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The Consumer Duty: final rules confirmed

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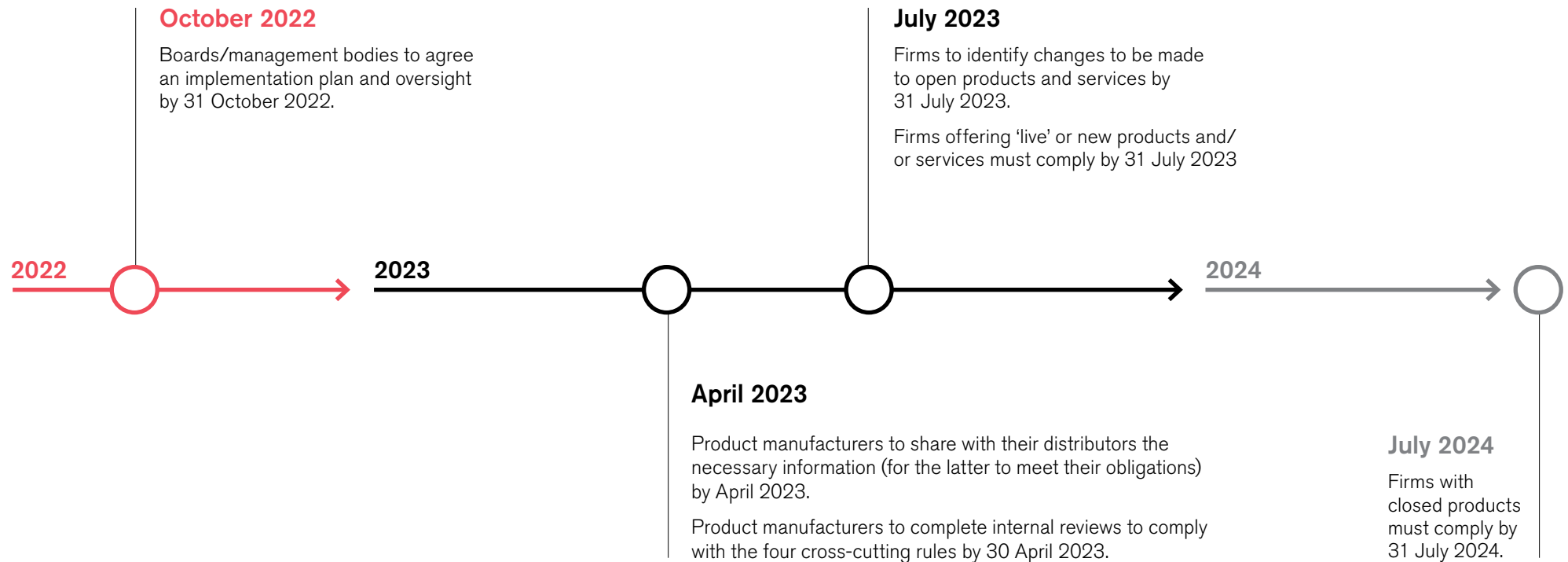
On 27 July, the FCA published its **Policy Statement and final Handbook rules** on the new Consumer Duty (“the Duty”). The Duty seeks to raise standards in customer service across financial services whenever a retail consumer is involved.

The FCA's statement largely reflects the rules that were previously consulted on, with some important clarifications. However, questions are likely to remain about how the Duty will work in practice. The FCA has sought to address these considerations with **additional, non-Handbook guidance**.

Firms will be given an additional three months to comply with the rules. However, the FCA has set an aggressive series of interim deadlines that it expects firms to achieve to be ready for the implementation date. Firms must also negotiate with counterparties, including others in the distribution chain, to make changes to agreements and to ensure preparedness.

This note provides an entry-point to understanding the final rules. Firms will need to give consideration as to how the Duty is relevant to their business and to restructure their documents and practices accordingly with a view to ongoing compliance with the Duty. Please contact us for help with developing an implementation plan and making the necessary changes. For instance, we have an inventory of documents that firms should amend and can help with step changes through the process.

An aggressive timeline for implementation



The scope of the Duty

The Duty impacts firms doing regulated activities in the UK, mirroring the FCA’s sectoral handbooks. The Policy Statement confirms that the rules apply to firms in the Temporary Permissions Regime, and to UK firms dealing with non-UK retail customers.

The Duty applies when a firm deals with a retail consumer, even if the firm does not have a direct relationship with them. The definition of “a retail consumer” reflects the approach taken in the FCA’s sourcebook. For instance, a small-and-medium sized enterprise (SME) might be treated as a retail consumer depending on the relevant sourcebook for the impacted firm (for instance, an SME could be defined differently by an insurer and by a bank).

