

New FCA Consumer Duty – What firms need to know

1. Speed read

The FCA has finalised its new proposed consumer duty regime for UK firms, with a start date of July 2023 (subject to transitional provisions). The first milestone in terms of a relevant firm's implementation project is 31 October 2022.

This bulletin provides a snapshot of the regime, and an overview of its requirements and timing.

2. Key dates and milestones

- 31 October 2022 – deadline for a firm's board to have agreed plans to implement the consumer duty:¹

"[the board should also] be able to evidence they have scrutinised and challenged the plans to ensure they are deliverable and robust to meet the new standards. Firms should expect to be asked to share implementation plans, board papers and minutes with supervisors and be challenged on their contents."
- 30 April 2023 – deadline for relevant manufacturers to share key information with relevant distributors.
- 31 July 2023 – the regime begins to apply to firms in respect of all new products and services, and all existing products and services that remain on sale or open for renewal.
- 31 July 2024 – the regime begins to apply to all closed products and services. The intention is to give firms more time to bring these older products, that are no longer on sale, up to the new standards.
- 31 July 2024 – deadline for a relevant firm's first annual report on complying with the consumer duty. This relates to the new requirement under the regime for a firm to conduct an internal assessment at least annually.

1. Page 70, <https://www.fca.org.uk/publication/policy/ps22-9.pdf>.

The following express FCA requirements also apply, which are unusual and reinforce the degree of importance being placed by the FCA on this regulatory initiative:²

- Boards must maintain oversight of a firm’s implementation plans to ensure they remain on track, and the work to review and improve the firm’s products and services is sufficient to comply with the new regime.

- Firms are required to notify the FCA if their implementation project is not on track.
- At the end of the implementation period, boards should assure themselves their firms are compliant, and that any potential gaps or weaknesses and any action needed to remediate, have been identified.

3. Cheat sheet of key materials

- **Policy statement** – The FCA published the final rules in July 2022 via Policy Statement 22/9 titled “A new Consumer Duty Feedback to CP21/36 and final rules”.³

- **Finalised guidance** – In July 2022, the FCA also published Finalised Guidance (FG) 22/5 titled “Final non-Handbook Guidance for firms on the Consumer Duty”.⁴ This contains detailed information as to the FCA’s expectations, good and poor practice, and how certain scenarios should be dealt with – eg a disagreement between a product manufacturer and distributor. Put simply, it is essential reading for firms that need to comply with the new regime.

- **FCA strategy** – The FCA’s latest strategy document⁵ sets out its overarching strategy for the next three years, with the new consumer duty being “the cornerstone”:

“We want to see a higher level of consumer protection in retail financial markets, where firms compete vigorously in consumers’ interests. Firms need to understand their customers’ needs and to have the flexibility to support them with certainty of our expectations, so they get good outcomes... This is particularly important as consumers face increasing pressures, including those relating to the cost of living...”

- **Background materials** – For insight into the development of the new regime and key concepts, see also the following:

- Discussion Paper (DP) 18/5 titled “Discussion Paper on a duty of care and potential alternative approaches” (July 2018).⁶
- Feedback Statement (FS) 19/2 titled “A duty of care and potential alternative approaches: summary of responses and next steps” (April 2019).⁷
- Consultation Paper (CP) 21/13 titled “A new Consumer Duty” (May 2021).⁸
- Consultation Paper (CP) 21/36 titled “A new Consumer Duty Feedback to CP21/13 and further consultation” (December 2021).⁹
- The Financial Services Act 2021¹⁰ – this demonstrates the support of Parliament for the new regime. In particular, it required the FCA to carry out a public consultation on the introduction of a duty of care, and stated that the FCA “*must, before 1 August 2022, make such general rules about the level of care that must be provided to consumers, or particular classes of consumer, by authorised persons as it considers appropriate, having regard to that analysis*”.

2. Page 70, <https://www.fca.org.uk/publication/policy/ps22-9.pdf>.

3. <https://www.fca.org.uk/publication/policy/ps22-9.pdf>. See also https://www.handbook.fca.org.uk/instrument/2022/FCA_2022_31.pdf

4. <https://www.fca.org.uk/publication/finalised-guidance/fg22-5.pdf>

5. <https://www.fca.org.uk/publication/corporate/our-strategy-2022-25.pdf>

6. <https://www.fca.org.uk/publication/discussion/dp-18-05.pdf>

7. <https://www.fca.org.uk/publication/feedback/fs19-02.pdf>

8. <https://www.fca.org.uk/publication/consultation/cp21-13.pdf>

9. <https://www.fca.org.uk/publication/consultation/cp21-36.pdf>

10. <https://www.legislation.gov.uk/ukpga/2021/22/enacted>



4. High profile nature of initiative

The importance placed on this initiative has been reinforced in a number of FCA speeches; for example, the FCA CEO has stated as follows:¹¹

“We want to break new ground with our New Consumer Duty, which will ensure all firms take account of the actual impact of their services and product suitability on the consumer. Selling someone the right product, easily understandable with suitable customer service is hardly controversial but, too often, even established firms aren’t delivering.

