

FCA Policy Statement PS 22/9

A new Consumer Duty

<https://www.fca.org.uk/publications/policy-statements/ps22-9-new-consumer-duty>

July 2022

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

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- Overview
 - Under the Duty, firms will need to assess and evidence the extent to which, and how, they are acting to deliver good outcomes.
 - The Duty sets a higher, clearer standard by requiring firms to ensure their products and services are fit for purpose and offer fair value, and to help consumers make effective choices or act in their interests
 - The Duty also supports more agile and assertive supervision
 - *The Duty applies only to the extent that a firm is responsible for determining or materially influencing retail customer outcomes*

- The UK's Financial Conduct Authority is introducing
 - A new Consumer Principle that requires firms to act to deliver good outcomes for retail customers; and
 - Cross-cutting rules providing greater clarity on our expectations under the new Principle and helping firms interpret the four outcomes
- The four outcomes are
 - fair value: consumers receive fair prices and quality
 - suitability and treatment: consumers receive suitable products and services and receive good treatment
 - confidence: consumers have strong confidence and levels of participation in markets
 - access: diverse consumer needs are met

- The cross-cutting rules require firms to:
 - act in good faith
 - avoid causing foreseeable harm
 - enable and support retail customers to pursue their financial objectives
- The rules represent key elements of the firm-consumer relationship which are instrumental in helping to drive good outcomes for customers
- The four outcomes relate to:
 - products and services
 - price and value
 - consumer understanding
 - consumer support

- “The Duty also aligns with our own transformation and our focus on being more innovative, assertive and adaptive in our regulatory approach”
 - Under the Duty, firms need to assess and evidence the extent to which, and how, they are acting to deliver good outcomes and address any issues they identify
 - Combined with our more data-led approach, this will enable us to more quickly identify practices that negatively affect those outcomes and to intervene
- Firms will need to apply the Duty to new and existing products and services that are open to sale (or renewal) from July 31st 2023. We have given firms longer, until July 31st 2024, to apply the Duty to products and services held in closed books

- “We are proposing to undertake a post-implementation review to understand how firms have implemented the Duty, whether it is having the intended effect and whether it is leading to any unintended consequences
- where SMEs are already protected by our rules...the Duty will also apply”

- “It is important that all firms that can control retail customer outcomes should take responsibility for their actions, regardless of the relationship with the customer. So, we are retaining the proposed scope of the Duty to include customers with whom a firm does not have a direct relationship”
- This will apply to firms which may influence retail customer outcomes as part of a design, distribution, communication or support chain
- Note that “firms are responsible only for their own activities and do not need to oversee the actions of other firms in the distribution chain” *but* “We have introduced a rule requiring firms to notify us if they become aware that another firm in the distribution chain is not complying with the Duty”

- Firms that purchase or have purchased existing books of retail products must use best endeavours to meet the Duty's requirements under the products and services outcome and the price and value outcome
- Firms which sell or may sell existing books of retail business will need to provide information to the firm buying the book to help them comply with the Duty

- “Principle 12 [the Duty] imposes a higher and more exacting standard of conduct than
 - 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*]
- ...therefore firms should take account of the inherent limits of such guidance, as they do not cover our expectations under the Duty in full
- However, failure to act in accordance with existing guidance on Principles 6 and 7, which would have amounted to a breach of those Principles, is likely to breach Principle 12”

- Our rules describe **acting in good faith** as a ‘standard of conduct characterised by honesty, fair and open dealing and acting consistently with the reasonable expectations of retail customers’
 - We have retained the concept of reasonableness connected with what can be expected of a prudent firm...what is reasonable will also be assessed on the facts and so will involve judgements from firms at the time
 - We do not expect firms to protect their customers from risks they understood and accepted
 - *One question that firms can ask themselves is whether they are applying the same standards and capabilities to delivering good consumer outcomes as they are to generating sales and revenue*

- **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
 - In general, the rules apply at the level of the target market, rather than a firm's services for an individual customer. These rules would only apply at an individual customer level where a bespoke service is developed for a particular customer

■ The price and value outcome

- We want all consumers to receive fair value. Value is about more than just price, and we want firms to assess their products and services in the round to ensure there is a reasonable relationship between the price paid for a product or service and the overall benefit a consumer receives from it
- ...we do not believe that all differential pricing between new and existing customers necessarily causes harm. Where upfront discounts are clear and transparent, and the firm can demonstrate that both groups are receiving fair value, then there may be no consumer harm and this could meet the standards of the Duty.
- We can confirm that our rules are not intended to prevent cross-subsidies between products or require firms to move onto cost-plus pricing

