

Corterum

Everything you
ever wanted to
know about the
Consumer Duty
(but were afraid to
ask)



Contents

Consumer duty implementation timetable.....	6
Introduction.....	7
This guide.....	7
Try our questionnaire!.....	7
Find out how technology can help you to embed the Consumer Duty.....	7
The Consumer Duty in a nutshell.....	8
The new consumer principle.....	10
Cross-cutting rules.....	12
The “four outcomes”.....	13
The products and services outcome.....	14
General.....	14
What is a “product manufacturer”?.....	15
What is a “product distributor”?.....	15
Target markets.....	15
Target market identification.....	15
Product design.....	17
Product testing.....	17
Product approval.....	18
Product distribution.....	20
Product review.....	20
Distribution Chains.....	21
Product Manufacturers.....	21
Product Distributors.....	21
Co-manufacturers.....	21
Information sharing.....	26
Distribution chains involving non-UK distributors.....	24
Liability in the context of distribution chains.....	24
Firms which are already subject to other product governance rules.....	24
Product Distributors.....	25
What is a product distributor?.....	25
Obligations of product distributors.....	25
Product distribution arrangements.....	26
Product distributor reviews.....	26
Monitoring the products and services outcome.....	27
The products and services outcome: key questions for firms.....	27
The products and services outcome: a summary of compliance.....	28
The price and value outcome.....	29
General.....	29
Value assessments.....	29
Introduction to product manufacturer value assessments.....	29
Timing of product manufacturer value assessments.....	30
Value assessments and the concept of “reasonableness”.....	30
Value assessments and products sold as part of a package.....	31
Value assessments and grouping of similar products.....	31
What is “value”?.....	31
The concept of “price” in the context of value assessments.....	31
What are “benefits”?.....	32
Value assessments in relation to free products.....	32
Factors to consider in any value assessment.....	33
For how long must a product manufacturer value assessment remain valid?.....	35
Value assessments should be forward-looking.....	35

What if a manufacturer is already subject to “fair value” rules?.....	35
What if a manufacturer concludes that a product or service DOES NOT provide fair value?.....	36
Monitoring and record keeping in relation to value assessments.....	37
Value assessments in the context of collaborations between product manufacturers.....	38
Provision of value assessment information to product distributors.....	38
Product distributors and the requirement to perform value assessments.....	38
Sharing of value assessments between manufacturers and distributors.....	39
Distributor obligations to perform value assessments for non-UK manufactured products.....	40
What if a distributor concludes that a product or service DOES NOT provide fair value?.....	40
The price and value outcome: key questions for firms.....	40
Framework for assessing the fairness of price discrimination.....	41
The price and value outcome: a summary of compliance.....	43
The consumer understanding outcome.....	44
General.....	44
Requirements under the consumer understanding outcome.....	44
Timely provision of information.....	46
Tailoring communications in order to assist consumer understanding.....	46
Communicating complex information.....	47
Vulnerability in the context of the consumer understanding outcome.....	47
Product-specific versus non product-specific communications.....	48
Demonstrating consumer understanding - testing.....	48
Examples of testing.....	48
Customer communication champions.....	48
Not all communications need to be tested.....	48
When to test communications.....	49
Provision of information within distribution chains.....	49
Communication issues identified within distribution chains.....	49
Remediating communication issues.....	49
Data and monitoring.....	50
Key questions for firms.....	51
The consumer understanding outcome: a summary of compliance.....	52
The consumer support outcome.....	53
General.....	53
Application of the consumer support outcome.....	53
Design and delivery of customer support.....	54
Appropriate friction and unreasonable barriers.....	54
Unreasonable additional costs.....	55
Reasonableness in the context of the consumer support outcome.....	55
Channels of support.....	55
Limited channels of support.....	55
Meeting the support needs of vulnerable customers.....	56
Dealing with representatives.....	56
Dealing with requests from other firms.....	56
Outsourcing of customer support.....	56
Monitoring the provision of support.....	57
Remediation of failures in the provision of customer support.....	57
Key questions for firms.....	57
The customer support outcome: a summary of compliance.....	58
Scope of the Consumer Duty.....	59
General.....	59
Unregulated activities.....	60
Application outside of the UK.....	60

Products and services designed for the wholesale market.....	61
Application of the Consumer Duty through distribution chains.....	62
Appointed representatives.....	63
Outsourcing arrangements.....	63
Occupational pension schemes.....	64
Group insurance policies.....	64
The concept of ‘reasonableness’.....	65
“Good faith”.....	66
Avoiding causing “foreseeable harm”.....	68
Practical steps to avoid “reasonable harm”.....	69
Financial objectives.....	70
The Consumer Duty and fiduciary relationships.....	72
What is a “retail customer”?.....	73
Obligations of boards.....	75
General.....	75
Initial implementation of the Consumer Duty.....	75
Annual board report.....	75
Consumer Duty Champion.....	76
Vulnerable customers.....	77
General.....	77
What is “vulnerability”?.....	77
Understanding vulnerability within the target market.....	78
Managing vulnerability within the target market.....	79
Monitoring of vulnerability within the target market.....	79
Helping frontline staff to manage vulnerability.....	79
Embedding the fair treatment of vulnerable consumers across the workforce.....	79
Ensuring frontline staff have the necessary skills and capability to recognise and respond to a range of characteristics of vulnerability.....	80
Offering practical and emotional support to frontline staff dealing with vulnerable consumers.....	80
Recording and accessing information about consumers’ needs.....	80
Addressing vulnerability within product and service design.....	82
General.....	82
Idea generation.....	83
Product development.....	83
Product testing.....	83
Product launch.....	83
Product distribution.....	84
Product review.....	84
Customer service for vulnerable customers.....	84
Systems and processes that support and enable vulnerable consumers to disclose their needs.....	84
Customer service that responds flexibly to the needs of vulnerable consumers.....	85
Telling consumers about the support available to them.....	85
Supporting decision-making and third-party representation.....	85
Putting in place systems and processes that support the delivery of good customer service.....	86
Communications.....	86
Ensuring all communications are understandable.....	86
Considering how to communicate with vulnerable consumers.....	87
Monitoring and evaluation.....	87
Implementing processes to evaluate where the needs of vulnerable consumers are not met.....	87
Management information.....	87
Retrospective effect.....	89
Purchases of product books.....	90

Existing vs closed products.....	91
Review of existing products and services.....	91
Review of closed products and services.....	91
Unilateral changes to products or services.....	92
Proportionality under the Consumer Duty.....	93
The nature of the product being offered or provided.....	94
The characteristics of the retail customer(s).....	94
The firm's role in relation to the product.....	94
Notifications of breaches of the Consumer Duty.....	95
Private Right of Action.....	96
Culture, governance and accountability.....	97
Monitoring and governance.....	98
General.....	98
Developing a strategy towards monitoring.....	99
Monitoring objectives.....	99
Action required of firms.....	100
"Reasonableness" in the context of monitoring.....	100
Monitoring within distribution chains.....	101
Types of data used in monitoring.....	101
Monitoring outcomes for vulnerable consumers.....	101
Monitoring requirements under different regulations.....	102
Interaction with the Senior Managers Regime.....	103
General.....	103
New conduct rule.....	103
Rule 6 applies within the context of what is "reasonable".....	104
Individual conduct rule 6 versus individual conduct rule 4.....	104

Consumer duty implementation timetable

Date	Action
31 Oct 2022	Firms to have agreed plans to implement the Consumer Duty at board level
20 Apr 2023	Manufacturers to share key information with distributors
31 July 2023	Consumer duty comes into force with respect to all <u>new</u> products and services
31 July 2023	Consumer duty comes into force with respect to <u>existing</u> products that remain on sale or open for renewal
31 July 2024	Consumer duty comes into force with respect to <u>closed</u> products and services
31 July 2024	First consumer duty annual board report due



Introduction

This guide

In creating this guide, we decided to dive straight in and explain exactly what the Consumer Duty is and how it works. Having done that, we move on to discuss other topics – which are related to (and assist understanding of) the Consumer duty – such as the exact scope of its application, the concepts of “reasonableness” and “good faith” (both of which sit at the heart of the Consumer Duty) and particular considerations when dealing with vulnerable customers.

We hope that you find the guide both informative and useful. If you have any comments or questions, please do get in touch at hello@parallel-51.com.

Try our questionnaire!

But we aren't going to let you go just yet...

If you think that you would benefit from a checklist of the tasks that you need to complete in order to properly embed the Consumer Duty within your firm – and if you would like to know how you rank in this regard against your peers – check out our questionnaire. It only takes a few minutes to complete and you'll get a personalised report summarising where you currently stand in terms of Consumer Duty regulatory compliance and best practice.

Click here to take the questionnaire: <https://www.corterum.com/smcr-quiz-test/>

Find out how technology can help you to embed the Consumer Duty

Just one more thing...

From a regulatory compliance and data capture point of view, Consumer Duty is BIG, is COMPLEX and requires CONSTANT MONITORING. Therefore, if you are genuinely serious about embedding the Consumer Duty into your firm and – to the extent possible – subsuming it into 'business as usual' processes, you will need the assistance of technology. By the way, excel does NOT count as technology!

Within this guide, you will see a number of screenshots from “Corterum” – our technology platform designed specifically to help you comply with both the SM&CR and the Consumer Duty. Corterum will save you time and money. If you would like to learn more, please drop us a line at hello@parallel-51.com.

Michael Beaton



The Consumer Duty in a nutshell

The Consumer Duty is an outcome-focused¹ set of rules designed to set the standard of care that firms should give to customers in retail financial markets. Its purpose is to better protect consumers from current and new/emerging drivers of harm.² At a high level, it requires firms to ensure that their products and services are fit for purpose, offer fair value and help customers make effective choices.³ It requires firms – at every stage of the customer journey – to consider the needs, characteristics (including characteristics of vulnerability) and objectives of their customers as well as how they behave. It applies both at the level of a target market and an individual customer (depending on the situation)⁴.

There are three aspects to the new Consumer Duty:

1. New Consumer Principle: which reflects the overall standard of behaviour which the FCA requires from firms.
2. Cross-cutting rules: which develop the FCA's expectations for behaviour through three overarching requirements. These rules explain how firms should act to deliver good outcomes. They apply across all areas of firm conduct and help firms to interpret the "four outcomes".
3. The "four outcomes": are a suite of rules and guidance which provide more detailed expectations for firm conduct in four areas that represent key elements of the firm-consumer relationship:
 - a. the governance of products and services,
 - b. price and value,
 - c. consumer understanding, and
 - d. consumer support.

1 Policy Statement PS22/9, 1.6
2 FG22/5, 1.2
3 Policy Statement PS22/9, 1.14
4 Policy Statement PS22/9, 5.15



Firms seeking authorisation will need to demonstrate that they can meet the standards of the Consumer Duty at the point of authorisation.⁵ Post-authorisation, all firms must demonstrate how the Consumer Duty is embedded throughout their organisation, how they propose to monitor customer outcomes in line with the Consumer Duty, and what processes they have in place to ensure that they take action if they identify that they are not delivering good customer outcomes.⁶

5 Policy Statement PS22/9, 14.6

6 Policy Statement PS22/9, 14.6

The new consumer principle

As part of the new Consumer Duty rules, a new 'Principle 12' has been added to the FCA Handbook. It states that:

“A firm must act to deliver good outcomes for retail customers”.⁷

The new Principle 12 only applies to a firm’s “retail market business”.⁸ Moreover, the standard to be applied is that which could reasonably be expected of a prudent firm carrying on the same activity in relation to the same product or service and taking account of the needs and characteristics of retail customers.⁹

Principle 12 requires firms to:

1. pro-actively act to deliver good outcomes for customers and put customers’ interests at the heart of their activities,
2. focus on the outcomes customers get, and act in a way that reflects how consumers actually behave and transact in the real world, better enabling them to access and assess relevant information, and to act to pursue their financial objectives,
3. ensure they have sufficient understanding of customer behaviour and how products and services function to be able to demonstrate that the outcomes that would reasonably be expected are being achieved by those customers,
4. put in place processes to tackle the factors that lead to any poor outcomes that are identified, and
5. consistently and regularly challenge themselves to ensure their actions are compatible with delivering good outcomes for customers.¹⁰

The new principle 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?”.¹¹

Existing Principles 6 and 7 are disapplied where the Consumer Duty applies.¹² However, the FCA has confirmed that it will retain existing Handbook and non-Handbook material linked to Principles 6 and 7. This is primarily because it will continue to be applicable to firms and business activities outside the scope of the Consumer Duty. However, the FCA also considers that existing guidance may also be helpful to firms in considering their obligations where the Consumer Duty does apply.¹³

To this end, the FCA has clarified that a failure to act in accordance with existing guidance on Principles 6 and 7 which would have amounted to a breach of those Principles, is likely to breach Principle 12.¹⁴ However, acting in accordance with Principles 6 and 7 will NOT, of itself, mean that a firm is acting in compliance with Principle 12.¹⁵

7 PRIN 2.1.1R
 8 PRIN 2A.1.3G
 9 PRIN 2A.1.6G
 10 FG22/5, 4.8
 11 FG22/5, 4.4
 12 Policy Statement PS22/9, 4.15
 13 Policy Statement PS22/9, 4.15
 14 Policy Statement PS22/9, 4.15, PRIN 2A.1.17G(3)
 15 PRIN 2A.1.17G(4)

Either way, it is important to note that the FCA is clear that Principle 12 sets a higher and more exacting standard of conduct (with a broader application) than both:

1. Principle 6 – which states that “A firm must pay due regard to the interests of its customers and treat them fairly”, and
2. Principle 7 – which states that “A firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading”.¹⁶



Cross-cutting rules

The purpose of the cross-cutting rules is to provide guidance on the new Principle 12. The cross-cutting rules set out how firms should act (proactively and reactively) to deliver good outcomes for customers. As with the rest of the Consumer Duty, the cross-cutting rules can apply both at a target market level and an individual customer level, depending on the situation.¹⁷ The specific application of the rules in any given situation will typically depend on whether or not the firm is interacting with an individual retail customer or providing a bespoke service.

