

Consumer Duty — The Final Countdown?

The deadline for implementing the Duty for closed products and services is fast approaching, however firms' work on the Duty is far from over as they must successfully pivot to addressing the Duty as part of their day-to-day operations.

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Introduction

31 July 2024 will mark one year since the Consumer Duty (the Duty) came into force for new and open products and services, and the deadline for implementing the Duty for closed products and services. Firms must also produce their first board report on compliance with the Duty over the last year by the same date. In this publication, we look at lessons learned from Consumer Duty implementation to date, guidance for firms finalising their work on closed products and services, and how firms should address the Duty as part of their business-as-usual operations going forward, including key questions firms can ask to help assess their implementation.

There is plenty for firms to think about as they approach the July deadline, but firms also need to remember that meeting this deadline will not signal the end of Consumer Duty implementation. As the FCA noted in this [speech](#) in November 2023, “The Duty isn’t something where you can tick the Consumer Duty box on your to-do list and move on. It’s something that needs to become part of who you are as a firm, your culture, and how you do business, running across your whole organisation from board to front-line delivery, from product design to communications and customer support”.

Cultural Shift

The FCA expects firms implementing the Duty to view it as a cultural overhaul, and has stressed that firms should not approach it as a tick-box exercise. Consequently, the FCA has [highlighted](#) as an example of good practice firms aligning their purpose and values to delivering good consumer outcomes.

The FCA wants to see firms implement lasting change and approach the way they do business with a new mindset. Simply trying to prevent bad outcomes from occurring is no longer enough; firms must strive to ensure that consumers experience good outcomes and should be proactive in providing products and services which achieve this goal. Therefore, firms and their staff need to think laterally about how they can help achieve positive customer outcomes. In particular, parts of the Duty can feel quite nebulous, and so firms need to ensure staff think about whether something “feels” right, even if there is no rule prohibiting it. Equally, staff need to be more adept at problem solving rather than giving a “computer says no” response. Firms also need to be flexible when it comes to customers with additional needs, including vulnerable customers, considering how they can go “above and beyond” to ensure such customers receive good outcomes.

An important point to bear in mind is that the FCA does not view the Duty as a stand-alone regime. It permeates many aspects of the regulator’s work, and firms should think about it in the same way they consider the other Principles for Businesses. All employees — and not just the Consumer Duty Champion — should be asking “Is there a Consumer Duty angle to this?” at each stage of the customer journey.

Key questions for firms:

- How are we ensuring that we consider consumer outcomes holistically, and that we are going above and beyond for our customers?
- How have we embedded the Duty within our culture, how have we communicated this throughout the organisation, and how do we evidence this?
- Have we made lasting and deep-rooted changes to the way in which we operate, and do we have a good story to tell the regulator about what we have achieved?
- Do staff feel free to raise issues relating to compliance with the Duty, and are their concerns heard appropriately?
- Have we achieved everything we set out to achieve in our implementation plans, and could any of the changes go further?

Target Market

Under the Duty, firms need to identify an appropriate target market for their products and services. We have seen the FCA really probing firms in relation to their chosen target market, and firms need to be prepared to provide the regulator with a detailed rationale for how and why they have selected and defined their target market.

Further, recent FCA feedback outlined how it expects firms to track customers who may have bought a product or service despite falling outside of the target market, to monitor for potential harm (see this Latham [blog post](#)). The FCA has also emphasised the importance of sharing the necessary information across the distribution chain so that firms can monitor whether their products are reaching the intended target market. Firms are expected to take action if they become aware that their products are not being distributed to the intended target market, and should bear in mind their obligation to report breaches of the Duty by other firms to the FCA.

Key questions for firms:

- Do we have a clear and properly documented rationale for selecting appropriate target markets for our products and services?
- How do we ensure that products and services are sold or distributed within the target market?
- Do we have procedures for monitoring customers who are not within the target market?
- Do we review our target market at appropriate times and in response to relevant management information (MI)?

Price and Value

The FCA has acknowledged that price and value is one of the most challenging areas for firms. While the FCA has stressed that it is not a price regulator, firms have found that the regulator has really focused on their price and value assessments. In particular, the FCA has been drilling down into fees and charges, including how each element of a percentage fee is determined. The regulator has already raised concerns in the banking, insurance, fund management, and financial advice sectors when it has found potential issues relating to fair value (e.g., interest rate rises not being passed on to savers and customers paying fees for ongoing services that they may not be receiving).