The FCA emphasises throughout that its expectations for firms will be proportionate, based on the extent to which a firm has influence over the material outcomes for a retail consumer.

This expectation should be borne in mind when a firm is part of a distribution chain that extends beyond the UK. The important consideration is the degree of control that a firm can bear.

The Consumer Duty comprises three related elements.



A Consumer Principle

A broad statement of the standards of behaviour expected from firms. After consultation, the FCA has settled on: “A firm must act to deliver good outcomes for retail clients”.



Cross-cutting rules

A development of the Consumer Principle across the various areas of firm conduct. Rules that would require firms to take reasonable steps: (i) to act in good faith; (ii) to avoid foreseeable harm to customers; and (iii) to enable customers to pursue their financial objectives.



Four consumer outcomes

Further detailed expectations for the firm-consumer relationship. A set of rules and guidance that will determine firms’ conduct in relation to (i) communications; (ii) products and services; (iii) customer service; and (iv) price and value.

A Consumer Principle



The foundation of the Duty is a Consumer Principle (a new FCA Principle 12):

“A firm must act to deliver good outcomes for retail customers”.

The FCA considers “good outcomes” to be an objective measure that is explained by the other components of the Duty: the four consumer outcomes, the cross-cutting rules, and the additional guidance.

FCA Principle 12 replaces the existing Principle 6 (to act in a customers' interests and treat them fairly) and Principle 7 (to ensure that customers' communication needs are met and that the information provided is fair, clear, and not misleading) when an in-scope firm has a relationship with a retail consumer. The FCA deems that achieving Principle 12 is also sufficient to achieve Principles 6 and 7.

However, when a firm has no relationship with a retail consumer, Principles 6 and 7 continue to apply. Furthermore, if a firm deals with both retail and non-retail consumers (for example, as co-mingled investors in the same unit or share class of a fund), then Principle 12 will apply (and in turn, satisfy Principles 6 and 7).

Cross-cutting rules



The Duty is supported by three cross-cutting rules that give practical application to the Consumer Principle:

1 Act in good faith towards retail customers

Acting in a way that is consistent with a customer's reasonable expectations.

Points to note

The FCA's additional guidance provides various examples to illustrate this point.

2 Avoid foreseeable harm

Not a duty to protect consumers from all foreseeable harm but to help consumers avoid those harms and to take decisions based on calculated risks.

Points to note

Firms must act to mitigate risks to consumers or to help consumers adequately understand the risks that might occur. A consequence of this is an expectation that customer disclosures must be comprehensible and comprehensive in respect of the likely risks that might occur.

3 Enable retail customers to pursue their financial objectives

Acting in a way that is consistent with the firm's role and knowledge of the customer to understand their needs and to facilitate their achievement to the extent possible.

Points to note

Given the myriad nature of potential objectives, products, and services, the FCA has taken a proportional approach: firms should consider what is under their control to help achieve their customer's needs.

It is important to note that the cross-cutting rules apply at both the level of the target market (for instance, to the range of intended and potential customers of a firm when designing a product) and to individual consumers (such as when a financial adviser deals with a specific client). Consequently, the rules are relevant along the distribution chain to the end consumer.



Four consumer outcomes

The consumer outcomes provide details about the FCA's expectations of firms, assuming that they are compliant with the Consumer Principle and cross-cutting rules. There are four consumer outcomes.

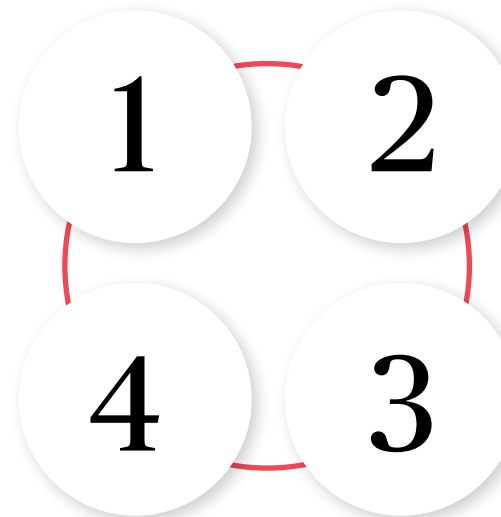
Four consumer outcomes

Consumer understanding

Consumers are equipped to make good decisions. Information is made available at the right time and is understandable.

Consumer support

Customer service should be responsive and helpful. It should be as easy to complain about or switch and cancel products or services as it was to buy them.