Those firms who do the right thing and show leadership should welcome action to tackle competitors who drive down standards, and we anticipate fewer rule changes as a result, lowering costs to good firms operating in the UK.”

The following “quotable quotes” from the FCA also underline the degree of change it is looking to see:

*“The FCA’s Consumer Duty will lead to a major shift in financial services”.*¹²

From an FCA press release: *“FCA to introduce new Consumer Duty to drive a fundamental shift in industry mindset”.*¹³

“We’ve been working to set a higher standard for firms, to put more of the onus on them to act in their customers’ interests and get their products and services right.

‘The new duty will drive a change in culture at firms. We expect firms to step up and put consumers at the heart of what they do and

*we’ll be holding senior managers accountable if they do not. The duty will also help create an environment for healthy competition between firms, encouraging them to be innovative in developing products and services that meet consumers’ needs.”*¹⁴

*“[The new regime] should prompt firms to ask themselves questions such as, ‘Am I treating my customers as I would expect to be treated in their circumstances?’ or, ‘Are my customers getting the outcomes from my products and services that they would expect?’.”*¹⁵

Two conclusions may be drawn from the materials referred to above:

- It has taken the FCA over 4 years to reach this point, or 5 years if you count backwards from the proposed start date of the regime (31 July 2023). This represents a significant investment of time and resource overlapping with both Brexit and the pandemic, and the FCA is likely to find itself under considerable scrutiny from the UK parliament and the press in terms of the success of the initiative.
- The regime represents a material divergence and “step up” from EU regulatory requirements. This may be a point of note for firms that hoped Brexit would result in the UK being a more “light touch” regulatory regime.

11. <https://www.fca.org.uk/news/speeches/how-uk-will-regulate-future>

12. <https://www.fca.org.uk/news/press-releases/fca-consumer-duty-major-shift-financial-services>

13. <https://www.fca.org.uk/news/press-releases/fca-introduce-new-consumer-duty-drive-fundamental-shift-industry-mindset>

14. As above.

15. <https://www.fca.org.uk/publication/finalised-guidance/fg22-5.pdf>



5. Scope of regime

In general terms, the scope of the regime:

- comprises all UK regulated firms that offer products and services to retail customers, including where there is a distribution chain which involves a retail customer;¹⁶
- comprises existing as well as closed products;
- includes payment services and the issue of electronic money;¹⁷
- applies in relation to potential as well as actual customers of firms;¹⁸
- (from a territorial perspective) is as follows: *“[it applies] with respect to activities carried on with retail customers located in the United Kingdom unless another applicable rule or onshored regulation which is relevant to the activity has a different territorial scope, in which case Principle 12 and PRIN 2A apply with that scope in relation to the activity described in that rule or onshored legislation”*;¹⁹
- does not include unregulated business, such as unregulated buy-to-let lending or commercial lending;²⁰ and
- will generally extend to high net worth (HNW) individuals, unless their status takes them outside the FCA’s perimeter (for example, as regards consumer credit).

A new concept (the term “retail market business”) has also been introduced, as follows:

“3.2.6 Principle 12 and PRIN 2A apply to a firm’s retail market business only, including in respect of existing products and closed products.”

“3.2.7 R Where a firm’s retail market business involves operating in a distribution chain, Principle 12 and PRIN 2A apply only to the extent that the person is responsible in the course of that retail market business for determining or materially influencing retail customer outcomes.”

This new term, “retail market business” is, defined in the FCA Glossary as follows (emphasis added):

*“the regulated activities and ancillary activities to those activities, payment services, issuing electronic money, and activities connected to the provision of payment services or issuing of electronic money, of a firm in a distribution chain (including a manufacturer and a distributor) which involves a retail customer, **but not including the following activities:***

- (1) the manufacture of a product that is: (a) only marketed and approved for distribution to non-retail customers; and (b) not a product provided by Firm A to Firm B (further to an arrangement between them) to enable Firm B to distribute another product to a retail customer, or operate a specified investment held by a retail customer;*
- (2) activities carried on in relation to non-retail financial instruments;*

16. See new PRIN 3.1.12 and the detailed explanation on scope in pages 8-12 of <https://www.fca.org.uk/publication/finalised-guidance/fg22-5.pdf>. Note also that a new limb of the definition of “retail customer” has been introduced to clarify certain points – eg “retail customer” means, “where a firm is involved in a distribution chain, any person who is, or would be, the end retail customer in that distribution chain but is not a direct client of that firm”. Further guidance in relation to distribution chains is provided in new PRIN 2A.1.13-2A.1.15, and Finalised Guidance (FG) 22/5 paragraphs 2.13-2.20.