The cross-cutting rules require firms to:

1. act in good faith towards retail customers,
2. avoid causing foreseeable harm to retail customers, and
3. enable and support retail customers to pursue their financial objectives.¹⁸

The cross-cutting rules also inform (and are supported by) the four outcomes, which set out more detailed rules in key areas of the firm-customer relationship.¹⁹

The cross-cutting rules apply at all stages of the customer journey and during the whole lifecycle of a product. Firms will therefore need to keep products under regular review and consider the impact of any changes they make to those products.²⁰



¹⁷ FG 22/5, 5.3; PRIN 2A.1.10G (see page 106); PRIN 2A.2.27G (see page 112); PRIN 2A.2.24G

¹⁸ Policy Statement PS22/9, 1.15; Policy Statement PS22/9, 5.1

¹⁹ FG22/5, 5.5

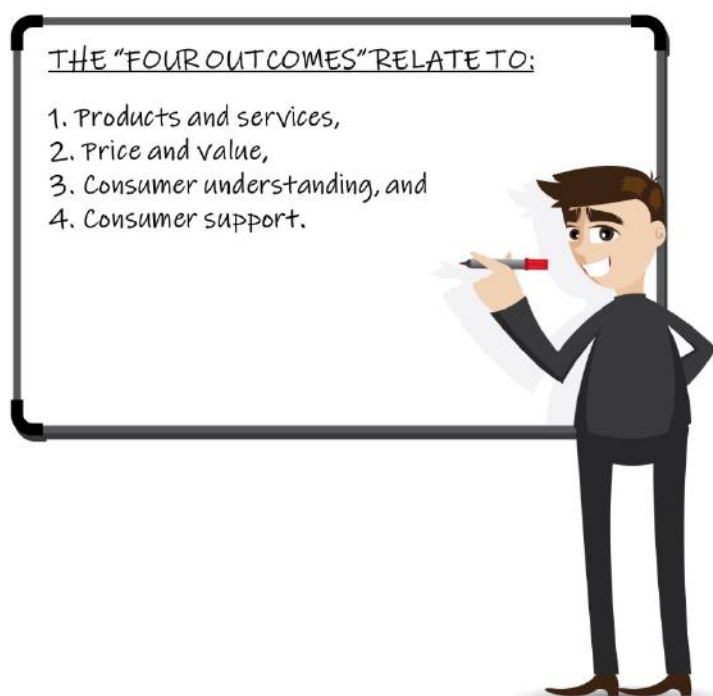
²⁰ PRIN 2A.2.23G

The “four outcomes”

The “four outcomes” are elements of the firm-consumer relationship which the FCA considers to be instrumental in helping to drive good outcomes for consumers. They relate to:

1. Products and services,
2. Price and value,
3. Consumer understanding, and
4. Consumer support.²¹

In general, the “four outcomes” apply at the level of the target market rather than at the level of an individual customer.²² They would only apply at an individual customer level where a bespoke product or service has been developed for a particular customer.²³



21 Policy Statement PS22/9, 1.15
22 Policy Statement PS22/9, 6.11
23 Policy Statement PS22/9, 6.11

The products and services outcome

General

Under the “products and services outcome”, products and services must meet the needs, characteristics (including characteristics of vulnerability²⁴) and objectives of an identified target group of customers and must be distributed appropriately.²⁵ This necessitates a robust product approval process. Moreover, the features of a product that are visible to consumers must be capable of being understood by the target market.²⁶



The products and services outcome means different things, depending on whether the firm in question is a manufacturer, or a distributor, of the product in question, and depending on whether or not the product is open or closed.

However, the products and services outcome DOES NOT require firms to:

1. exclude particular groups, such as customers who might have characteristics of vulnerability and whose needs or objectives a product might meet,
2. ensure that products or services are suitable for individual customers within the target market, except where this is relevant in the context (which might be the case, for example, when providing advice or discretionary services, or assessing affordability under a loan), or
3. mitigate harm that was not foreseeable.²⁷

24 Policy Statement PS22/9, 6.9
 25 Policy Statement PS22/9, 6.1
 26 Policy Statement PS22/9, 6.11
 27 FG 22/5, 6.81

What is a “product manufacturer”?

Firms are product manufacturers if they create, develop, design, issue, manage, operate, carry out, or (for insurance or credit purposes) underwrite a product or service.²⁸

What is a “product distributor”?

Firms are product distributors if they offer, sell, recommend, advise on, arrange, deal, propose, or provide a product or service, including at renewal.²⁹

Target markets

Target market identification

Product manufacturers must identify a target market of customers for whom a product or service is designed.³⁰ As such, the distributor’s distribution strategy must be consistent with the manufacturer’s intended distribution strategy and the identified target market.³¹

In essence, a “target market” is a group or groups of customers sharing common features whose characteristics, needs and objectives the product is or will be designed to meet. These customers are the end-users of the product or service, not other firms in the distribution chain.³²

The target market must be identified at a sufficiently granular level, considering the characteristics, risk profile, complexity and nature of the product or service.³³ One way in which this can be achieved is for firms to consider whether there are any groups of customers within the target market for whose needs, characteristics and objectives the product or service is generally not compatible.³⁴

Product manufacturers must identify a target market

28 FG22/5, 6.4
 29 FG22/5, 6.56
 30 FG22/5, 6.18
 31 Policy Statement PS22/9, 6.11; Policy Statement PS22/9, 6.11;
 32 FG22/5, 6.18
 33 FG22/5, 6.19
 34 FG22/5, 6.20

Vulnerability within the target market

Product manufacturers must consider the needs of customers with characteristics of vulnerability in its target market.³⁵

In practical terms, product manufacturers ARE expected to:

1. design products or services to take account of the needs, characteristics and objectives of all groups within the target market,
2. consider whether a product or service has features that could risk harm for any group of customers, including those with characteristics of vulnerability,³⁶
3. take active steps to encourage customers to share information about their needs or circumstances, where relevant.³⁷
4. set up systems and processes that enable customers to disclose their needs, if they choose³⁸, and
5. support their staff to identify signs of vulnerability, for instance through training and resources.

Examples of actions firms can take in relation to identifying the needs of customers with characteristics of vulnerability in the target market include:

1. holding focus groups with customers with characteristics of vulnerability or consumer representatives at the product development stage to get a greater understanding of their needs and how products can meet them,
2. exploring resources provided from, and consulting with, specialist organisations offering information on how the needs of customers with characteristics of vulnerability can be met in the design stage,
3. consulting with customers or representative groups when seeking to alter or withdraw a product, and
4. employing third-sector organisations who can review products from the viewpoint of customers with characteristics of vulnerability.³⁹



35 FG22/5, 6.26
 36 FG22/5, 6.27
 37 FG22/5, 6.28
 38 FG22/5, 6.29
 39 FG22/5, 6.32

Product manufacturers ARE NOT expected to:

1. review the needs, characteristics and objectives of individual customers, to track potential vulnerability for each customer or to monitor the diverse needs of each customer, or
2. explore customers' circumstances exhaustively or to identify every customer with characteristics of vulnerability.⁴⁰

Product design

Product manufacturers must ensure that their products or services (whether new or existing) are designed to meet the IDENTIFIED needs, characteristics and objectives of the target market which has been identified.⁴¹

Product testing

Product manufacturers are expected to base their work on REAL consumer needs, characteristics and objectives within the identified target market (including those which characteristics of vulnerability). This is particularly relevant where there are greater risks of consumer harm.⁴² Firms should not merely look to copy other products or services in the market.⁴³ As such, the Consumer Duty rules require firms to undertake appropriate testing of their products or services.⁴⁴ This will include scenario analyses where relevant.

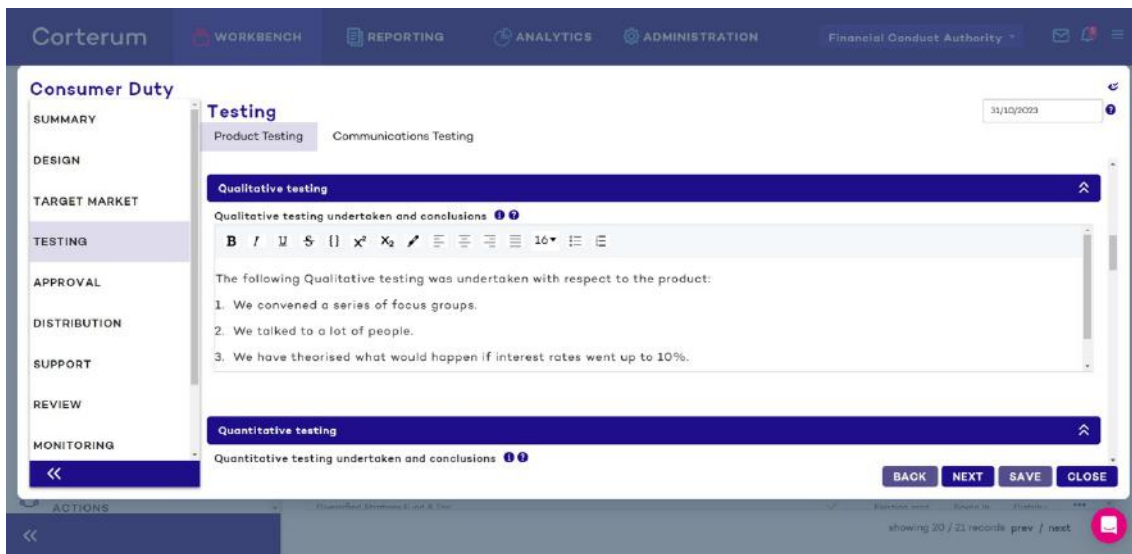
In all cases, firms must undertake QUALITATIVE testing of products and services. For example, they could consider likely changes to the target market's needs in the future and whether the product or service would continue to meet those needs. Where relevant, depending on the type and nature of the product or service and the risk of harm, firms must also conduct QUANTITATIVE testing. This could include, for example, testing how investments would perform in different market conditions.⁴⁵

Firms should give consideration to what may happen in the FUTURE, and not just what has happened in the PAST.⁴⁶ For example, firms should consider how the product or service is likely to function over its proposed term and, where different, the average time customers are expected to hold the product or service, so they can properly assess all potential risks to customers.⁴⁷

If the results of the testing show that the product does not meet the identified needs, characteristics and objectives of the target market:

1. in relation to new products (or a significant adaptation of an existing product): the manufacturer must NOT bring the new or adapted product to the market, and
2. in relation to existing products: the manufacturer must immediately:
 - a. cease marketing or distributing the product (whether directly or indirectly),
 - b. cease any renewals for existing retail customers, provided that existing retail customers are easily able to move to an alternative product that provides at least the same level of benefit at an equivalent cost to the customer, whether with the firm or with another firm, and
 - c. where the firm intends to continue to market and distribute the product, make such changes as are necessary for the product to meet the identified needs, characteristics and objectives of the target market.⁴⁸

40 FG22/5, 6.29
 41 FG22/5, 6.38
 42 FG22/5, 6.47; see also TR14/10
 43 FG22/5, 6.40
 44 FG22/5, 6.43
 45 FG22/5, 6.44; PRIN 2A.39R
 46 FG22/5, 6.45
 47 FG22/5, 6.46
 48 PRIN 2A.3.10R



In all cases, firms must undertake QUALITATIVE testing of products and services

Product approval

Approval of open products

With respect to any new product manufactured on or after 31 July 2023, or any existing product, a product manufacturer must maintain, operate and review a process for the approval (or any significant adaptation to) a product in each case before it is marketed or distributed to retail customers.⁴⁹ Approval procedures must:

1. specify the target market for the product at a sufficiently granular level, taking into account the characteristics, risk profile, complexity and nature of the product,
2. take account of any particular additional or different needs, characteristics and objectives that might be relevant for retail customers in the target market with characteristics of vulnerability,
3. ensure that all relevant risks to the target market, including any relevant risks to retail customers with characteristics of vulnerability, are assessed,
4. ensure that the design of the product: (i) meets the needs, characteristics and objectives of the target market; (ii) does not adversely affect groups of retail customers in the target market, including groups of retail customers with characteristics of vulnerability; and (iii) avoids causing foreseeable harm in the target market,
5. ensure that the intended distribution strategy is appropriate for the target market, and
6. require the manufacturer to take all reasonable steps to ensure that the product is distributed to the identified target market.

Product approval processes should be regularly reviewed (and amended where appropriate to ensure that they remain valid and up to date.⁵⁰

In terms of product approval, product manufacturers will be expected to be able to evidence the steps that they have taken to match product design with the needs, characteristics and objectives of the target market.⁵¹

49 PROD 2A.32R; FG22/5, 6.13
50 FG22/5, 6.16
51 FG22/5, 6.51



Approval of closed products

A manufacturer of a closed product must maintain, operate and review a process to assess and regularly review whether:

1. any aspect of the product results in the firm not complying with the cross-cutting obligations in relation to existing retail customers,⁵² and
2. the product affects groups of retail customers in different ways and in particular whether any retail customers in the target market with characteristics of vulnerability are adversely affected by any aspect of the product.⁵³



Every product must go through an approval procedure

Product distribution

Product manufacturers must develop a distribution strategy that is appropriate for the target market.⁵⁴ As part of this process, firms should consider what distribution channels are appropriate for the target market. For example, a firm manufacturing a particularly complicated product might consider only allowing the product to be sold with advice or by distributors with specific knowledge, expertise and competence to understand the features of the product.⁵⁵

Product review

A manufacturer must regularly review its products taking into account any event that could materially affect the potential risk to the target market. At the very least, any review must ask:

1. whether the product meets the identified needs, characteristics and objectives of the target market (including those with characteristics of vulnerability),
2. whether the intended distribution strategy remains appropriate, including whether the product is being distributed to the target market or reaching retail customers outside the target market,⁵⁶ and
3. whether products or services have been distributed to customers in the target market.⁵⁷

Where a manufacturer identifies any circumstances related to the product that may adversely affect retail customers, it must:

1. take appropriate action to mitigate the situation and prevent any further harm, and
2. where appropriate, promptly inform other relevant persons in the distribution chain about the circumstances that led to action being taken and the remedial action taken.⁵⁸

In terms of action it could take, a manufacturer could consider:

1. making changes to a product or service,
2. providing additional information to distributors or customers,
3. amending the distribution strategy before making further sales,
4. offering existing customers the option to leave the product or service without additional cost, or

54 FG22/5, 6.52

55 FG22/5, 6.52

56 PRIN 2A.3.7R

57 FG 22/5, 6.65

58 PRIN 2A.3.8R

5. providing appropriate mitigation of any harm suffered.⁵⁹

Distribution Chains

Product Manufacturers

“Manufacturers” are firms that create, develop, design, issue, manage, operate or underwrite (for insurance or credit purposes only) a product or service.⁶⁰ More than one firm may be involved in the manufacture of a single product. It is also possible that intermediaries may be co-manufacturers, for example if they set the parameters of a product and commission other firms to build it.⁶¹