The FCA has, however, emphasised that fair value is about more than just price. Consequently, the regulator expects firms to take a more holistic approach to value. This is really challenging for firms, as it requires considering how different cohorts of customers might derive value from a product or service, as well as potentially anticipating difficult-to-foresee outcomes that could impact on value. The FCA has also highlighted that firms need to have solid data to justify value, and should not rely solely on benchmarking against the market when considering their pricing.

Key questions for firms:

- Are we comfortable that our price and value assessments are sufficiently robust and encompass all the necessary considerations?
- Are we thinking enough about overall value, rather than just price?
- Is all evidence and data used for price and value assessments properly verified and documented so that we can present the FCA with a credible picture?
- When we are using estimates or quotations as inputs for our price and value assessments, do we monitor whether estimates are correct, and what action do we take if figures are lower or higher than expected?

Vulnerability

Vulnerability is another challenging area for firms to consider, and a further area of heightened regulatory scrutiny.

It requires firms to really delve into how different types of customers will experience their products and services. It also requires them to have a certain degree of foresight as to how customers with characteristics of vulnerability may be impacted, which in particular goes to the obligations regarding foreseeable harm. Firms also need to think about vulnerability across all stages of the customer journey. The FCA has previously stressed that all firms will have vulnerable customers and that firms might want to think about conducting a holistic review of their approach to vulnerable customers, ensuring that customers receive a consistent service (see this Latham [blog post](#)). For example, customers should not have to detail their circumstances every time they deal with a different department within the firm. Firms should also be alive to potential sensitivities, such as asking customers unnecessarily or repeatedly for evidence of their vulnerability.

Firms need to be able to accurately record information that customers have shared, and ensure that this is passed on to the relevant people within the firm dealing with that customer. They also need to ensure that customers have suitable options for sharing information, such as being able to speak to someone about their needs to discuss the nuances of their situation, bearing in mind that it may be difficult for customers to discuss these issues.

The FCA is conducting a review of firms' treatment of customers in vulnerable circumstances; therefore, firms should be ready to act on the FCA's findings when they are published.

Key questions for firms:

- What does vulnerability really mean, and are we fully considering how individuals within our customer base might exhibit signs of vulnerability?
- How do we accurately identify vulnerable customers, and have staff been trained appropriately on how to do this?
- Do we provide opportunities for customers to share relevant information about their circumstances?
- Are we treating vulnerable customers with appropriate respect and sensitivity?
- Do we have a joined-up approach to vulnerability across the firm and throughout the customer journey, so that customers are receiving consistent outcomes?
- Do we collect adequate MI on vulnerable customers, and is this MI considered by all relevant forums?

Data and Management Information

The Consumer Duty requires firms to think carefully not only about the outcomes they are achieving for consumers, but also how they can evidence these outcomes. The FCA has observed that firms tend to do better at this when they think about what data they need to measure and monitor the outcomes they aim to deliver, rather than just repackaging existing data. The Duty requires firms to go further than before in considering outcomes, so few firms should be able to meet expectations solely by relying on the data they already have in play. Many firms will also find that they have relevant MI but do not always look at it correctly or use it to identify trends or themes, and so a re-evaluation of what is available would be beneficial.

Key questions for firms:

- How are we measuring customer outcomes, and are we using the right metrics?
- Do we have the information we need to really understand consumer outcomes across all relevant customer cohorts?
- Does existing data give us other insights which we are currently not seeing?
- Are we using our data to improve our products and services, and acting appropriately on data that suggests we are falling short?

Governance and Monitoring

The Consumer Duty presents an ongoing compliance exercise, and so monitoring and improvements need to be continuous. The FCA expects firms to take a proactive approach, stepping in not only when harm may be possible, but also when better outcomes could be achieved. The FCA has indicated that an area of focus will be firms' complaints data, identifying where the Financial Ombudsman Service upholds high numbers of complaints — which may suggest firms are getting something wrong.

The regulator has also stressed that the Duty is important at multiple levels of the firm. While obviously it is key that the board takes the Duty seriously, it also needs to be considered across the business and not just viewed as a piece of compliance work. This means that everyone in the business needs to understand what the Consumer Duty is and how they fit into compliance.

The FCA has encouraged firms to consider whether bonus and incentive structures are in line with the Duty. In particular, firms may use outcomes under the Duty to help inform both individual and firm-wide remuneration decisions, including making remuneration adjustments if progress in embedding and complying with the Duty falls short.

