package, please get in touch.

The high-level components of a Consumer Duty implementation plan

The Consumer Duty is wide-ranging in scope, changing the way that firms do business, regardless of whether the firm has a direct or indirect relationship with a retail consumer. Firms will need to undertake a comprehensive review of their business with a view to ensuring the firm's compliance. However, before that exercise can even begin each firm must identify which of its business is in scope of the Consumer Duty and satisfy itself that it has all the data and information it needs to complete its gap analysis and identify any weaknesses which exist.

The following elements will be key to a successful implementation plan.



Scoping

Analysis of the firm's business against PRIN 2A to determine application of the new rules.



Data

The identification, collection and calculation of relevant metrics to measure performance and compliance, and their presentation in a usable form to governance bodies.



Gap analysis

A mapping of the Consumer Duty against the firm's business.

- **Project management:** a centralised function to co-ordinate the interlocking workstreams across the business with appropriate, senior oversight.
- **Governance:** the necessary structures to oversee, monitor and take decisions to ensure ongoing compliance.
- **Communications:** mapping and oversight of the various channels (direct and indirect) by which the firm communicates with retail consumers and ensuring that its content meets the FCA's expectations.
- **Policies and procedures:** tangible changes to the firm's operations to reflect the FCA's expectations and desired outcomes, and the updating of documents to evidence the changes.
- **Training:** education for all staff on the new regulations and conduct rules, and tailored training for senior staff and individuals involved in functions directly impacted by the new obligations.

- **Written plan for the board/management** with estimates of costs and strategic impacts.

What do I need to do?

1 The starting point is a gap analysis, beginning with a scoping exercise utilising existing data, metrics and management knowledge.

You will need to map the Consumer Duty rules against your specific business model. The Consumer Duty comprises an overarching principle that should be embedded throughout the firm, while the supporting three cross-cutting rules and four consumer outcomes should form the basis of the mapping exercise.

There is an initial interpretative step required to translate the generic rules and outcomes into actionable rules for your business activities and operational structure. The scoping exercise should be designed to identify potential deficiencies in the firm's existing arrangements. For example, IT that will not be able to deliver services consistent with the Consumer Duty rules will need to be replaced and that kind of replacement activity will take time.

The FCA's supporting guidance provides numerous examples although you might find legal advice necessary, particularly if you have a complex business model.

There are some important foundational distinctions that will need to be made. First, distinguishing retail consumers that are subject to the Consumer Duty from institutional clients. Where these types of clients are mingled – for instance, as co-investors in a single fund share class – the Consumer Duty will apply. Second, you will need to distinguish open

and new products and services from legacy business. The latter products and services have an additional year (until 31 July 2024) for compliance, and the application of the rules will differ (for example, in the consideration of price and value).

The Consumer Duty is dynamic in that it requires firms not only to comply at the outset but to adapt to consumer behaviour. You should seek to future proof implementation to the extent possible to avoid breaches and the need for more costly adaptations after the implementation date. It is important to consider any potential changes in product and service lines, particularly new target markets and types of assets, and operational and staffing changes.

Finally, it is also necessary to consider at the outset any third parties on which the firm is dependent and vice versa. These third parties can include service providers that might need to be brought within the scope of the implementation project, but also any intermediaries such as product providers that sit upstream of the firm in the value chain and distributors between the firm and the end consumer. Preparations by the third parties for their own implementation of the Consumer Duty is likely to have an impact on the firm, for which the firm will have to prepare.

2 Create a project management function to oversee compliance.

The wide-ranging nature of the Consumer Duty means that it will impact across different functions and staff. In addition, the Consumer Duty itself is manifold and, as previously noted, will demand an element of interpretation and application to different business models. Consequently, for all but the simplest business models, implementation will likely require the creation of a centralised function to plan and to oversee delivery.

Furthermore, the plan's workstreams are independent but in many respects interlinked. For example, data will require the gathering of information across the business and will also need to be closely linked to governance, because the latter will seek to use management information, including data, to oversee and take decisions in relation to the Consumer Duty's outcomes.

3 Decide which governance functions are necessary for your firm.

The Consumer Duty requires that firms have sufficient oversight and decision-making capabilities both to comply with the requirements as they come into effect, but also to ensure that the firm meets its regulatory expectations on an ongoing business. The functions of governance entities will include activities such as monitoring internal data, for example the types of customer complaints, and making the necessary adaptations to ensure continuing compliance. Governance functions will need to have sufficient seniority and expertise to take decisions on matters that affect the future of the company, for instance, pricing and lines of business.