Firms that purchase books of closed products or services from an original manufacturer will be regarded as “manufacturers” due to the fact that they are ‘managing, operating or carrying out activities’ in relation to the product or service in question. As such, they will be expected to continue to review customer outcomes, as required by the Consumer Duty.⁶²

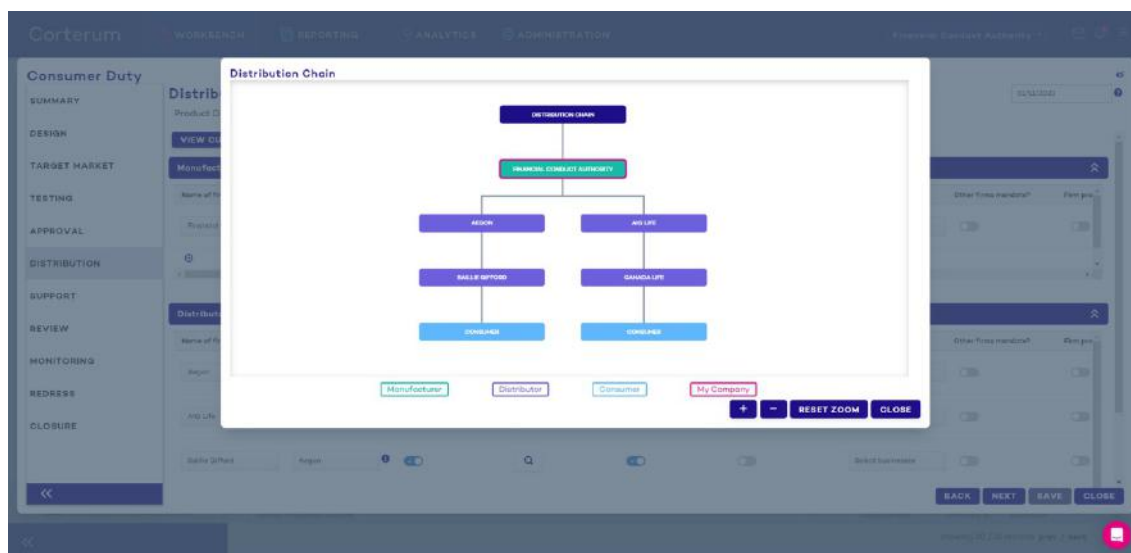
Unless they have an oversight role, manufacturers are not responsible for the activities of distributors.⁶³

Product Distributors

Firms are product distributors if they offer, sell, recommend, advise on, arrange, deal, propose, or provide a product or service, including at renewal.⁶⁴

Co-manufacturers

Where the firms involved are co-manufacturers of a product or service, they must have a written agreement outlining their respective roles and responsibilities. This agreement should clarify which firm is responsible for deciding a particular issue and provide confirmation of which firm is responsible for meeting different aspects of the Consumer Duty.⁶⁵



Corterum allows you to manage your distribution chains

⁵⁹ FG 22/5, 6.79

⁶⁰ See definition of “manufacturer”

⁶¹ Policy Statement PS22/9, 2.24, FG22/5, 6.4. See also the definition of “manufacturer”

⁶² Policy Statement PS22/9, 2.24, FG22/5, 2.41 and 2.42

⁶³ FG22/5, 6.53

⁶⁴ FG22/5, 6.56; Policy Statement PS22/9, 2.24. See also the definition of “distributor”

⁶⁵ PRIN 2A.3.11R; FG22/5, 2.28 and 6.11, FG22/5, 6.12

Information sharing

General

The FCA recognises that distribution chains for retail market business can be long and complicated. This can cause issues for manufacturer firms obtaining relevant information about customer outcomes. Some manufacturers do not have full visibility of the distribution chain or the end customers. In these circumstances, the FCA expects firms to do what is reasonable.⁶⁶

Manufacturer obligations to share information with distributors

Product manufacturers must provide each distributor with adequate information in good time to enable it to comply with its own obligations with respect to the Consumer Duty. The information to be made available includes all appropriate information regarding the product and the product approval process from time to time to enable the distributor to comply with the obligations under PRIN 2A.3.16R (which require distributors to obtain information from manufacturers).⁶⁷

More specifically, manufacturers must make all appropriate information available to distributors to:

1. understand the characteristics of the product or service,
2. understand the identified target market,
3. consider the needs, characteristics and objectives of any customers with characteristics of vulnerability,
4. identify the intended distribution strategy, and
5. ensure the product or service will be distributed in accordance with the target market.⁶⁸

Distributor obligations to share information with manufacturers

In general, distributors are NOT expected to share information without being asked.⁶⁹ However, to support product reviews carried out by manufacturers, a distributor must, upon request, provide a manufacturer with relevant information including, where appropriate, sales information and information on the regular reviews of product distribution arrangements.⁷⁰

In addition, as an exception to the general approach, where appropriate, distributors must “promptly” inform other relevant parties in a distribution chain if:

1. they take remedial action following a review of distribution arrangements, or
2. they identify consumer harm.⁷¹

In order to avoid a contravention of data protection laws, wherever possible, distributors should share information in an anonymised or aggregate form.⁷²

Manufacturer obligations to obtain information from distributors

Product manufacturers will need to seek information from distributors in order to support their product review processes. However, manufacturers should remain mindful of the obligations on distributors to provide anonymised or aggregate data wherever possible. Questions manufacturers may wish to ask distributors could include:

1. Are there any issues identified by the distributor in relation to the target market assessment?
2. Are there any issues identified by the distributor in their review of distribution arrangements for a product or service?
3. Have any issues been identified by, or for, customers with characteristics of vulnerability?

66 FG22/5, 2.22
 67 PRIN 2A.3.12R
 68 FG22/5, 6.54
 69 FG 22/5, 6.70
 70 PRIN 2A.3.18R; FG 22/5, 6.68
 71 FG 22/5, 6.71
 72 FG 22/5, 6.73

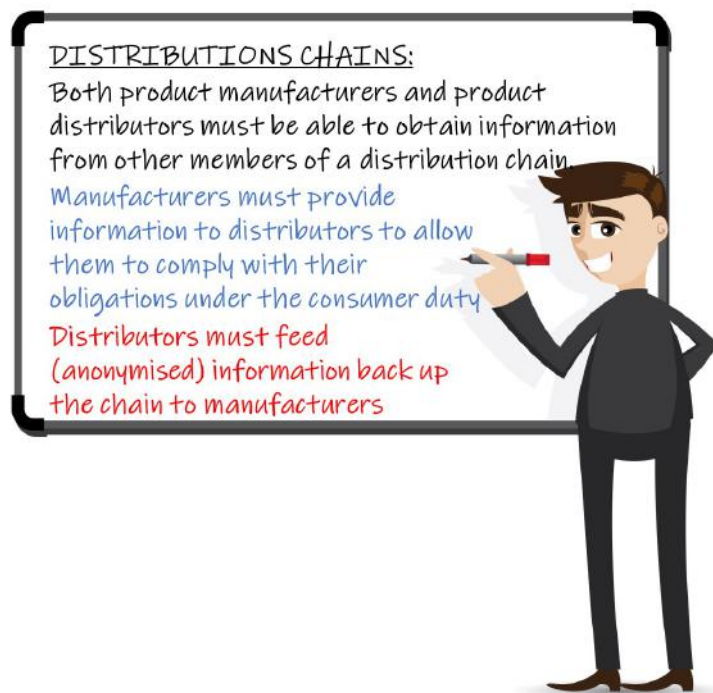
What are they at a high level (not identifying individual customers)?

4. Have any sales outside the target market been identified in the distributor review? In what way are they outside the target market? What harm is foreseeable?
5. What proportion of customers hold the product for the recommended timescale (if any)?⁷³

Distributor obligations to obtain information from manufacturers

A distributor must ensure that the product distribution arrangements it enters into with a product manufacturer contains effective measures and procedures to obtain sufficient, adequate and reliable information from the manufacturer about the product to:

1. understand the characteristics of the product,
2. understand the identified target market,
3. consider the needs, characteristics and objectives of any retail customers in the target market with characteristics of vulnerability,
4. identify the intended distribution strategy for the product, and
5. ensure the product will be distributed in accordance with the needs, characteristics and objectives of the target market.⁷⁴



Distribution chains involving non-UK distributors

Where a distribution chain includes non-UK distributors (which are not subject to the Consumer Duty), UK manufacturers may not be able to obtain relevant information from them. In this case, UK firms should consider what is reasonable in the circumstances to gather information. For example, they could use any information that they do have available to support their work, but they would not be expected to obtain information from firms that are not subject to the Consumer Duty.⁷⁵

Liability in the context of distribution chains

Unless there are regulatory requirements, or unless contracts between parties in a distribution chain require it, firms are responsible only for their own activities and do not need to oversee the actions of other firms in a distribution chain.⁷⁶ However, there are some limited exceptions to this approach, for example where a firm acts as a principal firm.⁷⁷

Firms which are already subject to other product governance rules

Firm which are already subject to the existing product governance rules in PROD⁷⁸ should continue to comply with those requirements. In doing so, they will comply with the products and service outcome under the Consumer Duty.⁷⁹ Conversely, a failure to comply with the requirements of PROD 3 would be taken as a failure to comply with the products and services outcome.⁸⁰

Firms that follow PROD 3 as guidance (such as asset managers) may choose whether to follow the rules in PROD or those under the products and services outcome.⁸¹

75 FG22/5, 240
76 Policy Statement PS22/9, 2.15
77 Policy Statement PS22/9, 2.18
78 Product Intervention and Product Governance sourcebook
79 Policy Statement PS22/9, 6.5
80 Policy Statement PS22/9, 6.7
81 Policy Statement PS22/9, 6.7

Product Distributors

What is a product distributor?

Firms are product distributors if they offer, sell, recommend, advise on, arrange, deal, propose, or provide a product or service, including at renewal.⁸²

Obligations of product distributors

Product distributors are also subject to the products and services outcome.⁸³ Put simply, distributors must understand the products or services they distribute. This requires all distributors to get information from manufacturers. More specifically, distributors must:

1. understand the characteristics of the product or service,
2. understand the identified target market,
3. consider the needs, characteristics and objectives of any customers with characteristics of vulnerability,
4. identify the intended distribution strategy, and
5. ensure the product or service will be distributed in accordance with the needs, characteristics and objectives of the target market.⁸⁴

Firms should not distribute a product or service if they do not understand it sufficiently.⁸⁵



82 FG22/5, 6.56
83 FG22/5, 6.61
84 FG22/5, 6.59
85 FG22/5, 6.60

Product distribution arrangements

Distributors must have (and keep under review) distribution arrangements for each product or service they distribute.⁸⁶ The distribution arrangements must:

1. avoid causing and, where that is not practical, mitigate foreseeable harm to customers,
2. support management of conflicts of interest, and
3. ensure the needs, characteristics and objectives of the target market are taken into account.⁸⁷

In addition, a distributor should identify or create a distribution strategy that is consistent with the identified target market.⁸⁸ Moreover, if a distributor sets up or implements a specific distribution strategy to supplement the manufacturer's strategy for a product or service, it must be consistent with the manufacturer's intended distribution strategy and the identified target market.⁸⁹

When reviewing its distribution arrangements, a distributor must verify that it is only distributing each product to the identified target market.⁹⁰

If it identifies an issue as a result of a review, a distributor must:

1. make appropriate amendments to the product distribution arrangements,
2. take appropriate action to mitigate any harm that has been identified and prevent any further harm, and
3. promptly inform all relevant persons in the distribution chain about any action taken.

Product distributor reviews

Distributors must regularly review whether their:

1. distribution arrangements are appropriate and up to date, and
2. products and services have been distributed to customers in the target market.⁹¹



86 FG22/5, 6.57
87 FG22/5, 6.57; PRIN 2A.3.14R
88 FG22/5, 6.62
89 FG22/5, 6.63; PRIN 2A.3.17R
90 PRIN 2A.3.19R
91 FG 22/5, 6.66

When deciding how regularly to *review* a product or service, firms should consider factors such as:

1. the nature and complexity of the product or service,
2. the nature of the customer base, including whether there are significant numbers of customers with vulnerable characteristics, and
3. any indicators of customer harm.⁹²

If firms identify issues in their review, they must take appropriate action to mitigate the situation and prevent further harm from occurring. As previously, noted, where appropriate, they must inform other firms in the distribution chain about their actions.⁹³

Monitoring the products and services outcome

In order to monitor the products and services outcome, firms could consider data such as:

1. sales information and information on business persistency,
2. customer feedback,
3. complaints received about the product or service, and the results of root-cause analysis of those complaints,
4. analysis of whether the product or service functions as expected at outset, including whether customers use product or service features as expected, and
5. where appropriate, consumer research, such as focus groups or new testing.⁹⁴

The products and services outcome: key questions for firms

Below are a set of questions which the FCA recommends firms consider in terms of managing their compliance with the products and services outcome:

1. Has the firm specified the target market of its products and services to the level of granularity necessary?
2. 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?
3. 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?
4. Is the firm sharing all necessary information with other firms in the distribution chain, and receiving all necessary information itself?
5. How is the firm monitoring that distribution strategies are being followed and that products and services are being correctly distributed to the target market?
6. 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?
7. 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?⁹⁵

92 FG 22/5, 6.67
 93 FG 22/5, 6.78
 94 FG 22/5, 6.77
 95 FG 22/5, 6.80

The products and services outcome: a summary of compliance

Actions likely to be inconsistent with the Duty	Actions likely to be consistent with the Duty
A target market is defined so broadly that it captures groups of customers for whose needs, characteristics and objectives the product or service is generally incompatible.	The target market is defined at a sufficiently granular level to help avoid sales to customers for whose needs, characteristics and objectives the product or service is generally incompatible.
Products or services are marketed or distributed without considering whether they are designed to meet the needs, characteristics and objectives of customers in the target market.	A manufacturer considers if a product or service meets the needs, characteristics and objectives of customers in the target market and, where it does not, takes appropriate action to mitigate the situation and prevent any further harm.
A manufacturer does not test a new product or service before launch and, as a result, does not identify that the product does not meet the needs, characteristics and objectives of the target market.	A manufacturer tests its product or service before launch to assess how it is likely to function in different conditions and whether it could lead to foreseeable harm. Where it identifies potential issues, the firm adjusts the product or service to avoid them or mitigate their impact.
A distribution strategy is not appropriate and the product or service is distributed to groups of customers for whose needs, characteristics and objectives the product or service is incompatible.	A product or service has an appropriate distribution strategy and is sold to customers in the target market for whose needs, characteristics and objectives the product or service was designed.
A firm does not review its products or services or distribution arrangements and does not identify a potential issue when it becomes foreseeable. The firm misses the chance to prevent the harm before it can materialise, and customers suffer harm.	A firm identifies a potential issue during its regular review of a product or service or distribution arrangement and takes appropriate steps.
Firms do not consider the fairness of their product or service contract terms, resulting in unfair terms that are not enforceable.	Firms draft and regularly review their product or service contract terms to ensure compliance with the fairness requirements of the Consumer Rights Act 2015. ⁹⁶

The price and value outcome

General

The concept of “value” is about more than price. Firms must assess their products and services in order to ensure that, in the round, there is a reasonable relationship between the price paid for a product or service and the overall benefit a consumer receives from it.⁹⁷

The price and value rules apply at the level of the product or service, rather than for individual customers.⁹⁸ Customers do not need to be moved onto the latest product version in order to ensure fair value. The focus should be on ensuring that the product or service offers fair value on its own merits.