17. Eg see PRIN 2A.1.7.

18. See also new PRIN 2A.1.5.

19. See new PRIN 3.3.1

20. See pages 8, 16 and 17 at <https://www.fca.org.uk/publication/finalised-guidance/fg22-5.pdf>



(3) an offer and any associated promotional communications, where that offer is:

(a) carried on by a firm with or for any issuer, holder or owner of a financial instrument and relates to the offer, issue, underwriting, repurchase, exchange or redemption of, or the variation of the terms of that financial instrument or any related matter; and

(b) of a financial instrument which meets all the following criteria: (i) it is when issued, traded or intended to be traded on an RIE or trading venue operated by a regulated market; (ii) it does not involve any actual or potential liability for the investor that exceeds the cost of acquiring the instrument; (iii) it does not incorporate a clause, condition or trigger that could fundamentally alter the nature or risk of the investment or pay out profile, such as investments that incorporate a right to convert the instrument into a different investment; or where the return of initial capital invested at the end of the investment period is linked by a pre-set formula to the performance of an index, a combination of indices, a 'basket' of selected stocks (typically from an index or indices), or other factor or combination of factors; (iv) it does not include any explicit or implicit exit charges that have the effect of making the investment illiquid even though there are technically frequent opportunities to dispose of, redeem or otherwise realise it; (v) it is not a collective investment scheme or an AIF; and (vi) it is not a structured finance product;

[Note: paragraphs (ii) to (iv) derive from article 57 of the MiFID Org Regulation]

(4) activities carried on in relation to contracts of large risks for a commercial customer or where the risk is located outside the United Kingdom;

(5) the regulated activity of administering a benchmark, any ancillary activity to that activity and any activities undertaken by a benchmark administrator for the purpose of complying with the Benchmarks Regulation;

(6) insurance distribution activities carried on by a firm in respect of a group policy that: (a) are carried on by the firm at the time the group policy is entered into or subsequently; (b) are for the purpose of a person, other than the legal holder of the policy, becoming a policyholder; and (c) do not involve any direct contact between the firm and that person.”²¹

On terminology, the FCA has also helpfully clarified as follows:²²

- It generally uses the term ‘consumer’ when talking about the wider group of those who use financial services and ‘customer’ when talking about an individual firm’s customers or potential customers. However, “both mean retail customers who are within the scope of the Duty”.
- The term “product” is used to refer to both products and services.²³

21. See https://www.handbook.fca.org.uk/instrument/2022/FCA_2022_31.pdf . See also the helpful guidance on pages 14 and 15 at <https://www.fca.org.uk/publication/finalised-guidance/fg22-5.pdf>.

22. <https://www.fca.org.uk/publication/finalised-guidance/fg22-5.pdf>

23. Eg see PRIN 2A.1.4.



6. What does the regime require?

The overall regime (including all applicable new guidance) is lengthy and detailed, but the overarching requirements comprise three components.

A new Consumer Principle	<p>What is this?</p> <p>The FCA has introduced a new consumer principle which reflects the overall standard of behaviour it wants from firms and which is defined further by the other elements of the consumer duty.</p> <p>This comprises new Principle 12 (“Consumer Duty”) in the FCA’s high level principles for businesses, and reads as follows:²⁴</p> <p><i>“A firm must act to deliver good outcomes for retail customers”.</i></p> <p>Where are the new provisions on this?</p> <p>PRIN 2.1²⁵</p> <p>See also the guidance in Finalised Guidance (FG) 22/5; in particular, Chapter 4</p>
Cross-cutting rules	<p>What is this?</p> <p>The FCA has introduced new cross-cutting rules that:</p> <ul style="list-style-type: none">– set out its expectations for behaviour through three overarching requirements that explain how firms should act to deliver good outcomes and apply across all areas of firm conduct; and– inform and help firms interpret the four outcomes referred to below. <p>In particular, firms will be required to:</p> <ul style="list-style-type: none">– act in good faith;– avoid causing foreseeable harm; and– enable and support retail customers to pursue their financial objectives. <p>Where are the new provisions on this?</p> <p>PRIN 2A</p> <p>See also the guidance in Finalised Guidance (FG) 22/5; in particular, Chapter 5</p>
Four outcomes	<p>What is this?</p> <p>The four outcomes are a suite of rules and guidance setting out more detailed expectations for firm conduct in four areas that represent key elements of the firm-consumer relationship:</p> <ul style="list-style-type: none">– the governance of products and services;– price and value;– consumer understanding; and– consumer support. <p>Where are the new provisions on this?</p> <p>PRIN 2A</p> <p>See also the guidance in Finalised Guidance (FG) 22/5; in particular, Chapters 6, 7, 8 and 9</p>

24. https://www.handbook.fca.org.uk/instrument/2022/FCA_2022_31.pdf and <https://www.handbook.fca.org.uk/handbook/PRIN/2/1.html?date=31-08-2024&timeline=True>

25. “PRIN” refers to the FCA’s Principles for Businesses.



7. FCA expectations

The FCA has also made clear its expectations of firms under the new regime. In particular, firms should:²⁶

- 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; and
- ensure that their board 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**).

8. Next steps



Firms should be under no misapprehension as to the importance placed by the FCA on this regulatory initiative, and ensure they put sufficient resource and senior management attention into their regulatory change projects. If you have any questions about the points discussed in this bulletin, or about the new consumer duty regime generally, please get in touch with your usual A&O contact.

26. <https://www.fca.org.uk/publication/finalised-guidance/fg22-5.pdf>

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