

A guide to Consumer Duty

What is Consumer Duty?

The Consumer Duty sets the standard of care that firms should give to customers in retail financial markets.

FCA policy statement PS22/9, together with Final non-Handbook Guidance for firms on the Consumer Duty in FG22/5, sets out final rules and guidance in respect of Consumer Duty. The Duty places an increased emphasis on firms putting the needs of their customers first, by creating a requirement that they do so. Firms need to remember to take into account the FCA's Guidance for firms on the fair treatment of vulnerable customers (FG21/1) when considering how to comply with the Consumer Duty.

The Duty comprises:

- 1 a Consumer Principle that provides an overarching standard of conduct
- 2 a set of 3 cross cutting rules
- 3 four outcomes relating to key elements of the firm-customer relationship

The FCA expects the Duty to be reflected in firms' strategies, governance, leadership and people policies. Senior managers will be accountable for delivering the higher standards and good customer outcomes required by the Duty within their areas of responsibility. This is in line individual conduct rules in the Senior Managers and Certification Regime rules in the FCA's Code of Conduct sourcebook, together with Chapter 2A of PRIN (Principles for Business sourcebook).

The Duty applies to all FCA-regulated firms that provide products and services to retail customers.

Distributors (Financial Advisers):

Firms that offer, sell, recommend, advise on, propose or provide a product or service would be regarded as distributors.



Background to Consumer Duty?

Advisers may question why the FCA has introduced further protection for customers when most advice firms are already complying with the substantial number of existing rules.



Indeed, the FCA acknowledges that many firms already demonstrate good practice in terms of consumer protection.

However, the regulator wants to go further. It stated in CP 21/13 'A new Consumer Duty', that there still remains;

"too many firms that are not adequately considering the needs of their customers or prioritising good customer outcomes as an objective of their business activities."

It states that it continues to see practices that cause customer harm, including:

- firms providing information which is either misleading or presented in a way which is difficult for customers to understand
- products and services that are not fit for purpose or are not appropriate for the customers they are being sold to
- products and services that do not represent fair value
- poor customer service that hinders customers from taking timely action to manage their financial affairs
- other practices which hinder customers' ability to act or exploit information asymmetries, consumer inertia, behavioural biases or vulnerabilities

The FCA is concerned such practices could lead to customers being unable to make informed or timely decisions. They may also buy products and services that are risky or inappropriate for their needs, or incur greater monetary or non-monetary costs. It could also mean they may find it harder to switch or get a better deal elsewhere or receive sub-standard treatment during their relationship with the firm.

The regulator has said it wants to bring about a fairer, more customer-focused and level

playing field where firms are consistently placing their customers' interests at the centre of their businesses. It also wants to ensure competition is effective in driving market-wide benefits, with firms competing to attract and retain customers based on high standards and customer satisfaction and innovating in pursuit of good customer outcomes. Under the Duty, firms will need to assess and evidence the extent to which and how they are acting to deliver good outcomes.

The Consumer Duty will lead to a major shift in financial services and will promote competition and growth based on high standards. As the Duty raises the bar for the firms we regulate, it will prevent some harm from happening and will make it easier for us to act quickly and assertively when we spot new problems

Sheldon Mills, FCA Executive Director of Consumers and Competition

Structure of Consumer Duty?

The Duty is made up of an overarching principle and rules firms will have to follow. It will mean that consumers should receive communications they can understand, products and services that meet their needs and offer fair value, and they get the customer support they need, when they need it.

The Consumer Principle (12)

The Consumer Principle reflects the overall standards of behaviour the FCA expects from firms:

The principle: 'A firm must act to deliver good outcomes for retail customers'