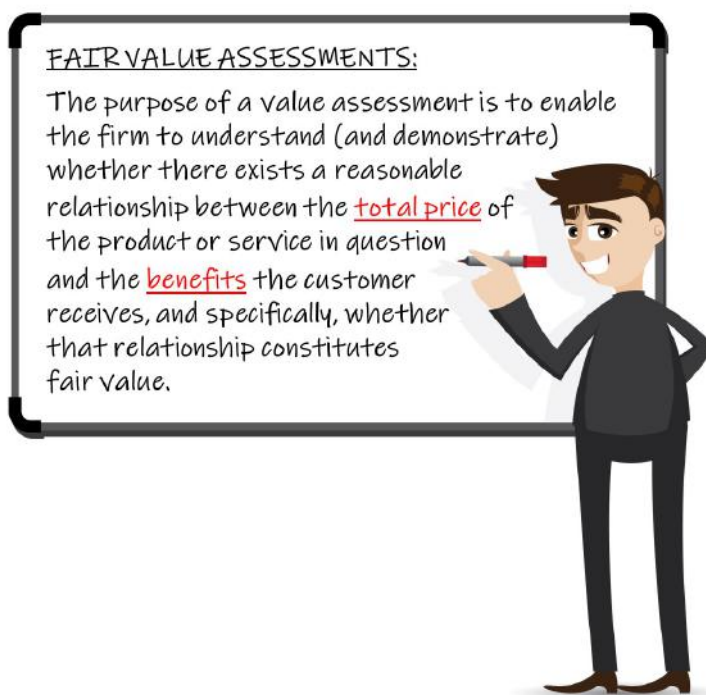
A product or service that doesn't meet any of the needs of the customer it is sold to, causes foreseeable harm, frustrates the objectives of customers or has negligible or no obvious benefits for consumers is unlikely to offer fair value whatever the price.⁹⁹

Value assessments

Introduction to product manufacturer value assessments

Product manufacturers must conduct value assessments with respect to each of their products or services¹⁰⁰. Note that the assessment is only needed at the level of the product or service itself. There is no requirement to review individual existing contracts.¹⁰¹

The purpose of a value assessment is to enable the firm to understand (and demonstrate) whether there exists a reasonable relationship between the total price of the product or service in question and the benefits the customer receives, and specifically, whether that relationship constitutes fair value.



97 Policy Statement PS22/9, 71

98 Policy Statement PS22/9, 318

99 FG 22/5, 75

100 Policy Statement PS22/9, 71; Policy Statement PS22/9, 78

101 FG22/5, 313

Timing of product manufacturer value assessments

Product manufacturers must assess value at every stage of the product approval process (i.e. before offering products or services to consumers).¹⁰² In particular, value assessment should be conducted when:

1. designing a product,
2. identifying retail customers in the target market for whom the product needs to provide fair value, and
3. selecting distribution methods/channels.¹⁰³

Product manufacturers must also monitor and assess “value” throughout the life of a product or service, conducting regular reviews of value assessments.¹⁰⁴ Manufacturers must consider how regularly to perform ongoing value assessments based on relevant factors, such as the nature and complexity of the product or service, any indicators of customer harm, the distribution strategy and any relevant external factors.¹⁰⁵

A value assessment should also be conducted following any significant adaptation of a product (but before it is re-marketed or re-distributed).¹⁰⁶



Value assessments and the concept of “reasonableness”

As with the entire Consumer Duty, the price and value outcome rules apply based on what is “reasonable”. As such, the nature of the value assessment and the data and insight firms use to inform that assessment will vary depending on the type of product or service, and the size and complexity of the firm.¹⁰⁷

102 FG22/5, 715
 103 PRIN 2A.4.19R; PRIN 2A.4.24R
 104 FG22/5, 716; FG 22/5, 745
 105 FG 22/5, 746
 106 PRIN 2A.4.3R
 107 FG22/5, 718

Value assessments and products sold as part of a package

Where products and/or services are sold together as part of a package, firms must ensure that each component product or service, and the overall package, provides fair value.¹⁰⁸

Value assessments and grouping of similar products

When carrying out value assessments, firms may group similar products together where the customer base, complexity and risk of consumer harm are sufficiently similar. However, firms should not do this if it could impair their ability to assess each product or service adequately.¹⁰⁹

What is “value”?

“Value” is the relationship between the amount paid by a retail customer for a product and the benefits they can reasonably expect to get from the product. A product provides fair value where the amount paid for the product is reasonable relative to the benefits of the product.¹¹⁰

The concept of “price” in the context of value assessments

When considering the concept of “price”, product manufacturers must consider all the costs and charges a consumer may pay for the product or service over time. This includes:

1. the charges consumers pay at the start and end of a contract,
2. all fees and charges which consumers may incur over the life of the product or service. These may include contingent charges, like fees as a result of late payments/arrears (this is especially important if the target market includes consumers with poor credit rating),
3. with respect to products and/or services intended to be sold together as part of a package, the value of each component and the overall value of the package.¹¹¹

108 FG22/5, 717; PRIN 2A.4.7R

109 FG22/5, 719; Policy Statement PS22/9, 713

110 PRIN 2A.4.1R

111 FG 22/5, 725

Firms also need to consider whether consumers will incur other costs which may not be financial, such as:

1. the time and effort it takes to access, assess and act to buy, amend, switch or cancel a product, and
2. the firm's use of consumer data where consumers knowingly or unknowingly 'pay' with their data, privacy or attention.



What are "benefits"?

In order to perform a value assessment, product manufacturers must assess the benefits (both financial and non-financial) consumers can reasonably expect from a product or service.¹¹²

Characteristics such as the quality of the product or service, the level of consumer service, the potential pay-out or return, how well the product meets consumers' needs, or other features that consumers find valuable, all constitute "benefits" against which the price of the product should be assessed.¹¹³

Firms are not necessarily expected to quantify non-monetary costs and benefits. However, they are expected at least to provide qualitative consideration of these factors.¹¹⁴

Value assessments in relation to free products

Manufacturers who provide free products or services should still consider if their customers are paying in non-monetary terms, and whether those costs are reasonable in relation to the product's benefits.¹¹⁵

¹¹² FG22/5, 722; PRIN 2A.4.10G

¹¹³ FG 22/5, 724

¹¹⁴ Policy Statement PS22/9, 78

¹¹⁵ Policy Statement PS22/9, 78

Where a product or service does not have any financial or non-financial cost to the consumer (e.g. debt advice funded through other sources), there is no requirement to perform a value assessment.¹¹⁶

Factors to consider in any value assessment

Firms have the discretion to decide on the factors they use in their value assessments, provided those factors allow the firm to demonstrate that there remains a reasonable relationship between the total price of the product or service and the benefits the customer receives.¹¹⁷ In preparing a value assessment, firms should not rely solely on data relating to individual consumers.¹¹⁸

The FCA states that firms must consider at least the following:

1. the nature of the product or service, including the benefits that will be provided or may reasonably be expected and their qualities,
2. any limitations that are part of the product or service (for example, limitations on scope of cover for insurance products),
3. the expected total price customers will pay, including all applicable fees and charges over the lifetime of the relationship between customers and firms,¹¹⁹ and
4. any characteristics of vulnerability that retail customers in the target market display and the impact these characteristics have on the likelihood that retail customers may not receive fair value from its products.¹²⁰

Other factors a firm could consider include:

1. the costs incurred to manufacture and/or distribute the product or service (this may help to explain why otherwise similar products are priced differently, and/or explain changes in the price charged over time),
2. the market rates and charges for comparable products or services (where a product or service is a significant outlier, it might prompt the firm to confirm they are still confident the price is reasonable compared to the benefits received),
3. whether there are any products in the firm's portfolio which are priced significantly lower for a similar or better level of benefit,
4. any accrued costs and/or benefits for existing or closed products,¹²¹ and
5. depending on the nature of the product or service, customer research, testing or use of internal data.¹²²

116 FG 22/5, 720
 117 FG22/5, 713
 118 FG22/5, 712; PRIN 2A.4.20R
 119 FG 22/5, 79
 120 PRIN 2A.4.8R
 121 FG22/5, 710; PRIN 2A.4.9G
 122 FG22/5, 712

Value assessments for target markets comprised of different groups

In conducting a value assessment in circumstances where different groups of retail customer exist within the target market, product manufacturers should have regard in particular to:

1. whether any retail customers who have characteristics of vulnerability may be less likely to receive fair value, and
2. whether the product provides fair value for each of the different groups of retail customer in the target market, including in circumstances where the pricing structure of the product involves different prices being charged to different groups of retail customers.¹²³



In considering “fair value”, it is permissible for firms to charge different prices to different groups of consumers within the target market. However, firms must consider whether the price charged for the product/service provides fair value for customers in each group, while having regard to whether any customers who have characteristics of vulnerability may be disadvantaged.¹²⁴

For how long must a product manufacturer value assessment remain valid?

A product manufacturer must be satisfied that the product/service in question will continue to provide fair value from the point at which the manufacturer completes the assessment for a “reasonably foreseeable” period, including, where the product is one that renews, following renewal.¹²⁵ What constitutes a ‘reasonably foreseeable period’ will depend on the type of product.¹²⁶



Value assessments should be forward-looking

The assessment of whether a closed product or an existing product provides fair value should be on a forward-looking basis only.¹²⁷ It should take into account the benefits provided, the costs charged to the retail customer and the costs incurred by the firm prior to the rules regarding the Consumer Duty coming into effect.¹²⁸

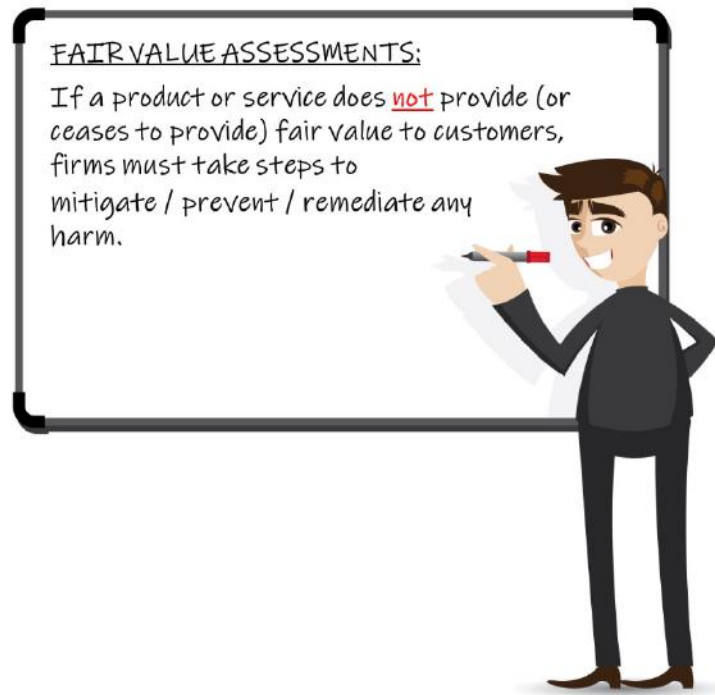
What if a manufacturer is already subject to “fair value” rules?

Firms that are already subject to fair value rules (such as PROD 4 for non-investment insurance or PROD 7 for funeral plans) will meet the price and value outcome of the Consumer Duty by complying with those existing rules.¹²⁹

125 PRIN 2A.4.5R
 126 PRIN 2A.4.6G
 127 PRIN 2A.4.22G
 128 PRIN 2A.4.23G
 129 Policy Statement PS22/9, 7.12

What if a manufacturer concludes that a product or service DOES NOT provide fair value?

If a product or service does not provide (or ceases to provide) fair value to customers, firms must take appropriate action to mitigate, prevent and (where appropriate) remediate harm, for example, by amending it to improve its value or withdrawing it from sale.¹³⁰



Monitoring and record keeping in relation to value assessments

Firms must get all necessary fair value information to enable them to understand and monitor consumer outcomes, including value assessments performed in relation to the price and value outcome.

At a high level, firms must be able to clearly demonstrate how any product or service provides fair value.¹³¹ To this end, they should:

1. record factors considered in their value assessments,
2. collect and analyse appropriate management information (MI), and
3. be able to provide evidence if requested to do so by the FCA.¹³²

The screenshot displays the Corterum software interface for a 'Consumer Duty' 'Target Market' 'Value Assessment'. The interface includes a navigation menu on the left with options like SUMMARY, DESIGN, TARGET MARKET, TESTING, APPROVAL, DISTRIBUTION, SUPPORT, REVIEW, MONITORING, REDRESS, and CLOSURE. The main content area shows a form with the following sections:

- Value assessment - further information:** Includes fields for 'Date of fair value assessment' (05/09/2023) and 'Date of next value assessment' (05/09/2024).
- Scope of value assessment:** Features a toggle for 'Value assessment covers more than one product?' and a text area for 'Products to which value assessment applies' containing the text: 'The "Super Duper" series of life products manufactured by the company.'

At the bottom of the form, there are buttons for 'BACK', 'NEXT', 'SAVE', and 'CLOSE'. The footer of the interface shows 'Showing 00 / 01 records prev / next'.

