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Consumer Duty: What Do Boards Need to Know?

With the Consumer Duty's effective date of 31 July 2023 fast approaching, this briefing looks at the ongoing obligations that apply to the boards of FCA-regulated firms under the Consumer Duty.

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What Is the Consumer Duty?

To recap, a core priority for the Financial Conduct Authority (FCA) is improving outcomes for consumers. The FCA has stated that it is concerned that, due to the way financial services markets operate, consumers do not always get the products and services that meet their needs or the outcomes they might reasonably expect, which can lead to harm.

With this in mind, in order to improve consumer outcomes, on 27 July 2022 the FCA published its Policy Statement PS22/9, "A new Consumer Duty" along with the final rules inserted into the Principles for Businesses (PRIN) chapter of the FCA's Handbook and detailed Final non-Handbook Guidance for firms on the Consumer Duty (FG22/5), which together set out the new "Consumer Duty" package. This package represents the FCA's move into what it refers to as "outcomes based" regulation.

The Consumer Duty (the Duty) applies from 31 July 2023 to all new products and services, and all existing products and services that remain on sale or open for renewal. It also applies to all closed products and services from 31 July 2024. In addition, firms' boards (or equivalent management body, for the purpose of this briefing together referred to as "boards") were required to have agreed plans to implement the Duty, following scrutiny and challenge of these plans, by 31 October 2023. Therefore, boards have been required to retain oversight of their firms' implementation of the Duty, and importantly inform the FCA if there are likely to be any areas of non-compliance on 31 July 2023.

Throughout this briefing we include quotes from the FCA on these responsibilities.

> *"[W]e expect firms to be proactively working to deliver good customer outcomes: it is not enough just to avoid bad outcomes."*

At a high level, the aim of the Duty is to provide clear expectations for firms to help ensure that they deliver the right level of care and service to consumers and deliver the outcomes the FCA wants to see. It is designed to reinforce and complement the FCA's existing Handbook requirements (e.g., the current Principles for Businesses and the conduct of business rules). The Duty comprises the following three components:

1) A (new) Consumer Principle 12, which reflects the overall standard of behaviour the FCA wants from firms and which is defined further by the other elements of the Duty as follows:

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

2) The "cross-cutting rules", which the FCA states develop its expectations for behaviour through three overarching requirements that explain how firms should act to deliver good outcomes, apply across all areas of firm conduct, and inform and help firms interpret the four outcomes. These are:

   (i) to act in good faith;

   (ii) to avoid causing foreseeable harm; and

   (iii) to enable and support retail customers.

3) The "four outcomes"', which are a suite of rules and guidance setting more detailed expectations for firm conduct in four areas that represent key elements of the firm/consumer relationship as follows:

   (i) the governance of products and services;

   (ii) price and value;

   (iii) consumer understanding; and

   (iv) consumer support.

> *"[C]hange won't be possible unless driven from the top with strong senior championing and oversight."*

What Does This Mean for Boards?

To date, boards have been expected to oversee and challenge their firms' implementation of the Duty, for example by receiving business line implementation plans, reviewing progress against those plans to ensure they remain on track, and asking questions around implementation to provide appropriate challenge, oversight, and sign-off. The FCA has been very clear that the Duty must be a top priority for boards and that ultimate accountability for compliance will sit with boards and senior management.

> *"Firms will need to pay as much attention to good consumer outcomes as they would to any other significant aspect of their business, such as their level of profit and loss."*

Are There Ongoing Obligations on Boards?

Yes. In addition to the requirements for boards to have oversight of Duty implementation, there are ongoing obligations on boards once the Duty applies from 31 July 2023. These obligations are in relation to three key areas: (1) embedding good customer outcomes, (2) ongoing monitoring, and (3) annual assessment.

> *"Under the Duty, we will be holding firms — including their senior managers and boards — accountable for delivering good outcomes for consumers."*

The FCA provides some example questions which the Chair and the Consumer Duty Champion can use to guide discussions by a firm's board on both Duty implementation and ongoing compliance. These questions are set out in the Annex to this briefing.