Cross-cutting rules

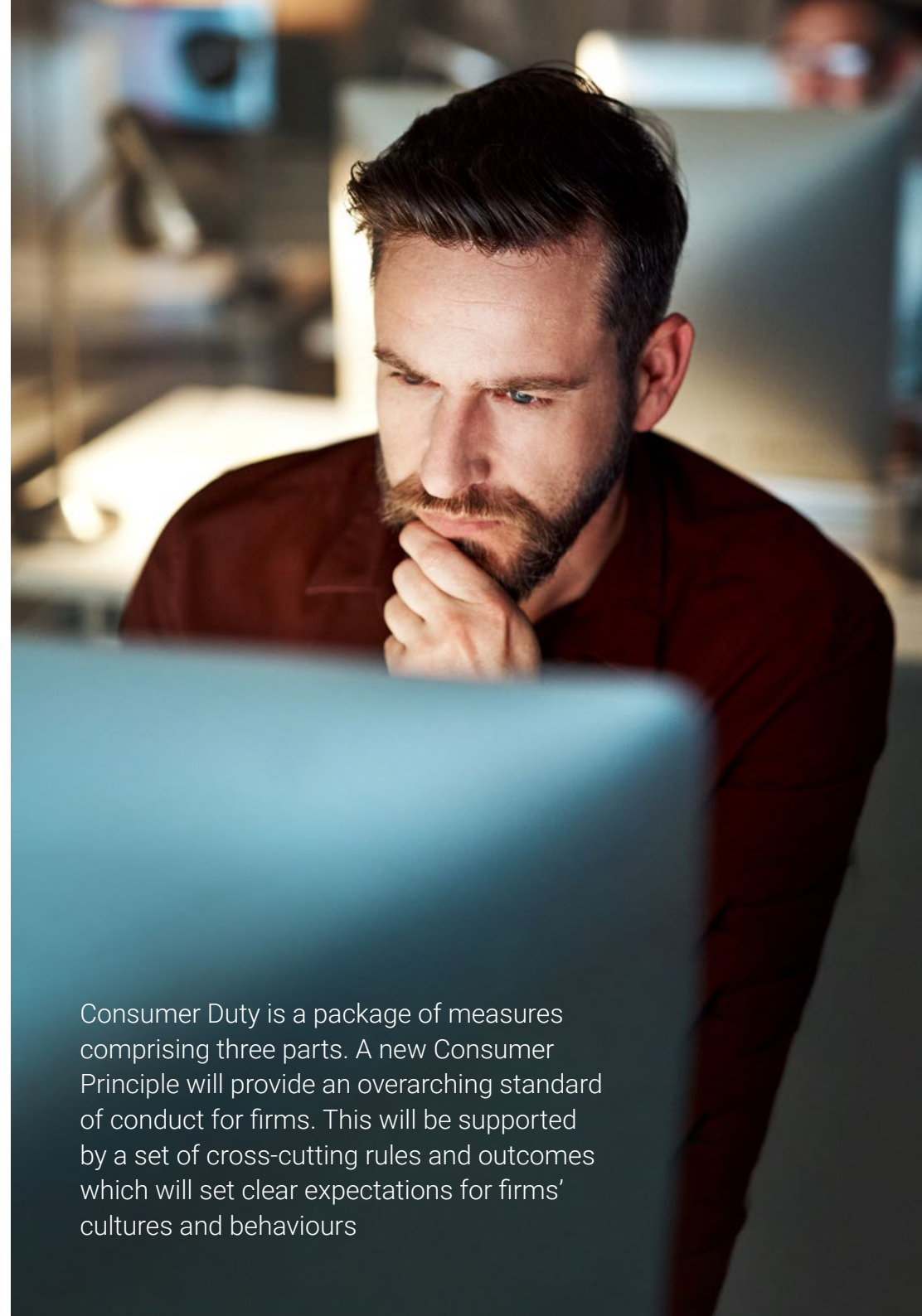
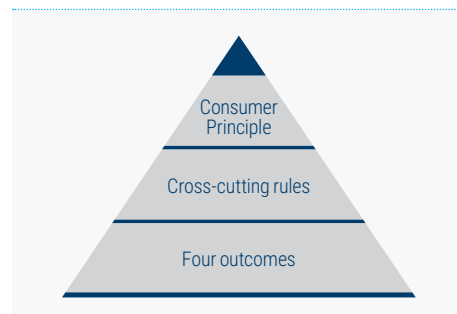
Cross-cutting rules require three key behaviours from firms:

- act in good faith towards retail customers
- avoid causing foreseeable harm to retail customers
- enable and support retail customers to pursue their financial objectives