Corterum enables product manufacturers to manage all value assessments in one place

Examples of the types of data which firms could monitor to ensure that they comply with their obligations with respect to value assessments could include:

1. the expected price paid by customers, including associated fees and charges and those incurred further down the distribution chain,
2. profitability data, including revenue and profit margins,
3. customer complaints and root cause analyses,
4. surveys, net promoter scores, social media rating analysis, focus groups, mystery shopping or other customer research,
5. data about customer usage and behaviour, such as transactional data, retention rates or relevant A/B testing of variation in product or service design,
6. operational data which might affect value such as on app or website outages or service call abandonment rates,
7. feedback from other firms in the distribution chain including, manufacturers, intermediaries, appointed representatives or other third parties regarding the value of the product,
8. the cost of providing the product or service, including credit risk, and
9. market conditions, such as the interest rate environment or rates for comparable products.¹³³

131 FG 22/5, 747

132 FG 22/5, 748

133 FG 22/5, 750

Value assessments in the context of collaborations between product manufacturers

Where firms collaborate to manufacture a product, they must set out in a written agreement their respective roles and responsibilities in the value assessment process.¹³⁴

Provision of value assessment information to product distributors

The manufacturer of a product must ensure that firms distributing a product have all necessary information to understand the value that the product is intended to provide to a retail customer.¹³⁵

Product distributors and the requirement to perform value assessments

General

Distributors are not required to duplicate value assessments performed by manufacturers. Each firm is only responsible for the prices that they control. They are not required to re-do or to challenge any other firm's value assessment.¹³⁶

However, distributors are required to understand at least the benefits of the product to the target market, the price and associated fees and whether any of their or other charges result in the product ceasing to provide fair value.¹³⁷ This means that the distributor will need to consider the cumulative impact of the remuneration added by each person in the distribution chain on the overall value of the product to the customer.¹³⁸

More generally, a distributor must not distribute a product unless its distribution arrangements are consistent with the product providing fair value to retail customers.

Where a product manufacturer sets the final price that the retail customer receives, including distribution charges (i.e., through commissions) then only the product manufacturer is responsible for ensuring that the product provides fair value. In these circumstances, the distributor does NOT need to carry out a value assessment (although it must confirm that the manufacturer has carried out a value assessment and review the information shared by the manufacturer to understand the benefits for the target market before they distribute).¹³⁹

134 PRIN 2A.4.13R
 135 PRIN 2A.4.15R
 136 Policy Statement PS22/9, 79; FG22/5, 731
 137 Policy Statement PS22/9, 79
 138 FG 22/5, 733
 139 FG 22/5, 735

Timing of product distributor value assessments

A distributor must consider the fair value assessment when determining the distribution strategy for the product and in particular where the product is to be distributed with another product whether as part of a package or not.¹⁴⁰ In addition, all distributors must regularly review distribution arrangements throughout the life of a product to ensure that they remain consistent with the product providing fair value to retail customers in the target market.¹⁴¹



Sharing of value assessments between manufacturers and distributors

In order to comply with the requirement to provide “fair value” to retail customers, as part of the distribution arrangements which product distributors enter into with product manufacturers, distributors must ensure that they are able to obtain enough information from the manufacturer to understand the outcome of the product manufacturer’s value assessment and in particular to identify:

1. the benefits the product is intended to provide to a retail customer,
2. the characteristics, objectives and needs of the target market,
3. the interaction between the price paid by the retail customer and the extent and quality of any services provided by the distributor, and
4. whether the impact that the distribution arrangements (including any remuneration it or (so far as the distributor is aware of it) another person in the distribution chain receives) would result in the product ceasing to provide fair value to retail customers.¹⁴²

For their part, manufacturers should provide distributors with the results of their value assessments. However, they do not have to include sensitive information. It is acceptable for a manufacturer to share a high-level summary of the benefits to the target market, information on overall prices or fees and confirmation that the manufacturer considers that total benefits are proportionate to total costs.¹⁴³

140 PRIN 2A.4.19R
 141 PRIN 2A.4.24R
 142 PRIN 2A.4.16R; FG22/5, 7.32
 143 Policy Statement PS22/9, 7.9

A firm which distributes products to other distributors must ensure that all information relevant to the value assessment is passed to the distributor at the end of the distribution chain. Firms in this situation must also consider whether they are actually a co-manufacturer of the product they are distributing. If they are, the manufacturer rules will apply.¹⁴⁴

Distributor obligations to perform value assessments for non-UK manufactured products

If a product is developed outside the UK (and therefore may not be subject to the requirements of the Consumer Duty), distributors must still take all reasonable steps to understand:

1. the benefits of the product or service to the target market,
2. any limitations of the product, and
3. whether their or any other charges added along the line cause the product to become unfair in terms of value.¹⁴⁵

What if a distributor concludes that a product or service DOES NOT provide fair value?

Where a product distributor identifies that the product no longer provides fair value, whether that is due to aspects of the product or the distribution arrangements, it must take appropriate action to:

1. mitigate the situation and prevent further occurrences of any possible harm to retail customers, including, where appropriate, amending the distribution strategy for that product,
2. redress any foreseeable harm that has been caused to retail customers by faults in the distributor's distribution arrangements, and
3. inform any relevant manufacturers and other distributors in the chain promptly about any concerns they have and any action the distributor is taking.¹⁴⁶

The price and value outcome: key questions for firms

Below are a set of questions which the FCA recommends firms consider in terms of managing their compliance with the price and value outcome:

1. 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?
2. 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?
3. 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?
4. 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?
5. 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?
6. 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?¹⁴⁷

144 PRIN 2A.4.18R

145 FG 22/5, 736

146 PRIN 2A.4.27R

147 FG 22/5, 751

Framework for assessing the fairness of price discrimination

In July 2019, the FCA introduced a framework for assessing the fairness of price discrimination.¹⁴⁸

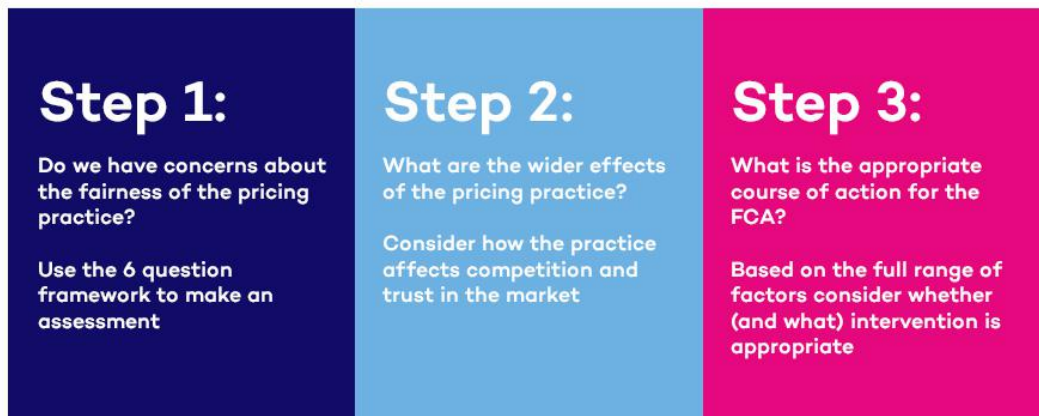
Figure 1: Framework questions to help assess concerns about fairness in price discrimination

	- Lesser concern	Greater concern +
Who is harmed by price discrimination?	Wealthier consumers - eg time poor, cash rich	Consumers with characteristics which might be deemed vulnerable (eg low income, old age, etc)
How much are these individuals harmed?	Profitability difference between consumer segments is minimal and is immaterial to the harmed segment	Significant profitability differences and the harm has a significant adverse effect on the segment affected
How significant is the pool of people harmed?	Very small minority	Significant group of consumers
How are firms price discriminating?	Transparent and based on behaviour which consumers can easily change (eg switching)	Hidden and based on intrinsic characteristics which consumers cannot easily change (eg personal characteristics)
Is the product/service essential?	Product/service is considered non-essential but desired by some consumers	Essential product/service (eg current account or motor insurance)
Would society view the price discrimination as egregious/socially unfair?	Little concern expressed about practices and firm behaviour widely accepted	Persistant and broad-based concern expressed and firm behaviour seen as poor conduct

In the view of the FCA, for the Framework to be effective and proportionate it needs to be considered in the round and retain a significant element of judgement in its application to particular cases.¹⁴⁹ Some Framework questions may in certain cases carry more weight than others, particularly if the answers to those questions reveal a particularly extreme or severe outcome. In most cases, no single question will determine a decision in isolation¹⁵⁰ and all 6 questions do not need to be answered in a particular way for the FCA to find that a pricing practice is unfair.¹⁵¹

In the view of the FCA, the Framework can be thought of as the first part of a broader, sequential decision-making framework (set out below) that accounts for possible wider effects of pricing practices – helping to inform the FCA as to how it should act on concerns about the fairness of a given pricing practice.¹⁵²

Figure 2: How the Framework informs what action we may take to address concerns about the fairness of a given pricing practice



149 FS19/04, 3.40
 150 FS19/04, 3.41
 151 FS19/04, 3.42
 152 FS19/04, 3.46

The price and value outcome: a summary of compliance

Actions likely to be inconsistent with the Duty	Actions likely to be consistent with the Duty
A firm has pricing practices which give no consideration to whether the product or service offers reasonable benefits to customers in relation to the total price paid by them.	A firm carries out a value assessment and documents how the prices of products or services provide fair value to customers in the target market.
A firm alters products or services after launch without consideration of the impact this could have on customers, so a product or service that started out as fair value may no longer continue to meet the requirements.	A firm considers if changes to the products or services benefits have any significant impact on fair value to customers in the target market and either withdraw or amend products or services if they are poor value.
A firm does not regularly review whether its products or services provide fair value and so does not identify a potential issue when it becomes reasonably foreseeable. The firm misses the chance to mitigate the harm before it can materialise, and customers suffer harm.	A firm proactively assesses fair value and identifies a potential issue during its regular review of a product or service and takes appropriate steps. Customers suffer no harm in practice.
A firm has many different products with different charges/fees/prices but with similar levels of benefits to consumers. Some of the charges are high in relation to the benefits provided, and some products do not offer fair value.	A firm considers the reasonableness of its product range and whether each product provides fair value to the customers in the target market.
A firm has significantly lower prices for new customers than existing customers. The firm does not consider the impact on different groups of customers and longstanding customers receive poor value.	A firm has different charges for different groups of customers. Customers in all groups receive fair value with a reasonable relationship between the benefits they are likely to receive and the price they pay.
A firm has a product that is priced based on risk, it provides fair value to some groups of customers, but one group pays costs that are disproportionate to the benefits they receive.	A firm has a product that is priced based on risk, all groups of customers receive fair value and the price they pay is reasonable relative to the benefits they receive. ¹⁵³

The consumer understanding outcome

General

Consumers can only be expected to take responsibility (and therefore pursue their financial objectives¹⁵⁴) where firms' communications enable them to understand their products and services, their features and risks, and the implications of any decisions they must make.¹⁵⁵

In essence, the consumer understanding outcome is about giving customers the information they need, at the right time, and presented in a way they can understand.¹⁵⁶ It applies to:

1. all FIRMS involved in the production, approval or distribution of retail customer communications (regardless of whether the firm has a direct relationship with a retail customer),
2. all INTERACTIONS with retail customers, including those that occur before, during, and after any sale of a product, and whether or not related to a specific product, and
3. all FORMS OF COMMUNICATION from a firm to a retail customer, regardless of the channel used or intended to be used for the communication (including verbal, visual, in writing, online and in product terms and conditions).¹⁵⁷

Requirements under the consumer understanding outcome

In order to comply with the consumer understanding outcome, firms should act in good faith and avoid designing or delivering communications in a way that exploits consumers' information asymmetries and behavioural biases.¹⁵⁸ At a more granular level, firms are required to:

1. support their customers' understanding by ensuring that their communications meet the information needs of customers, are likely to be understood by customers intended to receive the communication, and equip them to make decisions that are effective, timely and properly informed,
2. tailor communications taking into account the characteristics of the customers intended to receive the communication,
3. when interacting directly with a customer on a one-to-one basis, where appropriate, tailor communications to meet the information needs of the customer, and ask them if they understand the information and have any further questions, and
4. test, monitor and adapt communications to support understanding and good outcomes for customers.¹⁵⁹

In practical terms, firms should:

1. explain or present information in a logical manner,
2. use plain and intelligible language and, where use of jargon or technical terms is unavoidable, explain the meaning of any jargon or technical terms as simply as possible,
3. make key information prominent and easy to identify, including by means of headings and layout, display and font attributes of text, and by use of design devices such as tables, bullet points, graphs, graphics, audio-visuals and interactive media,
4. avoid unnecessary disclaimers, and
5. provide relevant information with an appropriate level of detail, to avoid providing too much information such that it may prevent retail customers from making effective decisions.¹⁶⁰

At the very least, in order to help consumers makes effective decisions, communications must explain:

1. any actions required by customers and any consequences of inaction,

154 FG 22/5, 8.2

155 FG 22/5, 8.1

156 Policy Statement PS22/9, 8.10; Policy Statement PS22/9, 8.10; Policy Statement PS22/9, 8.1; Policy Statement PS22/9, 8.11

157 PRIN 2A.5.1R; Policy Statement PS22/9, 8.7; FG22/5, 8.27

158 FG 22/5, 8.10

159 FG 22/5, 8.4

160 PRIN 2A.5.7G

2. the key features, benefits, costs and risks of a product or service where customers need to evaluate or make a choice about the product or service, and
3. how customers can access any additional information or support they might need.¹⁶¹

As with the entire Consumer Duty, obligations with respect to the consumer understanding outcome are based on what is “reasonable”. This will depend on a number of factors, including the nature of the product, the characteristics of the customers and the role of the firm.

A good rule of thumb firms can follow is to ask whether they are applying the same standards to ensure their communications are delivering good consumer outcomes as they do to ensure their communications help to generate sales and revenue.¹⁶² For example, communications advising customers on how to switch or complain should be at least as clear as those used to sell the product.¹⁶³



161 Policy Statement PS22/9, 8.11
162 Policy Statement PS22/9, 8.11
163 FG 22/5, 8.7

Timely provision of information

In the context of the consumer understanding outcome, “timely” provision of information means that information should be provided both before the purchase of a product and at suitable points throughout the lifecycle of the product.¹⁶⁴

If a product changes, firms should consider communicating with clients so as to ensure that the product or service continues to meet their needs and objectives. For example, firms should consider sending out a prompt before the end of an introductory offer period.¹⁶⁵ This is particularly important for longer-term contracts where there is greater scope for circumstances to change.