Embedding good outcomes

The board should ensure that the firm's strategies, governance, leadership, processes, and people policies (including incentives at all levels) reflect the obligation to act to deliver good outcomes for customers (PRIN 2A.8.1).

The FCA has noted that firms should think of good customer outcomes in the same way they think about profits, and act to embed it into all aspects of the business. Boards must act to drive this behaviour and take care to ensure that all aspects of their business have been considered, including, for example, remuneration structures and the remit of the risk and internal audit functions.

> *"Firms which view the Duty as simply a change to governance and processes are unlikely to succeed in delivering good consumer outcomes."*

Defining good outcomes is not necessarily an easy task, but boards should understand what "good" looks like for their business. This might differ between business lines where firms offer more than one product or service and where each product and service should be considered separately. Importantly, "good" is more than just the absence of "bad" or "poor" customer outcomes, and so boards cannot just assume that because the monitoring carried out does not show "bad" outcomes, that "good" outcomes are being achieved.

> *"A key part of the Duty is that firms are able to define, monitor, evidence and stand behind the outcomes their customers are experiencing."*

Ongoing monitoring

PRIN 2A.9 contains detailed requirements on how firms should monitor consumer outcomes. Ultimately, the board will need to retain oversight of the results of monitoring to satisfy itself that customers are getting good outcomes and, where this may not be the case, determine whether further action is needed to comply with the Duty.

Determining what management information (MI) makes its way to the board is usually determined by individual lines of business and/or the committees which oversee them. Boards will need to look carefully at the MI which flows up to them and assess whether this provides a sufficient basis on which to determine that consumers are receiving the good outcomes which firms expect.

Boards may also wish to ask now for examples or templates of the MI that lines of business intend to provide, to ensure that what is planned is sufficient (e.g., provides meaningful insights into whether good outcomes are being achieved, as opposed to the absence of bad outcomes) and to allow sufficient time for any changes to be made if necessary.

> *“[F]irms’ senior management need to clearly demonstrate to employees what putting good consumer outcomes at the heart of their business means in practice.”*

Annual assessment

Boards are required to review and approve a report prepared by the firm setting out whether the firm is delivering good outcomes for its customers which are consistent with the Duty (based on the firm’s monitoring as discussed above) and confirm whether the board is satisfied that the firm is complying with the Duty, at least annually (PRIN 2A.8.4). This assessment should include:

- the results of the firm’s monitoring to assess whether products and services are delivering expected outcomes in line with the Duty; any evidence of poor outcomes, including whether any group of customers is receiving worse outcomes compared to another group, and an evaluation of the impact and the root cause of any identified issues;
- a review of the actions taken to address any risks or issues; and
- considering whether the firm’s future business strategy is consistent with acting to deliver good outcomes under the Duty.

> *“Firms can expect at every stage of the regulatory lifecycle to be asked to demonstrate how their business model, the actions they have taken, and their culture are focused on delivering good customer outcomes. Firms can expect us to request their annual report, and other MI, and to publish an overview of our findings.”*

Before signing off the report, the board must also agree on the action required to address any identified risks, or any action required to address poor outcomes experienced by customers. It must also agree whether any changes to the firm’s future business strategy are required.

Firms will have to provide these reports to the FCA on request, together with the MI on which the report is based. The FCA notes that these board assessments will be part of the evidence the FCA uses to itself assess how a firm complies with the Duty.

Boards should therefore consider how to document and evidence their review of this annual report to a standard that they would be happy to provide to the FCA. They must also ensure that the report provided to the board is itself robust and comprehensive and provides a good foundation for demonstrating to the regulator how the firm complies with the Duty.