Four outcomes

The Consumer Principle is also underpinned by a suite of rules and guidance that set more detailed expectations for firms' conduct in relation to four specific outcomes:

- products and services
- price and value
- consumer understanding
- consumer support



Consumer Duty is a package of measures comprising three parts. A new Consumer Principle will provide an overarching standard of conduct for firms. This will be supported by a set of cross-cutting rules and outcomes which will set clear expectations for firms' cultures and behaviours

The Consumer Principle

The Consumer Principle, which is the new Principle 12, requires firms to **'act to deliver good outcomes for retail customers.'** (Chapter 2A of PRIN.)



It sets a higher and more exacting standard of conduct that was required under Principle 6 (a firm must pay due regard to the interests of its customers and treat them fairly) and Principle 7 (a firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading). Where Principle 12 applies, it will apply instead of Principle 6 and 7. As with all FCA Principles, this is a rule, breach of which will be actionable by the FCA.

What does this mean for firms?

Principle 12 focuses on customer outcomes, and requires firms to:

- put consumers at the heart of their business and focus on delivering good outcomes for customers
- provide products and services that are designed to meet customers' needs, that they know provide fair value, that help customers achieve their financial objectives and which do not cause them harm
- communicate and engage with customers so that they can make effective, timely and properly informed decisions about financial products and services and can take responsibility for their actions and decisions
- not seek to exploit customers' behavioural biases, lack of knowledge or characteristics of vulnerability
- support their customers in realising the benefits of the products and services they buy and acting in their interests without unreasonable barriers
- consistently consider the needs of their customers, and how they behave, at every stage of the product/service lifecycle
- continuously learn from their growing focus and awareness of real customer outcomes
- ensure that the interests of their customers are central to their culture and purpose and embedded throughout the organisation
- monitor and regularly review the outcomes that their customers are experiencing in practice and take action to address any risks to good customer outcomes
- ensure that their board or equivalent governing body takes full responsibility for ensuring that the Duty is properly embedded within the firm, and senior managers are accountable for the outcomes their customers are experiencing, in line with their accountability under the Senior Managers and Certification Regime (SM&CR)

Consumer Duty has been heralded as one of the biggest new pieces of regulation in the financial advice market in decades. Ultimately, it aims to ensure that existing best practice around good client outcomes is applied consistently across the industry

Cross-cutting rules

The cross-cutting obligations set out the overarching conduct which firms must demonstrate when acting to deliver good outcomes for retail customers.



✓ Act in good faith towards retail customers

- A standard of conduct characterised by honesty, fair and open dealing, and consistency with the reasonable expectations of customers

✓ Avoid causing foreseeable harm to retail customers

- Firms will be prohibited from causing harm to customers through their conduct, products or services and required to take proactive steps to avoid causing such harm to customers.
- Firms should not seek to exploit customers' vulnerabilities, behavioural biases or lack of knowledge.

- Firms should be fair in describing the benefits and risks of their products and services.

✓ Enable and support retail customers to pursue their financial objectives

- Firms must ensure that customers are able to act in their own interests.
- Firms should use their knowledge of customers behavioural characteristics to enable and support them in making informed decisions.

The cross-cutting rules work together as a package and poor conduct will often breach more than one of the cross-cutting rules.

The FCA acknowledges that customers should be empowered to make their own choices and ultimately must be responsible

for their own decisions. However, it does expect firms to create an environment in which customers can act in their best interests. Firms should use their knowledge of how customers behave, not exploiting behavioural biases of customers, taking into account any customer vulnerabilities, to support them in making good decisions.

The regulator also notes there is generally an imbalance in bargaining position, knowledge and expertise between customers and firms and so it is critical that firms act openly and honestly with all customers.

The Duty's three cross-cutting rules set out how firms should act to deliver good outcomes for retail customers.

- act in good faith towards retail customers
 - avoid causing foreseeable harm to retail customers
 - enable and support retail customers to pursue their financial objectives
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Four Consumer Duty outcomes

The four outcomes of Consumer Duty set out more detailed rules in key areas of the customer relationship.