If a firm’s monitoring activity identifies that customers are frequently asking the same questions or there are issues commonly causing confusion, it may be appropriate to proactively communicate more broadly with its customers to clarify the issues.¹⁶⁶

In some cases, this may mean that firms need to communicate more often than they currently do. However, at the same time firms should also consider the effect of communicating too frequently, and possibly diminishing the impact of important communications on which action is required.¹⁶⁷

Tailoring communications in order to assist consumer understanding

When designing a product or service, firms are required to define a target market. When communicating about the product, firms should consider the characteristics of the consumers within its target market and tailor communications to meet their information needs.¹⁶⁸

Firms should consider if they can segment or target communications to make them more relevant to the intended recipients, rather than adopting a ‘one size fits all’ approach.¹⁶⁹

However, firms are not expected to tailor all communications to meet the individual needs of each customer. Instead, they should take into account the characteristics of customers more broadly. This means that firms should consider what they know about their customer base and the target market for their products and services.¹⁷⁰ Factors to be considered include:

1. the characteristics of retail customers, including any characteristics of vulnerability,¹⁷¹
2. the complexity of the product,
3. the communication channel(s) used, and
4. the role of the firm, including whether the firm is providing regulated advice or information only.¹⁷²

Nonetheless, the Consumer Duty rules do require firms to tailor communications when dealing with customers on a one-to-one basis where it is appropriate to do so (such as in branch, during a telephone conversation or other interactive dialogue). If it becomes apparent to a firm in conversation with an individual customer that the customer requires particular information or has a specific characteristic of vulnerability that the firm needs to respond to¹⁷³ the firm should:

1. tailor the communication to meet the information needs of that retail customer,
2. ask the retail customer whether they understand the information, and
3. ask if they have any further questions (particularly if the information is reasonably regarded as key information, such as where it prompts that retail customer to make a decision).¹⁷⁴

164 PRIN 2A.5.5R
 165 FG22/5, 8.21
 166 FG22/5, 8.22
 167 FG22/5, 8.23
 168 FG22/5, 8.30
 169 FG22/5, 8.38
 170 Policy Statement PS22/9, 8.10
 171 FG22/5, 8.32
 172 PRIN 2A.5.8R
 173 Policy Statement PS22/9, 8.10
 174 PRIN 2A.5.9R

Communicating complex information

Where firms must communicate complex information in order to comply with other disclosure requirements, they should consider what additional steps they can take to support consumer understanding. For example, a layered approach can be helpful in providing context or explaining key information upfront in a simple way – such as in a cover letter, signposting more detailed information that consumers may want to consider or may be helpful for reference at a later date.¹⁷⁵

Vulnerability in the context of the consumer understanding outcome

Research has found that one in seven adults have literacy skills at or below those expected of a 9 to 11 year-old. In addition, the FCA's Financial Lives Survey found 17.7 million adults (34%) have poor or low levels of numeracy involving financial concepts.

Firms should consider characteristics associated with the drivers of vulnerability that may be present in their customer base or target market. These might include erratic income, inadequate income, over-indebtedness or low savings.¹⁷⁶ They should also have processes in place to support those within the target market who exhibit characteristics of vulnerability (for example, by having a clear way for consumers with a hearing or visual impairment to request communications in a format that meets their needs).¹⁷⁷

If a firm is developing communications for a simple mass-market product, the FCA expects it to take these characteristics into account and communicate information in as simple a way as possible to support understanding for these customers. In contrast, if a firm is communicating about a complex product with a more sophisticated target market, the FCA accepts that it may be reasonable to communicate in a different way.¹⁷⁸



175 Policy Statement PS22/9, 8.7
 176 Policy Statement PS22/9, 8.10
 177 Policy Statement PS22/9, 8.10
 178 Policy Statement PS22/9, 8.10

Product-specific versus non product-specific communications

For product-specific communications, a firm should consider the target market for that product.

For non product-specific communications, a firm should consider its retail customers generally,¹⁷⁹ taking into account what they know, or could reasonably be expected to know, about the sophistication, financial capabilities and vulnerability of the intended recipients of the communications.¹⁸⁰

Demonstrating consumer understanding - testing

The FCA expects firms to be able to demonstrate consumer understanding. This is primarily achieved through testing of communications and their impact.

Firms who are responsible for the production (or adaptation)¹⁸¹ of communications must be able to demonstrate:

1. that they have an approach to testing that delivers good outcomes,¹⁸²
2. how they have tested consumer understanding, and
3. where appropriate, where improvements have been made to their communications.¹⁸³

Firms which have direct interactions with retail customers, whether or not they are also responsible for the creation or adaptation of communications, must monitor the impact of those communications¹⁸⁴ and provide feedback to the originator of the relevant communication.¹⁸⁵ An example would be firms that provide customer services (whether outsourced in whole or in part).

Testing should check communications can be understood by customers, so they can make effective decisions and act in their interests.¹⁸⁶ Testing should normally be conducted before communication is made with customers. In addition, the impact of communications should be monitored so as to assist firms in identifying whether they are supporting good outcomes for retail customers.¹⁸⁷

Examples of testing

Forms testing may take include:

1. experimentation in the form of randomised controlled trials or A/B tests with real customers or online experiments,
2. surveys – asking a sample of customers for feedback and responses via a questionnaire (online or on paper),
3. interviews, or
4. focus groups.¹⁸⁸

Customer communication champions

Firms may wish to train internal ‘champions’ in the principles of good customer communications. These individuals can independently review communications from a consumer angle, and help firms develop and maintain best practice.¹⁸⁹

Not all communications need to be tested

It is important to note that it is NOT necessary to test ALL communications in advance of sending them. Rather, firms should determine which communications should be tested.¹⁹⁰ In determining

179	PRIN 2A.5.4R
180	FG22/5, 8.31
181	PRIN 2A.5.11G
182	FG22/5, 8.44
183	Policy Statement PS22/9, 8.11
184	PRIN 2A.5.11G
185	FG22/5, 8.53
186	FG22/5, 8.40
187	PRIN 2A.5.10R(1)
188	FG22/5, 8.57
189	FG22/5, 8.56
190	Policy Statement PS22/9, 8.12

whether testing of a communication is appropriate, a firm should consider factors such as:

1. the purpose of the communication and, in particular, if it is designed to prompt or inform a decision, and the relative importance of that decision,
2. the context of the communication, its timing, and its frequency (for example, it is likely to be more appropriate to test communications that could impact many retail customers),
3. the information needs of retail customers,
4. the characteristics of vulnerability of retail customers,
5. whether the scope for harm to retail customers is likely to be significant, including if the information being conveyed were misunderstood or overlooked by retail customers, and
6. whether, to support good outcomes for retail customers, it is more important to communicate information urgently, rather than carrying out testing beforehand.¹⁹¹

When to test communications

Testing should usually be carried out in advance of communicating the information to customers (for example, when firms are developing sales literature or telephony scripts in relation to a new product).

However, the FCA recognises that there may be times when firms need to respond to incidents at pace. In these circumstances, they must balance considerations in relation to testing – and the associated elapsed time – with the need to intervene urgently to protect customers from harm.

In addition, it may not be possible to test certain communications, such as ad-hoc conversations during customer service calls.¹⁹²

Provision of information within distribution chains

A firm must provide information in good time to another firm in the same distribution chain, where such information is:

1. requested by the other firm and is reasonably required, or
2. otherwise considered to be reasonably required by the firm, so that it can be communicated to retail customers.¹⁹³

Communication issues identified within distribution chains

Where a firm identifies or becomes aware of a communication produced by another firm in its distribution chain that is not delivering good outcomes for retail customers, it must promptly notify the issue to the relevant firm in the distribution chain.¹⁹⁴

Firms should also notify the FCA if they become aware that another firm in the distribution chain is not complying with the Consumer Duty.¹⁹⁵

Remediating communication issues

Where a firm has identified any issues in its communications, it must:

1. investigate the issue,
2. correct any deficiencies through adapting its communications,
3. where appropriate, adapt its products or processes, and
4. where appropriate follow the requirements in relation to remedies and other action in PRIN 2A.2.5R and PRIN 2A.10.¹⁹⁶

191 PRIN 2A.5.12G
 192 FG22/5, 8.43
 193 PRIN 2A.5.15R
 194 PRIN 2A.5.14R
 195 FG22/5, 8.66; PRIN 2A.9.17R
 196 PRIN 2A.5.10R(2)

Data and monitoring

Firms should monitor whether their communications are supporting customer understanding and helping their customers make effective, timely and properly informed decisions.¹⁹⁷

Beyond simply testing their communications, firms are also expected to consider the impact they expect communications to have, monitor whether this is the case in practice, and carry out further investigation where this is not the case, to identify and remedy any issues to support good customer outcomes.¹⁹⁸

Firms should have appropriate governance processes in place to oversee this process and consider keeping a record of any relevant actions taken.¹⁹⁹

Firms could use the following types of data to monitor that they are meeting expectations under the consumer understanding outcome:

1. the findings from any testing of their communications,
2. customer response rates to communications which prompt action,
3. broader analysis of whether customers are following instructions in communications,
4. analysis of responses to communications during customer journeys, including responses and drop-out rates at each stage,
5. product take-up rates,
6. product switching rates,
7. claim rates, including analysis of declined claims, and
8. relevant complaints data.²⁰⁰



197 FG22/5, 8.59
 198 FG22/5, 8.60
 199 FG22/5, 8.68
 200 FG22/5, 8.69

Key questions for firms

Below are a set of questions which the FCA recommends firms consider in terms of managing their compliance with the consumer understanding outcome:

1. 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?
2. 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?
3. How is the firm testing the effectiveness of its communications? How is it acting on the results?
4. How does the firm adapt its communications to meet the needs of customers with characteristics of vulnerability, and how does it know these adaptations are effective?
5. How does the firm ensure that its communications are equally effective across all channels it uses? How does it test that?
6. 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?²⁰¹

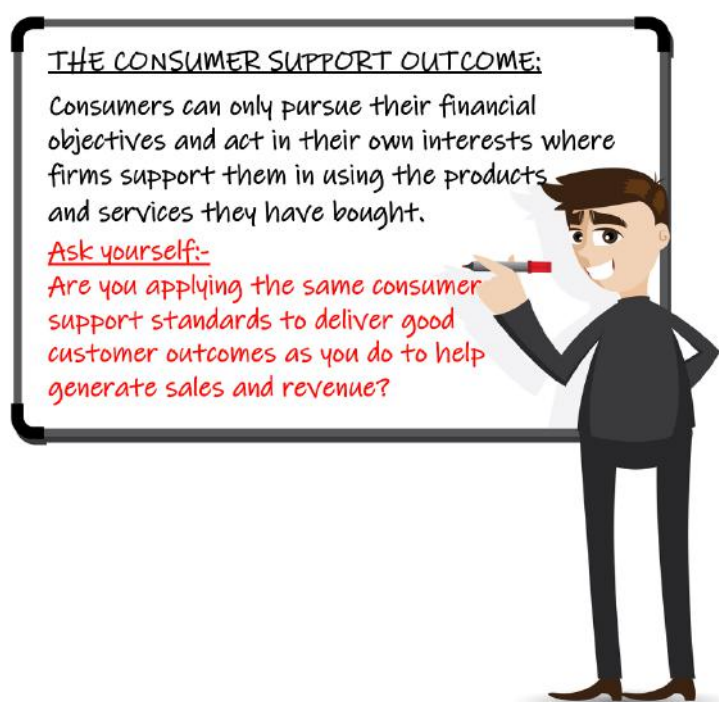
The consumer understanding outcome: a summary of compliance

Actions likely to be inconsistent with the Duty	Actions likely to be consistent with the Duty
Firms frame communications in a way that exploits customers' information asymmetries and behavioural biases.	Firms 'put themselves in their customers' shoes' and consider whether their communications equip customers with the right information, at the right time, to assess products and services and make effective decisions.
Firms make no attempt to help customers navigate the information they provide, making it difficult for customers to identify the key information and the options available to them. They rely solely on the tick box of 'I have read the terms and conditions'.	Firms adopt good practices that generally enhance the clarity of communications and, where possible, act to make communications more effective. For example, by layering information, making communications engaging, relevant, simple and timed well.
Firms design communication strategies based solely on what is most commercially efficient, rather than taking into account the information needs of their customers.	Firms aim to segment or target communications to make them more relevant to the intended recipients, rather than adopting a 'one size fits all' approach.
Firms do not consider the information needs of customers after the initial point of sale.	Firms are proactive in thinking about how best to engage and communicate with customers after the point of sale to support good outcomes.
Firms do not adopt a reasonable approach to the testing of communications, either by failing to identify communications where testing would be appropriate, or by following an approach that does not provide a reasonable basis to conclude that their communications are likely to be understood by recipients.	Firms adopt an effective approach to the testing of communications, which provides assurance that important communications can be understood by the target recipients. They adopt a 'test and learn approach', adapting communications where appropriate with the aim of improving customer understanding to support good outcomes.
Firms do not consider the fairness and clarity of their contract terms, which could result in unfair terms that are not enforceable and/or unclear contracts that contain out of date material.	Firms draft and regularly review their contract terms to support good outcomes, and this review includes compliance with the Consumer Rights Act 2015.
Firms do not consider whether their communications contain misleading information or misleading omissions which would be likely to influence a customer's decision making.	Firms ensure their practices and communications are clear, fair and not misleading, and comply with the requirements of the Consumer Protection from Unfair Trading Regulations 2008. ²⁰²

The consumer support outcome

General

The FCA believes that consumers can only pursue their financial objectives and act in their own interests where firms support them in using the products and services they have bought. Support should help customers to meet their needs and provide consumers with the ability to realise the benefits of the products and services they have purchased.²⁰³ A product or service that a customer cannot properly use and enjoy is unlikely to offer fair value.²⁰⁴



A good rule of thumb for firms is to ask themselves whether they are applying the same consumer support standards to deliver good customer outcomes as they do to help generate sales and revenue.²⁰⁵ It should be at least as easy to switch out of a product, leave a service or make a change, as it is to buy in the first place.²⁰⁶

Application of the consumer support outcome

The customer support outcome applies to:

1. ALL FIRMS who are responsible for interacting directly with, and providing support to, retail customers (including where the firm outsources (in whole or in part) its interactions with retail customers to a third party),
2. REGARDLESS OF THE CHANNEL USED when interacting with, or providing support to, retail customers, and
3. ALL SUPPORT PROVIDED by a firm to retail customers, whether before, during or after any sale of a product and whether or not related to a specific product.²⁰⁷

203 FG22/5, 92; Policy Statement PS22/9, 91

204 FG22/5, 91

205 FG22/5, 95

206 FG22/5, 926

207 PRIN 2A.6.1R

Design and delivery of customer support

A firm must design and deliver support to retail customers such that it:

1. meets the needs of retail customers (including those with characteristics of vulnerability),
2. ensures that retail customers can use their product as reasonably anticipated,
3. ensures that it includes appropriate friction in its customer journeys to mitigate the risk of harm and give retail customers sufficient opportunity to understand and assess their options (and any risks),
4. ensures that retail customers do not face unreasonable barriers (including unreasonable additional costs) during the lifecycle of a product, such as when they want to:
 - a. make general enquiries or requests to the firm,
 - b. amend or switch a product,
 - c. transfer to a new product provider,
 - d. access a benefit which the product is intended to provide,
 - e. submit a claim,
 - f. make a complaint, or
 - g. terminate their relationship with the firm,²⁰⁸
5. does not disadvantage particular groups of customers (including those with characteristics of vulnerability), and
6. enables the firm to monitor the quality of the support they are offering, providing evidence that may indicate areas where the firm falls short of the outcome.²⁰⁹

With Corterum you can evidence the product support structures you have in place

Appropriate friction and unreasonable barriers

As mentioned above, firms should consider the purpose, and impacts, of friction points in the design, delivery and review of their customer journeys. Any additional steps in customer journeys should not be overly complicated or designed in a way that benefits firms but not customers.²¹⁰

In some circumstances, positive friction points or nudges can help to mitigate the risk of consumer harm and support good outcomes. However, there can be commercial incentives for firms to create friction points (often called 'sludge') that deter their customers from taking action in their interests, such as making a complaint or switching product or provider.²¹¹

208 PRIN 2A.6.2R

209 FG22/5, 9.3

210 FG22/5, 9.21

211 FG22/5, 9.25; FG22/5, 9.19; FG22/5, 9.22

The FCA expects firms to be able to justify and evidence the customer benefits of additional steps in customer journeys. This necessitates monitoring of friction points. Monitoring of friction points will also help firms to understand how processes are working in practice and the outcomes they are delivering.