Price and value

Products and services should be sold at a price that reflects their value. There should be no excessively high fees.

Product and services

A firm's products and services should be fit for purpose. The terms match the target consumer needs and products and services work as expected.



The standard for the application of the outcomes is the expectations that one would have of a prudent firm.

This expectation is proportionate to the firm's characteristics, products or services, target market, and relationship with the consumer. A further consideration is that when considering a target market, rather than a specific individual, firms must consider the "average consumer". This includes consideration of characteristics such as financial knowledge, literacy, and vulnerabilities.

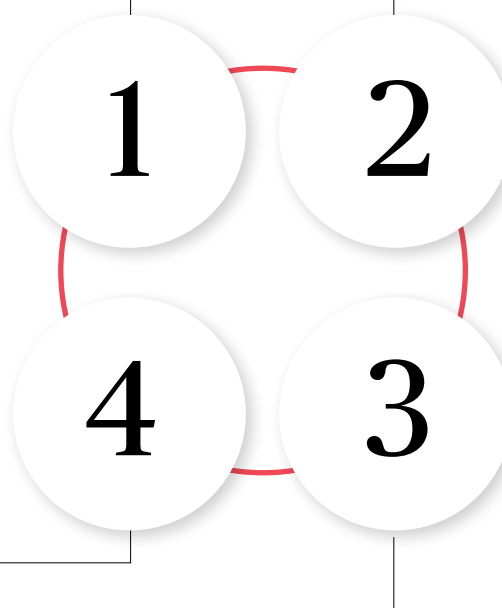
Four consumer outcomes

Consumer understanding

The first consumer outcome is additive to the various regulations that already apply to consumer disclosures. The existing requirements specify certain information that must be provided to consumers of a particular product or service at a given time. The Duty requires firms to think more broadly about how they approach communicating with their customers in different forms and what steps can be taken to make information more comprehensible. It is implied that firms should be thinking ahead to anticipate consumers' needs; for instance, signposting or linking to more detailed information that might be relevant in circumstances such as a life event. The FCA expects that firms will test their communications against the definition provided for the consumer understanding outcome.

Consumer support

Firms are expected to offer support to customers via whichever mediums are relevant, to monitor their support, to consider feedback, and to take reasonable steps to remedy problems if their support is found to be insufficient. An extension of this is to consider how firms engage with and treat other companies within the chain that leads to a retail consumer.



Price and value

Product manufacturers will need to undertake an annual value assessment. Distributors will need to have arrangements to understand their manufacturer's assessments and will also need to consider their own contribution to value. Value, in this context, is to be understood as the relationship between the price that a consumer pays for a product or service and the benefits that they receive. This means accounting for non-monetary costs and benefits too. So, a service that is nominally free in monetary terms will still need to be assessed for fair value.

Firms that are already subject to value assessment rules, such as managers of UK regulated funds subject to COLL rules, will be largely compliant with the Duty but will need to think about value in respect of related services. However, while firms must only consider their own impacts on value, the assessments undertaken by others in the distribution chain might have an impact upon them. For instance, asset managers familiar with value assessments under COLL might find that investment intermediaries reach different conclusions on value to the end consumer in their separate value assessments.

Product and services

The Policy Statement confirms that a firm that is compliant with the existing Product Intervention and Product Governance (PROD) sourcebook will be deemed compliant with the products and services consumer outcome. PROD is mandatory for some sectors, but the Duty seeks to ensure that all firms achieve the same standard by introducing similar rules. To clarify, firms will not be subject to both sets of rules, which are to be considered equivalent.

Aspects that firms will need to consider is to identify specific consumer needs before designing and launching a new product, robust product governance, reviewing and testing, and considering how the products and services outcome relates to other outcomes such as customer communications and support.

SMCR and applying the rules to legacy business

Application to existing products and services

The Duty applies to products and services that are already in the market and to those that are closed to new customers, such as a fund that has closed to new fund-raising. However, the FCA clarifies that it does not require a retrospective application of the Duty. Rather, firms should consider how the Consumer Principle, cross-cutting rules and consumer outcomes apply to current circumstances. For example, a firm should consider whether a product offers fair value to its customers now, rather than when the customer purchased the product prior to the introduction of the Duty.

Individual's duties within firms

The FCA will amend the Senior Managers' and Certification Regime to ensure that all employees act to deliver good outcomes for their customers if their firm is undertaking regulated activities with retail consumers. This means the introduction of a new Individual Conduct Rule 6. Practically, firms will need to consider communicating to and training their staff to understand their new duties and having means to determine whether their staff are compliant with the rule.

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