Products and services

These need to be specifically designed to meet the needs of customers and sold to those whose needs they meet.



Price and value

The price of products and services are fit for purpose and represents fair value for customers.



Consumer understanding

Firms' communications should support and enable customers to make informed decisions about product and services.



Consumer support

Providing a level of support that meets customers' needs throughout their relationship with the firm.

Outcome 1: Products and services

The FCA wants all products and services for retail customers to be fit for purpose.

It wants them to be designed to meet customers' needs and targeted at those customers.

The product and services outcome rules are central to firms acting to deliver good outcomes, setting out a range of requirements, including the need for relevant firms to:

- ensure that the design of the product or service meets the needs, characteristics and objectives of customers in the identified target market
- ensure that the intended distribution strategy for the product or service is appropriate for the target market
- carry out regular reviews to ensure that the product or service continues to meet the needs, characteristics and objectives of the target market

Source: FCA Final Guidance FG22/5 Final non-handbook Guidance for firms on the Consumer Duty. Chapter 6: Product and service outcome 6.3 Page 38

Outcome 2: Price and value

The FCA wants all customers to receive fair value.

A lack of fair value is unlikely to be consistent with customers realising their financial objectives and firms cannot act in good faith if they are knowingly manufacturing or distributing poor value products or services. However, value is about more than just price, and the regulator wants firms to assess their products and services to ensure there is a reasonable relationship between the price paid and the overall benefit a customer receives from the product or service.

To assess if a product or service provides value, firms must consider at least the following:

- the nature of the product or service, including the benefits that will be provided or may reasonably be expected and their qualities
- any limitations that are part of the product or service
- the expected total price customers will pay, including all applicable fees and charges over the lifetime of the relationship between customers and firms

Firms should also consider how different groups of customers are affected as some groups may be more at risk of harm. Customers with characteristics of vulnerability, for example, may be more susceptible to receiving poor value.

Source: FCA Final Guidance FG 22/5 Final non-handbook Guidance for firms on the Consumer Duty Chapter 7: Price and Value outcome, 7.9 Page 57



A firm must support customers' understanding by ensuring their communications meet the information needs of customers, are likely to be understood by customers intended to receive the communication and equip them to make decisions that are effective, timely and properly informed

Outcome 3: Consumer understanding

The FCA wants firms' communications to support and enable customers to make informed decisions about financial products and services.

It wants customers to be given the information they need, at the right time and presented in a way they can understand. The rules retain the obligation under Principle 7 for firms to communicate information in a way which is clear, fair and not misleading. They also go further by requiring firms to:

- support customers' understanding by ensuring their communications meet the information needs of customers, are likely to be understood by customers intended to receive the communication and equip them to make decisions that are effective, timely and properly informed
- tailor communications, taking into account the characteristics of the customers intended to receive the communication
 - including any characteristics of vulnerability, the complexity of products, the communication channel used, and the role of the firm
- when interacting directly with a customer on a one-to-one basis, where appropriate, tailor communications to meet the information needs of the customer and ask them if they understand the information and have any further questions
- test, monitor and adapt communications to support understanding and good outcomes for customers

Outcome 4: Consumer support

The FCA wants firms to provide a level of support that meets customers' needs throughout their relationship with the firm.

This means firms' customer service should enable customers to realise the benefits of the products and services they buy and ensure they are supported when they want to pursue their financial objectives and ensure that they can act in their own interests.

- design and deliver support that meets the needs of customers, including those with characteristics of vulnerability
- ensure that customers can use their products as reasonably anticipated
- ensure they include appropriate friction in customer journeys to mitigate the risk of harm and give customers sufficient opportunity to understand and assess their options, including any risks
- ensure customers do not face unreasonable barriers (including unreasonable additional costs) during the lifecycle of a product or service
- monitor the quality of the support they are offering, looking for evidence that may indicate areas where they fall short of the outcome, and act promptly to address these
- ensure they do not disadvantage particular groups of customers, including those with characteristics of vulnerability

Culture, governance and accountability

The Duty sets a higher expectation for the standard of care that firms give customers therefore ensuring the interests of their customers are central to their culture and purpose and embedded throughout the organisation.