Consumer Duty Champion

Alongside the Chair and CEO, the Consumer Duty Champion has a key role in ensuring that the Duty is regularly discussed and raised during all relevant board discussions. The FCA has stated that the Champion should be an independent non-executive director where possible, and this may also depend on the type and size of the firm in question. For large firms with disparate business lines, firms may wish to consider whether more than one Champion, each focussing on a particular business line or type or group of product or service, would be a better fit for their business.

While this role is not a prescribed responsibility under the Senior Managers and Certification Regime (SMCR), the FCA will likely probe whether the Champion is fulfilling this role, which should be evidenced through board minutes which demonstrate the Champion raising the Duty during all relevant board discussions and providing appropriate challenge.

It will not be sufficient for the Duty to just be a standing item on board agendas. It should, of course, be a standing item and should also be raised where relevant to all other board agenda items. For example, boards should discuss points such Consumer Duty MI and escalations as part of the Duty agenda item, but if a firm is launching a new business line, it will be incumbent on the Champion to ask probing questions as to how this complies with the Duty. This requires the Champion (as well as the Chair and CEO) to have a good understanding of the Duty and when it might be relevant to matters the board discusses, and with this in mind Champions may wish to consider whether additional training, both on the Duty and on how the firm has implemented it, would assist them in their role.

Senior Managers

The FCA notes that the focus on acting to deliver good consumer outcomes is supported by individual accountability and personal conduct resulting from the SMCR. Pursuant to the SMCR "Duty of Responsibility" and the "Senior Manager Conduct Rules", senior management are responsible for complying with the requirements and standards of the regulatory system, which will now include the Duty.

As board members will fall within the scope of the SMCR, each member should be clear about whether they play a role in delivering compliance with the Duty. It is vital that board members are clear about how they are ensuring that the business of the firm for which they are responsible complies with the requirements of the Duty on an ongoing basis. It will therefore be important for board members to consider their reporting lines, where applicable, and whether any updates to the existing SMCR framework and documents are required in order to reflect Duty obligations. Responsibility for the Duty may well also be viewed by the FCA as a collective board responsibility.

> *"Senior managers should expect to be asked about the role that they will play in delivering good outcomes for customers when they are seeking approval or engaging with us."*

Board members can also expect to be asked about the role they will play in delivering good outcomes for customers when seeking to register with the FCA for a role within a new firm, when taking up a new role, and during other regulatory engagements with the FCA. As with the Consumer Duty Champion, board members may wish to consider whether additional training, both on the Duty and on how the firm has implemented it, would assist them in their role.

In summary, therefore:

- Senior managers should:
    - be clear about what they are responsible and accountable for;
    - satisfy themselves on scoping and implementation of the Duty;
    - conduct ongoing oversight of Duty compliance; and
    - expect the FCA to ask about their role in delivering good outcomes for customers.
- Boards should additionally consider the application of the individual conduct rule to Duty compliance and satisfy themselves that relevant updates to their SMCR frameworks have been made.

ANNEX

FCA example questions from FG22/5 for the Chair and the Consumer Duty Champion to use to guide discussions by the firm's board

Culture and Governance

- Does the firm's purpose (whether publicly articulated or not) align with its obligations under the Duty? How is it embedded and understood throughout the organisation?
- How does the organisation's culture support the delivery of good outcomes for customers?
- How does the organisation ensure that individuals throughout the organisation — including those in control and support functions — understand their role in delivering the Duty?
- Are staff empowered and feel safe to challenge and raise issues where they feel the firm might not be acting to deliver good outcomes for customers? Are those challenges listened to, and where necessary, acted on?
- Is the Duty being considered in all relevant discussions such as strategy and remuneration? Are customers outcomes a key lens for Risk and Internal Audit?
- How is the firm ensuring that its remuneration and incentive structures drive good outcomes for customers?

