

FCA fires starting gun on consumer duty implementation

AT A GLANCE

July 2022

Contacts

David Kenmir

Partner

T: +44 (0) 7850 907754
E: david.kenmir@pwc.com

Ian Ody

Director

T: +44 (0) 7718 865206
E: ian.ody@pwc.com

Tessa Norman

Manager

T: +44 (0) 7753 812594
E: tessa.norman@pwc.com

Rory Davis

Manager

T: +44 (0) 7483 326478
E: rory.davis@pwc.com

What's new?

- The FCA confirmed final rules introducing a new consumer duty that will set higher standards for the level of care firms give retail customers, in a [policy statement](#) and [finalised guidance](#) on 27 July 2022.
- It is taking forward the vast majority of rules and guidance as [consulted on last year](#), but is giving firms additional time to comply. Instead of the proposed nine-month implementation period, the FCA is giving firms 12 months (until July 2023) to implement the rules for products and services currently on sale. For closed books, it's giving firms until July 2024 to implement the rules.

What does this mean?

- The FCA confirms it is introducing a new Consumer Principle, requiring firms to 'act to deliver good outcomes for retail clients'. This is underpinned by three cross-cutting rules, and guidance and rules relating to four outcomes. The FCA gives further clarity on its expectations and the scope of the rules, and strengthens its proposals in certain areas, as set out below.
- **Governance and accountability** - The FCA has strengthened its requirements, asking firms to reflect the Duty in strategies, governance, leadership and people policies (including performance management and pay at all levels). It introduces a requirement to appoint a champion at Board level who, along with the Chair and the CEO, ensures the Duty is discussed regularly and raised in all relevant discussions. The FCA sets out key questions firms can expect it to ask in relation to their governance arrangements, and that the Duty champion and Chair should use to guide discussions.
- **Remediation** - The FCA is bolstering rules and guidance in its Dispute Resolution (DISP) sourcebook, by requiring firms to proactively consider (not only in response to complaints) whether remedial action is appropriate, if they identify that customers have suffered harm because of the firm's conduct. It adds that firms should pay redress promptly, considering relevant decisions by the Financial Ombudsman Service.
- **Outcomes monitoring** - The FCA provides additional information on the data firms could use to monitor outcomes, including when to use data on an individual or cohort basis, and on frequency.
- **Implementation period** - The FCA is taking an 'assertive' approach, setting out milestones for certain actions. These include: Boards to have agreed and scrutinised implementation plans by 31 October 2022, and manufacturers to complete reviews for open products and services by 30 April 2023, and to share information with distributors.

AT A GLANCE

July 2022

Contacts

David Kenmir
Partner

T: +44 (0) 7850 907754
E: david.kenmir@pwc.com

Ian Ody
Director

T: +44 (0) 7718 865206
E: ian.ody@pwc.com

Tessa Norman
Manager

T: +44 (0) 7753 812594
E: tessa.norman@pwc.com

Rory Davis
Manager

T: +44 (0) 7483 326478
E: rory.davis@pwc.com

- **Review existing products and services** - The FCA provides further clarity on its expectations, particularly on assessing value. It makes clear that firms should not withdraw products/services without considering the impact on customers, and engaging with the regulator.
 - **Distribution chains** - The FCA clarifies the responsibilities of different firms in the distribution chain. It confirms firms are only liable for their own activities, but introduces a requirement for firms to notify it if they become aware that another firm in the chain is not complying with the Duty.
 - **Foreseeable harm** - The regulator updates the wording of this cross-cutting rule to require firms to 'avoid causing foreseeable harm'. It clarifies that firms can cause foreseeable harm through their role in the distribution chain, and makes clear that what is foreseeable is 'dynamic'.
- What do firms need to do?**
- Firms should create an implementation plan aligned to the FCA's interim and final deadlines. This must be agreed by the Board by 31 October 2022, with evidence of sufficient scrutiny and challenge. Firms should ensure effective Board oversight of the plan's delivery.
 - Firms should carefully consider processes for identifying and responding to foreseeable harm, including whether remedial action is required, in line with the changes to DISP.
 - Firms need to review their processes for withdrawing products or services, ensuring they consider the impact on customers and engage with the FCA.
 - Firms should prepare for the FCA's 'assertive' approach to implementation, in particular its approach to firms' plans on monitoring outcomes.
 - Key initial steps to prepare for implementation include: gap analysis, defining good outcomes, and creating frameworks for monitoring outcomes and assessing fair value. Firms should take a risk-based approach to implementation (e.g. by prioritising the most complex/risky products).
 - Firms should pay particular attention to the strengthened requirements on governance and accountability. This will require them to incorporate the Duty in performance management and pay, consider the Duty in all relevant discussions (e.g. strategy and remuneration), and make customer outcomes central to Risk and Internal Audit processes. Firms need to appoint a Duty champion at Board level, and decide how to allocate responsibilities under the Senior Managers & Certification Regime.

Next steps

Firms must comply with the FCA's milestones in the build up to the July 2023 and July 2024 implementation deadlines - e.g. manufacturers must complete reviews for open products by 30 April 2023. The FCA plans to issue further communications on implementation expectations and good/poor practices for each portfolio of firms, during the implementation period.