■ **The consumer understanding outcome**

- We want firms' communications to support and enable consumers to make informed decisions...to be given the information they need, at the right time, and presented in a way they can understand
- Firms will need to think more widely about the purpose of their communications, and the outcomes they are focused on, to meet our expectations under the Duty.
- We do not expect firms to tailor all communications to meet the individual needs of each customer. Instead, they should take into account the characteristics of customers more broadly, including characteristics of vulnerability
- E.g. research has found that one in seven adults have literacy skills at or below those expected of a nine- to 11-year-old and our Financial Lives Survey found 17.7 million adults (34%) have poor or low levels of numeracy involving financial concepts. So, for example, if a firm is developing communications for a simple mass-market product, we expect them to take these characteristics into account...
- Alternatively, if a firm is communicating about a complex product with a more sophisticated target market, it may be reasonable to do so in a different way

- **The consumer understanding outcome (contd.)**
 - E.g. the target market for a sub-prime credit product is more likely to include consumers with characteristics such as inadequate or erratic income, over-indebtedness or low savings. So, it might be appropriate to prominently signpost the availability of support for customers in financial difficulty in a broader range of communications after the sale of the product to meet the information needs of these customers
 - Firms should also have processes in place to support those with other characteristics of vulnerability by, for example, having a clear way for consumers with a hearing or visual impairment to request communications in a format that meets their needs.
 - Testing is an important part of the consumer understanding outcome. It builds on, and goes further, than the clear, fair and not misleading standard under Principle 7...We want firms to be able to demonstrate consumer understanding – because they have tested it and made improvements to their communications, where appropriate, to support good outcomes

- **The consumer support outcome**
- Firms' customer service should enable consumers to realise the benefits of the products and services they buy and ensure they are supported when they want to pursue their financial objectives
- We do not prescribe which channels firms must offer, but firms must ensure the channels of support they do offer meet the needs of their customers, including
 - customers dealing with non-standard issues
 - customers with characteristics of vulnerability
 - Consumers with changing needs; and
 - Consumers in vulnerable circumstances
- Other concepts such as neurodiversity and socio-economic background may be useful for firms as they consider how to meet customers' needs

- **FCA expectations of firms during the implementation period**
- Firms should use the whole implementation period and be able to demonstrate progress when asked
- The necessary changes to:
 - policies,
 - process,
 - governance and
 - culture...should be put in place
- By the end of October 2022, Boards should challenge, agree and sign-off on implementation plans, and thereafter maintain oversight of their delivery, to ensure the implementation work is sufficient to meet the Duty standards
- Firms that ‘manufacture’ products and/or services for distribution by others must review compliance with required outcomes, identify where changes need to be made and engage accordingly with distributors

- **FCA expectations of firms during the implementation period contd.**
- Where firms identify serious issues causing immediate consumer harm, they should prioritise action to remedy this
- *Where actions to bring products and services up to Consumer Duty standards can be completed more quickly than the implementation deadlines, firms should consider doing so, to improve outcomes for consumers more quickly*
- In line with Principle 11 (Relations with Regulators), firms should engage with the FCA if they are considering withdrawing or restricting access to products or services in a way that will have a significant impact on vulnerable consumers, or on overall market supply

- **FCA expectations of firms during the implementation period contd.**
- By the end of implementation period, Boards should assure themselves that their firm is complying with their obligations under the Duty, and ensure the firm has identified and remedied any potential gaps or weaknesses
- *The Duty should be reflected in firms' strategies, governance, leadership and people policies, including incentives at all levels*
- Firms should have a champion at Board level who, along with the Chair and the CEO, ensures that the Duty is discussed regularly and raised in all relevant discussions
- Senior managers will be accountable for delivering good consumer outcomes within their areas of responsibility, in line with the SM&CR Duty of Responsibility and the Conduct Rules. We will also consider evidence of individuals' understanding of and actions taken to comply with the Duty, when considering individuals for approval

- **FG22/5 Final non-Handbook Guidance for firms on the Consumer Duty**
- Firms should put consumers at the heart of their business and focus on delivering good outcomes for customers
- The Board should take 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
- One question all firms can ask themselves is whether they are applying the same standards and capabilities to delivering good customer outcomes as they are to generating sales and revenue in comparable areas. For example:
 - are communications focused on supporting customers as clear as those used to sell the product?
 - is the quality of any post-sale support as good as the pre-sale support?

- **FG21/1 - FCA guidance on the fair treatment of vulnerable customers**
 - Sets out what firms should do to ensure that customers in vulnerable circumstances experience outcomes as good as those for other consumers
 - The level of care that is appropriate for vulnerable consumers may be different from that for others and firms should take particular care to ensure they are treated fairly
 - Firms should understand the characteristics of vulnerability that exist in their target market and customer base, and the impact of vulnerability on the needs of consumers
 - Firms' senior leaders should create and maintain a culture that enables and supports staff to take responsibility for reducing the potential for harm to vulnerable customers, and to regularly generate and review appropriate MI
 - Firms should create an internal vulnerability policy that includes information on the likely vulnerabilities and needs in the firm's target markets. Formalising this information in a policy can help raise awareness throughout the firm.

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