Customer Outcomes

- Is the organisation prioritising acting to deliver good outcomes for customers? Are there any areas of concern?
- How is the external environment changing, and how will that impact on the organisation's ability to deliver good outcomes for customers?
- Has the firm identified the key risks to its ability to deliver good outcomes to customers and put appropriate mitigants in place?
- How does the firm define good outcomes (over the short, medium and long term) for customers using its products and services?
- What data does the firm have about its customers and how they use its products? Are there any gaps in the data? What steps is the firm taking to address them?
- What outcomes are customers getting? Are they getting good outcomes which align with their reasonable expectations?
- Are certain groups of consumers getting different outcomes, and if so why? What's driving any adverse outcomes?
- What actions is the firm taking to improve outcomes? (Who's accountable for this work, what will improvement look like and when will it happen?)

Product & Services Outcome

- Has the firm specified the target market of its products and services to the level of granularity necessary?
- How has the firm satisfied itself that its products and services are well designed to meet the needs of consumers in the target market, and perform as expected? What testing has been conducted?
- How has the firm identified if the product or service has features that could risk harm for groups of customers with characteristics of vulnerability? What changes to the design of its products and services is it making as a result?
- Is the firm sharing all necessary information with other firms in the distribution chain, and receiving all necessary information itself?
- How is the firm monitoring that distribution strategies are being followed and that products and services are being correctly distributed to the target market?
- What data and management information is the firm using to monitor whether products and services

continue to meet the needs of customers and contribute to good consumer outcomes? How regularly is it reviewing this data and what action is being taken as a result?

- Where the firm is planning to withdraw a product or service from the market, has the firm considered whether this could lead to foreseeable harm? What action is it taking to mitigate this risk?

Price and Value Outcome

- Is the firm satisfied that it is considering all the relevant factors and available data as part of its fair value assessments? Has it gathered relevant information from other firms in the distribution chain?
- What insight has the firm gained for its value assessments by benchmarking the price and value of its products and services against similar ones in the market? Have the price and value of its older products kept up with market developments?
- Can the firm demonstrate that its products and services are fair value for different groups of consumers, including those in vulnerable circumstances or with protected characteristics?
- If the firm is charging different prices to separate groups of consumers for the same product or service, is the firm satisfied that the pricing is fair for each group?
- What action has the firm taken as a result of its fair value assessments, and how is it ensuring this action is effective in improving consumer outcomes?
- What data, MI and other intelligence is the firm using to monitor the fair value of its products and services on an ongoing basis? How regularly is it reviewing this material, and what action is it taking as a result?

Consumer Understanding Outcome

- Is the firm satisfied that it is applying the same standards and testing capabilities to ensure communications are delivering good customer outcomes, as they are to ensuring they generate sales and revenue?
- What insights is the firm using to decide how best to keep customers engaged in their customer journey, whilst also ensuring its customers have the right information at the right time to make decisions?
- How is the firm testing the effectiveness of its communications? How is it acting on the results?
- How does the firm adapt its communications to meet the needs of customers with characteristics of vulnerability, and how does it know these adaptions are effective?
- How does the firm ensure that its communications are equally effective across all channels it uses? How does it test that?
- What data, MI and feedback does the firm use in its ongoing monitoring of the impact of its communications on customer outcomes? How often is this data reviewed, and what action is taken as a result?

Consumer Support Outcome

- How has the firm satisfied itself that its customer support is effective at meeting customer needs regardless of the channel used? Does the firm test outcomes across different channels?
- What assessment has the firm made about whether its customer support is meeting the needs of customers with characteristics of vulnerability? What data, MI and customer feedback is being used to support this assessment?
- How has the firm satisfied itself that it is at least as easy to switch or leave its products and services as it is to buy them in the first place?
- How has the firm satisfied itself that the quality of any post-sale support is as good as the pre-sale support?
- What data, MI and feedback is the firm using to monitor the impact its consumer support is having on customer outcomes? How often is this data monitored, and what action is being taken as a result?
- How effective is the firm's monitoring and oversight of outsourced or third party service providers, and is it confident that these services meet the consumer support standards?

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