The types of governance entities required will be dependent on the nature of your business. Some existing entities, such as fund boards might be co-opted to undertake the new roles, and some existing governance structures, such as the product governance committee, might already achieve the necessary standard. Regardless, you will need to take explicit and documented decisions on responsibilities.

Governance structures can be considered the primary means by which firms maintain compliance with the Consumer Duty and also ensure the preservation and creation of business value. You should future proof your implementation via good governance structures.

4 Determine the metrics and data that you will need to monitor the firm's performance against the Consumer Duty both now and after the deadlines for implementation have passed.

The firm will need to decide how it will measure business performance against the regulator's expectations. At the outset it will be necessary to determine a handful of metrics that will give the governance functions an indication as to whether the four consumer outcomes are being achieved.

Considerations to keep in mind

- At a minimum, the data should enable a clear sense as to whether the firm is compliant. Some elements of interpretation will typically be required – for instance, setting minimum or maximum thresholds as “warning points” for a particular metric.
- Quantitative information is essential but should be supported by qualitative information that is accessible to the firm's decision-makers. For example, you will wish to know the numbers and types of customer complaints, and additional information will help decision-makers understand how those complaints emerge and how they can be pre-empted or remediated.
- Some metrics will be readily available as a simple matter of business measurement. However, firms should consider which metrics are most effective, not necessarily the most readily available. This could mean using compound metrics comprised of diverse data sources and utilising external data where it is available.
- Data should be actionable. Whether a metric is useful will be dependent on whether governance bodies have the relevant powers and expertise to act on the evidence.

Data should not be considered as solely relevant to maintaining compliance with the Consumer Duty rules. It is also the primary means by which the firm can use the Consumer Duty to create value for its customers and for the business to compete with other firms that will be subject to the same requirements.

5 Consider your customer communications channels and create an inventory of the documents that will need to be reviewed.

The Consumer Duty sets a clear and very high standard for communications with retail consumers. These communications are the obvious test as to whether a firm is compliant with its obligations because it is in dealings with customers that firms are most likely to have problems raised which could lead to interventions by the FCA.

When creating an inventory of communication channels, it is important to account for all media: not only documents, but also oral channels such as telephone and in-person, instant communications such as chat messaging, online communications such as websites and social media channels, and advertising including via television and radio.

Once identified, each channel will require its own scrutiny and actions to ensure compliance. For example, customer service staff will require tailored training, which we consider below. At a minimum, firms will need to review and update their written documents to be consistent with the Consumer Duty. In some cases, this will mean updating language and terms, but more generally communications to customers should be clear, jargon-free and aim to achieve the four consumer outcomes contained in the Consumer Duty.

We have prepared an inventory to help firms identify which documents will need to be updated. Please do get in touch to discuss this.

6 Review your policies and procedures to become compliant with the Consumer Duty.

The type of operational changes that a firm will need to make will flow from the gap analysis and the other workstreams. This will include reorganising the business to be consistent with the required governance structure, customer communications approach, and broader business focus on achieving the consumer outcomes. At the outset the firm will need to map the relevant processes that will need to change and document those changes. Our previously mentioned inventory of documents that may need to be updated can help with this exercise.

7 Create a training plan to ensure that your staff are aware of their general and specific responsibilities.

If the previous steps lead to a well-designed plan, any breaches of the Consumer Duty after implementation are likely to be attributable to staff errors or poor conduct. Steps to reduce these risks should be taken through a tailored training programme. In addition, the Consumer Duty imposes additional conduct rules for all staff and in respect of senior management responsibilities.

The training programme could comprise:

- a baseline education programme for all staff explaining the Consumer Duty, its relevance and impact on the firm, and most importantly the new conduct rule under the Individual Accountability Regime;
- a tailored education programme for senior managers with responsibilities in relation to delivering the consumer outcomes, such as the governance forums, and related obligations such as the annual value assessment; and
- a tailored education programme for staff with responsibility for functions that are integral to compliance; for instance, customer facing staff, product and service design and management, and functions that will generate and monitor data relevant to compliance.

The training could take the form of an in-person or online session, supported by easily accessible reference documents.

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