Unreasonable additional costs

“Unreasonable additional costs” include unreasonable exit fees or other charges, delays, distress or inconvenience.²¹²

As mentioned above, the support firms provide should not lead to unreasonable additional costs (in other words, it should not result in the product costing more than customers expected up-front).²¹³

In general, an exit fee is more likely to be reasonable if it is commensurate with the costs incurred by the firm due to the customer terminating the agreement early. Any material provisions relating to early termination, including exit fees, should also be clearly drawn to customers’ attention.²¹⁴

Reasonableness in the context of the consumer support outcome

The consumer support outcome applies based on what is “reasonable”. This will depend on the nature of the product, the characteristics of the customers, and the role of the firm. In practical terms, this means that firms are not expected to always communicate and provide support through each individual customer’s preferred channel. However, the FCA does expect firms to provide effective support to their customers in a way that meets their needs.²¹⁵

Channels of support

The FCA does not prescribe which channels of support firms must offer. However, firms must ensure that the channels of support they do offer meet the needs of their customers, including customers dealing with non-standard issues, and customers with characteristics of vulnerability.²¹⁶

Limited channels of support

It is acceptable for a product or service to have a limited channel of support (such as digital-only aimed at a specific tech-savvy target market). However, in these circumstances, the firm must:

1. ensure that the product or service has been targeted correctly,
2. ensure that communication of the target market is clear to potential customers,
3. clearly communicate the support available,
4. ensure that support works effectively,
5. consider how to deal with non-standard issues,
6. take appropriate steps to ensure operational resilience,
7. take customers with protected characteristics into account, and
8. take account of customers with changing needs.²¹⁷

212 FG22/5, 928

213 FG22/5, 928

214 FG22/5, 929

215 Policy Statement PS22/9, 97; FG22/5, 916

216 Policy Statement PS22/9, 97; FG22/5, 911

217 FG22/5, 918; Policy Statement PS22/9, 97

Meeting the support needs of vulnerable customers

The FCA expects firms to respond flexibly to the needs of customers with characteristics of vulnerability. The assumption is that firms will usually need to be able to provide support to their customers through different channels or by adapting their usual approach.²¹⁸

Dealing with representatives

Where a natural person is authorised by a retail customer or by law to assist in the conduct of the retail customer's affairs (such as a power of attorney), the firm must provide the same level of support to that person that they would have provided to the retail customer.²¹⁹

However, this does NOT mean that firms must treat a representative as having the same characteristics of vulnerability (if any) as the customer they are representing. Rather, representatives should receive an appropriate standard of support and not face unreasonable barriers when acting on behalf of the customer. Of course, if a representative exhibits characteristics of vulnerability, firms are expected to respond flexibly, and provide effective support.²²⁰

Dealing with requests from other firms

The consumer support outcome does not apply to scenarios where a regulated firm is dealing with another firm on behalf of a customer (for example, where a mortgage intermediary is dealing with a lender). This would constitute a normal business relationship between a manufacturer and distributor.²²¹ However, firms must not cause harm to customers due to shortcomings in the way they deal with other firms. Firms must deal with reasonable requests from other firms in an effective way and in good time to enable other firms to comply with their obligations and provide effective support to customers.²²²

Outsourcing of customer support

Where firms are outsourcing or using a third-party provider to provide customer support, they remain responsible and accountable for all the regulatory responsibilities applying to outsourcing and third-party arrangements. Put simply, firms CANNOT delegate any part of their responsibilities in this area to a third party. As such, firms should have systems and controls in place to monitor that the support provided meets the standards set under the Consumer Duty.²²³

218 FG22/5, 914

219 PRIN 2A.6.5R

220 FG22/5, 937

221 FG22/5, 938

222 FG22/5, 939; PRIN 2A.6.6R

223 Policy Statement PS22/9, 99; FG22/5, 940; FG22/5, 949

Monitoring the provision of support

Firms must be able to demonstrate that they have thought about how the design and delivery of their consumer support meets the requirements of the consumer support outcome.

Beyond this, firms should regularly monitor the actual support they provide, take relevant feedback into account, and look for signs that may indicate their channel offering is not sufficient to meet the needs of their customers. In practical terms, firms could use the following types of data to monitor that they are meeting expectations under the customer support outcome and ensuring that customers are not encountering unreasonable barriers:

1. comparison of the level of support enjoyed by existing customers compared to prospective customers,
2. analysis of customers' use of products and services,
3. root-cause analysis of complaints,
4. customer persistency or retention information,
5. abandoned claim rates, unusually low volumes of claims or declined/successful claims analysis,
6. first contact resolution rates and average time to resolution,
7. speed to answer the telephone and average wait times, call abandon rates,
8. email and digital channel speed to answer,
9. internal quality assurance,
10. customer call listening exercises,
11. satisfaction surveys, and
12. net promoter scores.²²⁴

Remediation of failures in the provision of customer support

The FCA recognises that, on occasion, individual customers will have a poor consumer support experience. Where this occurs, it expects firms to act in good faith and deal with the issue promptly and fairly, take reasonable steps to address any shortfall in the support it provides, and provide redress where appropriate.²²⁵

Key questions for firms

Below are a set of questions which the FCA recommends firms consider in terms of managing their compliance with the customer support outcome:

1. 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?
2. 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?
3. 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?
4. How has the firm satisfied itself that the quality of any post-sale support is as good as the pre-sale support?
5. 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?
6. 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?²²⁶

224 FG22/5, 953; FG22/5, 945; FG22/5, 946
 225 FG22/5, 952; Policy Statement PS22/9, 97; FG22/5, 912
 226 FG22/5, 954

The customer support outcome: a summary of compliance

Actions likely to be inconsistent with the Duty	Actions likely to be consistent with the Duty
Firms disproportionately focus on supporting customers up to the point of sale, with little focus or support for customers after purchase.	Firms have processes that support customers throughout the product and service lifecycle: pre-sale, during sale and after-sale.
Firms streamline customer journeys as much as possible to maximise sales but to the detriment of customers making effective decisions.	Firms ensure there is appropriate friction in their customer journeys to support their customers in making good decisions.
Firms add unreasonable additional steps to their customer support processes that deter their customers from acting in their interests.	Firms design and deliver the support they provide in a way that enables customers to realise the benefits of the products and services they buy and act in their interests.
Firms have ineffective customer support processes and communication strategies to deal with unexpected surges in demand.	Firms have effective customer support processes and communication strategies to deal with unexpected surges in demand for support.
Firms have a rigid approach to the provision of customer support that doesn't effectively take into account the needs of their customer base, target market or customers with characteristics of vulnerability.	Firms design and deliver the support they provide to meet the needs of their customers. They adopt a flexible approach when dealing with customers with characteristics of vulnerability.
Firms have an ineffective approach to monitoring that fails to identify systemic issues with their customer support processes.	Firms regularly monitor the customer support they provide to make sure there are no systemic issues that create unreasonable barriers or costs for customers. ²²⁷

Scope of the Consumer Duty

General

The Consumer Duty applies to the regulated activities and ancillary activities of all firms authorised under the Financial Services and Markets Act 2000 (FSMA), the Payment Services Regulations 2017 (PSRs) and E-money Regulations 2011 (EMRs), in respect of products and services for prospective and actual retail customers.²²⁸

The scope of the Consumer Duty is aligned with the existing scope of the FCA's sectoral source-books. This includes small and medium enterprises (SMEs) for which the FCA already regulates the provision of financial services.²²⁹

Firms should also be aware that Principles 6 and 7 continue to apply to conduct outside of the scope of the Consumer Duty, in the same way that they apply currently.²³⁰

The FCA recognises that this might cause issues in practical implementation. For example, a firm may be out of scope with respect to the Consumer Duty for one particular service (for example a bank account) but may be in scope with respect to the Consumer Duty for a different service (for example an insurance product). In these circumstances, firms can either make the necessary changes or simply may find it more straightforward to apply the Consumer Duty standard in all circumstances.²³¹

The FCA also recognises that certain products (for example, investment funds or payment services) are accessed both by retail customers and non-retail customers. As such, firms face the prospect where – with respect to the same product – the Consumer Duty applies to one set of clients whereas Principles 6 and 7 apply to another set of clients. The FCA clarifies that if a firm is already subject to specific rules on product design or assessment of value, compliance with these rules will also satisfy the firm's obligations under these aspects of the Consumer Duty.²³² If not, the FCA expects firms to comply with the requirements of the Consumer Duty, but to do so in a “pragmatic and proportionate manner”.²³³

228 FG22/5, 21

229 Policy Statement PS22/9, 2.3

230 Policy Statement PS22/9, 2.3

231 Policy Statement PS22/9, 2.8

232 Policy Statement PS22/9, 2.9

233 Policy Statement PS22/9, 2.9

Unregulated activities

The Consumer Duty DOES NOT apply to unregulated activities.

However, the Consumer Duty DOES APPLY to unregulated activities which are ANCILLARY to a regulated activity. An activity is 'ancillary' to a regulated activity if it is carried on in connection with a regulated activity or held out as being for the purposes of a regulated activity.²³⁴ This would include unregulated activities which are necessary for the completion of a regulated activity. The FCA gives the example of product design services or customer support. Neither are regulated activities. However, they are necessary activities which are linked to regulated activities. As such, they are in-scope for the purposes of the Consumer Duty.²³⁵



Application outside of the UK

The Consumer Duty applies to firms conducting regulated activities in the UK.²³⁶

The Consumer Duty also applies to firms conducting business for non-UK customers, where the business is within scope of rules in existing sectorial sourcebooks. The FCA recognises that this might cause particular problems for firms which are within a distribution chain, part of which lies outside of the UK. In particular, potential issues regarding information sharing by non-FCA regulated firms were recognised.²³⁷ The FCA has clarified its expectations in these circumstances, providing guidance to firms that they should use any available information to support their work under the Consumer Duty but would not be expected to obtain information from firms that are not themselves subject to the Consumer Duty.²³⁸

The Consumer Duty also applies to firms in the temporary permissions regime following the UK's withdrawal from the EU. The UK left the EU on 31 January 2020 and the temporary permissions regime allows European Economic Area (EEA) firms to continue operating in the UK within the

234 Policy Statement PS22/9, 2.28

235 Policy Statement PS22/9, 2.30

236 Policy Statement PS22/9, 2.31, FG 22/5, 2.35

237 Policy Statement PS22/9, 2.34

238 Policy Statement PS22/9, 2.34

scope of their permissions for a limited period, while seeking full UK authorisation, if necessary. The Consumer Duty applies to these firms, whether they are doing regulated business from an establishment in the UK or on a cross-border services basis.

The Consumer Duty also applies to firms in supervised run-off under the financial services existing contracts regime.²³⁹

UK distributors of non-UK products and services must take all reasonable steps to understand the product or service, the target market it would serve and the value it provides in order to ensure it will be distributed appropriately. Regulated firms should also consider whether including a firm that is not subject to the Consumer Duty in the distribution chain leads to a risk of poor customer outcomes.²⁴⁰

Where a distribution chain includes non-UK distributors (which are not subject to the Duty), UK manufacturers may not be able to obtain relevant information from them. In this case, UK firms should consider what is reasonable in the circumstances to gather information. For example, they could use any information that they do have available to support their work, but they would not be expected to obtain information from firms that are not subject to the Consumer Duty.²⁴¹

Products and services designed for the wholesale market

Products or services that are not designed for retail customers are NOT in-scope for the purposes of the Consumer Duty, provided that:

1. they are only marketed and approved for distribution to non-retail customers, and
2. they are not provided to another firm under an arrangement forming part of a distribution chain for a retail product or service.²⁴²



239 FG22/5, 238

240 FG22/5, 239

241 FG22/5, 240

242 Policy Statement PS22/9, 2.20

In addition, financial instruments which are designed primarily to be wholesale instruments are excluded from the scope of the Consumer Duty, where this will not have a negative impact on retail customers.²⁴³ It follows, therefore, that firms in the wholesale market could still be subject to the Consumer Duty (even if they do not have a direct relationship with retail customers). For example, an investment bank that designs a structured product for sale to retail customers would be subject to the Consumer Duty. Conversely, an investment bank providing wholesale instruments that a third-party firm independently uses as component parts of a retail product would not.²⁴⁴ Either way, firms should be aware that incorrectly classifying a product or service as non-retail with the aim of avoiding the requirements of the Consumer Duty, and then distributing the product or service to retail customers, would be in breach of the Consumer Duty.²⁴⁵

The list of wholesale activities specifically excluded from the Consumer Duty includes:

1. manufacture of products or services only for wholesale purposes, where they meet the conditions in the 'retail market business' definition,
2. activities relating to non-retail financial instruments,
3. market activities for certain financial instruments meeting the criteria in the 'retail market business' definition,
4. activities relating to insurance contracts of large risks for commercial customers or where the risk is located outside the UK,
5. activities connected to the distribution of group insurance policies or the extension of these policies to new members, and
6. 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.²⁴⁶

Application of the Consumer Duty through distribution chains

A "distribution chain" means all firms involved in the manufacture, provision, sale and ongoing administration and management of a product or service to the end retail customer.²⁴⁷