The firm's board or equivalent governing body is required to ensure their strategies, governance, leadership and people policies (including incentives at all levels) lead to good outcomes for customers. Firms should appoint a Duty Champion at board (or equivalent governing body) level who, along with the Chair and the CEO, ensures that the Duty is being discussed regularly and raised in all relevant discussions. The champion should be an Independent Non-Executive Director (NED), where possible. For larger organisations with group structures, it is expected that this champion be at an appropriate senior level to ensure that the Duty is discussed in a meaningful way. The expectation applies reasonably, so the same level of formality is not expected in smaller firms.

However, irrespective of the scale of the firm, senior managers will be accountable for delivering good customer outcomes within their areas of responsibility, in line with the SM&CR Duty of Responsibility and the Conduct Rules.

Firms should appoint a Duty Champion at board (or equivalent governing body) level who, along with the Chair and the CEO, ensures that the Duty is being discussed regularly and raised in all relevant discussions

Monitoring outcomes

A key part of the Duty is that firms assess, test, understand and are able to evidence the outcomes their customers are receiving.

Without this, it will be impossible for firms to know that their products and services are working as they and their customers would have expected and in a way that is consistent with the Duty. The rules therefore require firms to:

- ✓ monitor and regularly review the outcomes their customers are experiencing to ensure the products and services they provide are delivering outcomes consistent with the Duty
- ✓ identify where customers or groups of customers are not getting good outcomes and understand why
- ✓ have processes in place to adapt and change products and services, or policies and practices, to address any risks or issues identified and stop it occurring again in the future

Through the monitoring of customer outcomes, there is the expectation for firms to:

- identify and manage any risks to good outcomes for customers
- spot where customers are getting poor outcomes and understand the root cause
- have processes in place to adapt and change products and services, or policies and practices, to address any risks or issues as appropriate
- be able to demonstrate how they have identified and addressed issues leading to poor outcomes
- a firm's board (or equivalent governing body) should review and approve an assessment of whether they are delivering good outcomes for its customers which are consistent with the Duty, at least annually

If asked, firms are expected to be able to explain how they reached a decision on the most appropriate intervention, demonstrate how it has delivered good outcomes and, if not, what they have done further to address the issue.

Summary of key implications of Consumer Duty for financial advice firms

The Consumer Duty has wide-ranging implications for firms:

- The focus on customers' interests and outcomes will lead firms to consider the Consumer Duty at every stage of their processes and at every level of their organisational structure.
- Senior Managers will be responsible for ensuring the Duty is met across the firm's business areas and they could be held accountable for failures to comply with the requirements and standards of the Duty.
- Appropriate management information (MI) will be key to evidencing that the delivery of customer outcomes is being properly assessed and monitored. MI must be fit for purpose and support senior management in evidencing that they are taking reasonable steps to meet the requirements of the Duty.
- The expectation will be for firms to adopt a "get it right in the first place" approach,

particularly when designing products and services. The FCA also expects firms to place greater emphasis on putting customers in a position where they can make decisions to meet their needs and pursue their financial objectives.

Consumer Duty requires that firms put consumers at the heart of their business and focus on delivering good outcomes for customers


- Firms will be required to monitor, test and adapt their practices and processes on an ongoing basis to satisfy both themselves and the regulator that they are delivering the expected outcomes. The FCA will expect firms to provide information and data to it to evidence their compliance with outcomes.
- Firms must deliver regular training to their staff on the Consumer Duty which will be overseen by their senior management.
- A firm's governing body should review and approve the firm's assessment of whether it is delivering good outcomes for its customers which are consistent with the Consumer Duty, at least annually.

The FCA expects the implementation of the Consumer Duty to develop over time and it will engage with firms to determine good practice in terms of implementation.


Additional reading

- > [FCA Final Guidance FG21/1. Guidance for firms on the fair treatment of vulnerable customers](#)
- > [FCA Final Guidance FG22/5: Final non-handbook Guidance for firms on the Consumer Duty](#)
- > [FCA Policy Statement PS22/9: A new Consumer Duty. Feedback to CP21/36 and final rules](#)

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