

FCA presses ahead with ‘good outcomes’ consumer duty

AT A GLANCE

December 2021

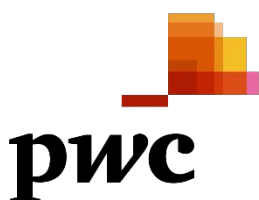
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What's new?

- The FCA published [CP21/36: A new Consumer Duty](#), setting out further details on its plans to introduce a new consumer duty, on 7 December 2021.
- The paper includes feedback to the FCA's [first consultation](#), issued in May 2021.
- The FCA is pushing ahead with most proposals from its first consultation. It is proposing a new Consumer Principle, which would require firms 'to act to deliver good outcomes for retail customers'. The FCA is no longer proposing to introduce a private right of action for breaches of its Principles.

What does this mean?

- The FCA sets out a three-tiered approach, comprising:
 - a new Consumer Principle that would replace Principles 6 (treating customers fairly) and 7 (communicating in a way which is clear, fair and not misleading)
 - cross-cutting rules requiring firms to: act in good faith, avoid foreseeable harm, and enable customers to pursue their financial objectives
 - rules relating to the FCA's 'four outcomes' (products and services, price and value, consumer understanding, consumer support).
- The new principle will require firms to 'act to deliver good outcomes for retail clients', rather than the alternative definition of 'acting in the best interests' of clients. This reflects the FCA's expectations that firms consistently focus on consumer outcomes, deliberately marking a break from existing requirements.
- The regulator proposes to amend the scope of the rules - rather than apply the Duty to all dealings with retail clients, it plans to clarify how the rules apply to SMEs by aligning the scope with that of its sectoral sourcebooks. The regulator also clarifies that it will retain Principles 6 and 7 where the new Duty does not apply.
- The FCA develops the concept of proportionality of the rules, stating that firms with a direct relationship with the end user will have greatest responsibility.
- The FCA is continuing with its four key outcomes, with some clarifications. On products and services, the FCA sets out separate requirements for manufacturers and distributors.
- On price and value, the FCA sets out the factors firms 'must' and 'may' consider to assess value (but does not propose detailed, prescriptive requirements). It intends for manufacturers to assess value at the design stage, and distributors to assess their charges at point-of-sale. Where more than one firm is involved, the distributor or final firm in the chain should consider whether the overall proposition provides fair value. Manufacturers and distributors will also need to assess value on an ongoing basis.

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- The FCA has renamed its communications outcome to 'consumer understanding'. It clarifies how its proposals go further than existing requirements under Principle 7, by requiring firms to focus more on consumer outcomes and understanding throughout the customer journey.
 - The regulator has renamed its customer service outcome to 'consumer support', to make clear this is not limited to after-sale service or a particular department.
 - The FCA provides further details on its expectations on governance and accountability. A firm's board will be responsible for assessing whether it is delivering good outcomes for customers. The board will be required to sign off an assessment of this at least annually.
 - The FCA proposes to add a new rule to its SM&CR conduct rules, requiring staff to 'act to deliver good outcomes for retail customers'. This would apply proportionately, meaning the FCA would expect more of senior staff.
 - The FCA will embed the proposals in its authorisation, supervision and enforcement activities. Firms must demonstrate how their business model, actions and culture are delivering good consumer outcomes.
- ### What do firms need to do?
- The FCA wants to see firms put customers at the heart of their business and culture.
 - Firms must carry out gap analysis on their policies and processes, and make relevant adjustments through change projects. This includes reviewing product design, prices and distribution, and assessing the impact on profitability.
 - Firms will have to consider how the proposals apply to their back books and existing products and services, as well as the design of new products and services. They will need to address any aspects of the design of existing products and services that mean they are not meeting the cross-cutting rules.
 - Firms need to create a framework for monitoring customer outcomes, identifying and managing risks - and evidencing this to the regulator. The FCA expects firms to identify where distinct groups receive worse outcomes, particularly for those sharing protected characteristics (as defined in the Equality Act 2010 or other legislation). Firms need to be able to evidence to the FCA that these different outcomes are compatible with the Duty.
 - Firms will need to provide appropriate training to their staff so they understand their obligations under the Consumer Duty and the individual conduct rules.

Next steps

The consultation closes on 15 February 2022, and the FCA plans to confirm final rules by the end of July 2022. Firms will have until 30 April 2023 to fully implement the rules. The FCA plans to carry out supervisory work to understand firms' implementation plans and progress, during the implementation period.

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