Key questions for firms:

- Are we monitoring complaints for potential trends or areas of concern?
- Is more of our Consumer Duty work proactive rather than reactive?
- Has the importance of the Duty been communicated at all levels of the firm?
- Are consumer outcomes being considered appropriately as part of the firm's governance structures, and fed through to considerations such as remuneration / performance reviews?
- Do incentive structures drive behaviours which may lead to poor customer outcomes?

Board Report

The first annual board report on whether and how the firm is delivering good outcomes for consumers is due by 31 July 2024. The rules are not prescriptive around what this report should contain. Firms should therefore consider how to meet the FCA's expectations in the context of their business, bearing in mind that they will have to provide the report to the FCA on request, together with the MI on which the report is based.

The FCA has stated that the board report should contain at least the following:

- 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
- Consideration as to whether the firm's future business strategy is consistent with acting to deliver good outcomes under the Duty

This list presupposes that firms are monitoring customer outcomes and assessing these outcomes against those expected by the firm for each product and service, as well as recording all actions taken following these assessments.

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

The report must be prepared to a sufficiently high standard that the board can comfortably sign off on it and that it will withstand scrutiny by the FCA. Further considerations around the ongoing role of the board under the Duty are set out in this Latham [briefing](#).

Closed Products and Services

With the deadline for implementing the Duty for closed products and services fast approaching, the FCA has recently provided firms with additional guidance to help them prepare (in a series of Dear CEO letters, available [here](#)). The Duty applies to closed products and services going forward from 31 July 2024, but will not apply to firms' past actions. While some parts of the framework will not be relevant to closed products (such as sales and distribution), firms will still need to ensure that customers receive good outcomes. Closed books bring their own challenges, which may make compliance with the Duty more difficult — something which the FCA acknowledges.

The FCA has set out five priority issues for firms to consider in relation to closed products and services:

- **Gaps in firms' customer data:** Firms must address any material gaps in customer data for closed products and services, and should proactively take steps to ensure they hold basic details that are up to date. If gaps remain despite best efforts, the FCA expects firms to proactively work around them to ensure they are achieving good outcomes for customers (e.g., through enhanced outcomes testing).
- **Fair value:** The FCA highlights that the fair value outcome applies to closed products and services on a forward-looking basis. There should be a reasonable relationship between the price customers pay and the benefits of the product or service.
- **Treatment of consumers with characteristics of vulnerability:** Firms should be aware that the challenges they face working with closed products and services may create a particular risk of harm to customers with characteristics of vulnerability. The FCA expects firms to respond flexibly, so firms will usually need to be able to provide support to their customers through different channels or by appropriately adapting their usual approach.
- **Gone-away or disengaged customers:** The most appropriate course of action for a firm to take will depend on the specific circumstances and a balance of different factors, including the regulatory permissions it holds. The FCA deems it important that firms carefully consider the actions they need to take, provide justification for their decisions, and assess how they track and act on the impact of these decisions.
- **Vested contractual rights:** The FCA explains that firms are not expected to give up vested rights. However, if a firm does not wish to give up a vested right, it should consider alternative ways to prevent or manage any harm to existing customers. This might include providing more flexibility or helping a customer switch to a new product.

The FCA emphasises that firms should prioritise areas with the highest level of harm or potential for harm, have clear plans to address any gaps, and take mitigating actions to protect customers from known or possible harms until they have rectified any issues.

Supervisory Approach

The Duty has been, and remains, a key priority for the FCA. The regulator will continue to test how firms are implementing and embedding the Duty, and intends to carry out multi-firm work and market studies across different sectors over the next year. The FCA has published several sector-specific letters that provide helpful guidance to firms, and more of this guidance should be expected in the future.

Key questions for firms:

- How are we evidencing the ways in which we are taking FCA guidance into account, and do we have a clear strategy for responding to future guidance?
- Do we have a plan for addressing breaches and/or potential shortcomings promptly and effectively?
- Are we considering the Duty from an audit perspective?
- How are we considering our Principle 11 notifications in relation to the Duty?

The FCA has also made clear that, while it takes compliance with the Duty very seriously, it does not intend to enforce against every technical breach of the Duty. The FCA seems to be taking a pragmatic view in this respect, although equally it is testing firms rigorously on anything Duty-related. What it wants to see is firms making their best efforts to comply, and that firms have a credible plan to identify and address any shortcomings. Naturally, the FCA plans to act when it uncovers serious problems or evidence of real or potential consumer harm. The regulator has a new special interventions team to take swift action against firms when it has serious concerns about consumer harm.

In the next 12 months, we expect to see further output from the FCA in relation to its view on firms' Consumer Duty compliance, and possibly the first enforcement action based on breaches of the Duty.

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