The Consumer Duty has indirect application to all firms within a distribution chain in the sense that those firms need to consider any retail customers who ultimately make use of a product or service, even if those customers are not direct clients of the firm in question.²⁴⁸ In simple terms, the Consumer Duty is capable of applying to all firms within the distribution chain of a product. More specifically, the Consumer Duty applies to firms that are **responsible** for determining or materially influencing retail customer outcomes.²⁴⁹ For example, it applies to firms that can influence material aspects of, or determine, the:

1. design or operation of retail products or services (including their price and value),
2. distribution of retail products or services,
3. preparation or approval of communications that are to be issued to retail customers, or
4. delivery of customer support for retail customers.²⁵⁰

The use of the word "responsible" (as opposed to, say, "able" or just "determines" or "influences") is interesting. This could be interpreted as implying some sort of deliberate or implicit assumption of responsibility. However, the word "responsible" does not appear in the FCA's guidance. Nevertheless, the guidance does helpfully confirm that a firm whose products are made available to retail customers without its involvement would not be subject to the Consumer Duty.²⁵¹

Firms would NOT be exercising any kind of "material influence" (and as such, the Consumer Duty

243 Policy Statement PS22/9, 2.23

244 FG22/5, 2.29 and 2.30

245 Policy Statement PS22/9, 2.20

246 FG22/5, 2.32

247 FG22/5, 2.12

248 Policy Statement PS22/9, 2.4; PRIN 2A.1.15G (see page 107); PRIN 2A.1.13G(1)

249 FG22/5, 2.13; FG22/5, 2.17; PRIN 3.2.7R; PRIN 2A.1.13G(3)

250 Policy Statement PS22/9, 2.14 and FG22/5, 2.14

251 https://www.lexology.com/library/detail.aspx?g=be43294f-5090-4048-be5c-4768055f8c9e&utm_source=Lexology+Daily+Newsfeed&utm_medium=HTML+e-mail+-+Body+-+General+section&utm_campaign=Lexology+subscriber+daily+feed&utm_content=Lexology+Daily+Newsfeed+2022-09-26&utm_term=

would NOT apply) where the role of the firm is limited to activities such as:

1. operating within a mandate determined by another firm in a distribution chain,
2. providing factual information to support the work of another firm in a distribution chain, or
3. providing IT systems.²⁵²

Unless there are regulatory requirements or contracts require it, firms within distribution chains are responsible only for their own activities and do not need to oversee the actions of other firms in the distribution chain.²⁵³ However, firms must notify the FCA where they become aware that another firm in the distribution chain of which they are part may not be complying with the Consumer Duty.²⁵⁴ Regulated firms should also consider whether including a firm that is not subject to the Consumer Duty in the distribution chain leads to a risk of poor customer outcomes.²⁵⁵



Appointed representatives

The Consumer Duty does NOT apply to appointed representatives directly. Rather, principal firms are required to oversee the actions of their appointed representatives, as set out in the Supervision sourcebook (SUP). They should check that their appointed representatives comply with the Consumer Duty when doing so.²⁵⁶

Outsourcing arrangements

In general, the Consumer Duty does NOT apply to outsourcing arrangements, unless an FCA-authorized outsource provider can determine or has material influence over retail customer outcomes.²⁵⁷

252 Policy Statement PS22/9, 2.14
 253 FG22/5, 2.23
 254 FG22/5, 2.22
 255 FG22/5, 2.39
 256 FG22/5, 2.24
 257 Policy Statement PS22/9, 2.39

Occupational pension schemes

The Consumer Duty does NOT apply to pension schemes regulated by The Pensions Regulator (TPR).²⁵⁸ However, FCA authorised firms creating a product and operating pension schemes for occupational pension scheme trustees will need to comply with the Consumer Duty if they can determine or materially influence retail customer outcomes.²⁵⁹

Group insurance policies

The Consumer Duty does NOT apply to the distribution of group insurance policies or the extension of the policy to new members.²⁶⁰

258 Policy Statement PS22/9, 2.14
259 Policy Statement PS22/9, 2.14
260 Policy Statement PS22/9, 2.14

The concept of 'reasonableness'

The Consumer Duty is underpinned by the concept of reasonableness. This is an objective test and means that the rules and guidance must be interpreted in line with the standard that could reasonably be expected of a prudent firm:

1. carrying on the same activity in relation to the same product or service, and
2. with the necessary understanding of the needs and characteristics of the customers in the relevant target market.²⁶¹

The Consumer Duty DOES NOT create an absolute obligation. Put simply, it DOES NOT mean that individual customers will always get good outcomes or that customers will always be protected from poor outcomes or all potential harms. It also DOES NOT impose an open-ended duty that goes beyond the scope of the firm's role and its ability to determine or influence customer outcomes.²⁶²



261 FG22/5, 1.4
262 FG22/5, 4.11

“Good faith”

The cross-cutting rules require that firms act in “good faith” towards retail customers (both groups of customers and individuals)²⁶³ at all stages of the customer journey and during the whole lifecycle of a product or service. This begs the question: “what does it mean to act in ‘good faith’?”

“Good faith” is a standard of conduct characterised by honesty, fair and open dealing, and acting consistently with the reasonable expectations of retail customers.²⁶⁴ Examples of “good faith” dealings include:

1. designing products or services to support the objectives and needs of customers in the target market and offer fair value,²⁶⁵
2. supporting customer understanding by presenting information in an even-handed way that properly explains the benefits and risks associated with the product/service in question,²⁶⁶ and
3. taking appropriate action to rectify any harm that the firm has caused (either through its action or inaction) to customers.²⁶⁷ However, this does not apply where the harm identified was caused by risks inherent in a product (provided that the firm reasonably believed that retail customers or the relevant retail customer understood and accepted those risks).²⁶⁸

Factors that might indicate a failure by a firm to act in good faith include:

1. failure to take account of customers’ interests, for example in the way it designs a product or presents information,
2. seeking to exploit consumers’ lack of knowledge and understanding,
3. seeking to exploit customers’ behavioural biases (such as tendencies to be influenced by the way things are presented, overvaluing immediate impacts and undervaluing future ones or attaching less weight to effects that are further off, such as termination or renewal fees),²⁶⁹
4. taking advantage of a retail customer or their circumstances, for example any characteristics of vulnerability, in a manner which is likely to cause detriment,
5. carrying out the same activity to a higher standard or more quickly when it benefits the firm than when it benefits the retail customer (without objective justification),²⁷⁰
6. using staff incentives, performance management or remuneration structures which are likely to cause detriment to their customers, or²⁷¹
7. operating customer support systems or processes that the firm knows frustrate or prevent customers enjoying the use of their products.²⁷²

Acting in good faith DOES NOT:

1. mean a firm is prevented from pursuing legitimate commercial interests or seeking a profit (provided it does so in a manner which is compliant with Principle 12 and PRIN 2A), or
2. require a firm to act in a fiduciary capacity where it was not already obliged to do so.²⁷³

263 FG22/5, 5.11
 264 FG22/5, 5.6; Policy Statement PS22/9, 5.5, PRIN 2A.2.2R (see page 108), COCON 2.4.6R(2)
 265 FG22/5, 5.12
 266 FG22/5, 5.13
 267 FG22/5, 5.15; PRIN 2A.2.5R
 268 PRIN 2A.2.6R
 269 FG22/5, 5.9
 270 PRIN 2A.2.3G
 271 FG22/5, 5.10
 272 FG22/5, 5.14
 273 PRIN 2A.2.4G

"GOOD FAITH":

The Consumer Duty requires firms to act in "good faith" towards retail customers.

"Good faith" is a standard of conduct characterised by honesty, fair and open dealing, and acting consistently with the reasonable expectations of retail customers.



Avoiding causing “foreseeable harm”

The cross-cutting rules require firms to avoid causing foreseeable harm to retail customers.²⁷⁴ In practice, this means that firms must take both proactive and reactive steps to avoid causing harm to customers throughout the lifecycle of the product/service in question (where it is in the firm’s control to do so).²⁷⁵

Firms do NOT have a responsibility to protect customers from ALL foreseeable harm.²⁷⁶

At a high level, as the Consumer Duty is underpinned by the concept of reasonableness, firms are only responsible for addressing the risk of harm when it is reasonably foreseeable at the time, considering whether a prudent firm acting reasonably would be able to predict or expect the ultimately harmful result of their action(s) (or omission(s)) in connection with the product or service in question.²⁷⁷ This will depend in part on the information the firm collects as part of its business, and this in turn should be driven by the scale, service offering and capabilities of the firm. However, either way, the FCA expects all firms to collect enough information to be able to act to avoid causing foreseeable harm.²⁷⁸

In particular, where a firm reasonably believes a customer understands and accepts risks inherent in a product (such as investment risk), it will not breach the rule if it fails to prevent such a risk from occurring.²⁷⁹



²⁷⁴ PRIN 2A.2.8R

²⁷⁵ FG22/5, 5.22

²⁷⁶ Policy Statement PS22/9, 5.11, PRIN 2A.2.13G

²⁷⁷ FG22/5, 5.21

²⁷⁸ FG22/5, 5.24

²⁷⁹ Policy Statement PS22/9, 5.11

Firms can cause foreseeable harm through their actions or omissions (even where they are not the sole cause of harm). Harm can also arise when the firm is in a direct relationship with a customer, but also indirectly, through the firm's role in a distribution chain (and even where another firm in that chain contributes to the harm).²⁸⁰ Nonetheless, a firm will NOT be responsible for the activities of other firms or be required to oversee the actions of other firms within a distribution chain.²⁸¹ However, despite this, where a firm can reasonably foresee harm to a retail customer, it should act where it can and raise any issues with other relevant parties.²⁸²

Firms should act to avoid causing foreseeable harm at all stages of the customer journey. As such, by logical extension, a firm with an ongoing relationship with a retail customer in relation to a product will need to act to avoid causing foreseeable harm to that customer throughout the lifecycle of the product.²⁸³ However, a firm which is involved with the provision of a product at a point in time and without an ongoing relationship with the retail customer does not need to act to avoid causing harm which only later becomes foreseeable.²⁸⁴

Where harm was not foreseeable initially but subsequently became apparent, the FCA expects firms to take appropriate action to mitigate the risk of actual or foreseeable harm.²⁸⁵

When giving consideration to the concept of “foreseeable harm” in specific circumstances, firms should think about both groups of customers (for example their target market or the audience for a financial promotion) and individual customers (for example when communicating with or providing support to an individual customer).²⁸⁶

The FCA regards the concept of “foreseeable” as dynamic. As such, firms must stay abreast of, and respond to, new or emerging sources of “harm”. The FCA cites a number of examples of how firms can stay up-to-date in this regard – for example through consumer complaints, management information, press reporting, and the FCA's own supervisory communications.²⁸⁷

Practical steps to avoid “reasonable harm”

In terms of practical steps to avoid “reasonable harm” occurring to retail customers, firms could consider:

1. ensuring all aspects of the design, terms, marketing, sale of and support for its products avoid causing foreseeable harm (updating or amending them as necessary to ensure that this remains the case),
2. ensuring that no aspect of its business involves unfairly exploiting behavioural biases or characteristics of vulnerability,
3. identifying the potential for harm that might arise if it withdraws a product, its products change or its understanding about the impact on retail customers changes,
4. monitoring and responding to emerging trends that identify new sources of harm,
5. ensuring that retail customers do not face unreasonable barriers (including unreasonable costs), for example when they want to switch products or providers or to complain, and
6. allowing time and support for retail customers to find suitable alternatives where a product is withdrawn.²⁸⁸

280 FG22/5, 5.20; PRIN 2A.29R
 281 Policy Statement PS22/9, 5.11
 282 Policy Statement PS22/9, 5.11
 283 PRIN 2A.2.11G
 284 PRIN 2A.2.12G
 285 FG22/5, 5.29
 286 FG22/5, 5.32
 287 Policy Statement PS22/9, 5.11
 288 PRIN 2A.2.10G

Financial objectives

The cross-cutting rules require firms to enable and support retail customers to pursue their financial objectives.²⁸⁹ This applies throughout the customer journey and life cycle of the product or service in question.²⁹⁰

However, the FCA is clear that customers are ultimately responsible for their own decisions. The customer is the person who best understands his/her own circumstances and financial needs and objectives. Firms are not required to go beyond what could reasonably be expected of a prudent firm carrying out the same activity in relation to the same product, taking appropriate account of the needs and characteristics of retail customers.²⁹¹ They are certainly not required to undertake activities that they are not authorised to undertake.²⁹² Rather, the FCA expects firms to take responsibility for establishing an environment in which consumers can act in their own interests²⁹³ and make good choices in their interests.

The actions a firm might need to take to enable and support customers to pursue their financial objectives would be determined by what is within a firm's control, based on their role and knowledge of the customer.

A firm which provides advisory or discretionary services should understand more about the individual objectives of the customer than a firm which provides execution-only services.²⁹⁴ However, it is entitled to rely on the objectives that retail customers have disclosed unless it knows or could reasonably be expected to know that information disclosed is manifestly out-of-date, inaccurate or incomplete.²⁹⁵

A firm which provides an execution-only service or a non-advised service can assume (unless it knows or could reasonably be expected to have known otherwise) that the financial objectives of retail customers are to purchase, use and enjoy the full benefits of the product in question.²⁹⁶

Enabling and supporting retail customers to pursue their financial objectives may require firms to proactively take action. For example, if the firm declines to provide a particular product to a retail customer it should still consider whether there is information or support it could provide to help the customer pursue their financial objectives.²⁹⁷ In practical terms, this could mean that the firm could signpost a customer to a third party that provides reliable and relevant information to such consumers.²⁹⁸

289 PRIN 2A.2.14R
 290 FG22/5, 5.37
 291 PRIN 2A.2.22G
 292 Policy Statement PS22/9, 5.14
 293 Policy Statement PS22/9, 5.14
 294 Policy Statement PS22/9, 5.14
 295 PRIN 2A.2.17G
 296 PRIN 2A.2.16G
 297 PRIN 2A.2.21G
 298 FG22/5, 5.40



At product or service design stage, firms can support consumers in pursuing their financial objectives by:

1. designing products or services with clear and straight-forward features so they can be understood by consumers in the target market,
2. taking account of the behavioural biases and characteristics of vulnerability (if any) of the target market,²⁹⁹ and
3. not charging unreasonable exit fees which discourage customers from leaving products or services that are not right for them, or getting better deals.³⁰⁰

In their communications with customers, firms can support customers in pursuing their financial objectives by:

1. considering the characteristics of the customers that their communications are aimed at and tailoring them accordingly so that they are likely to be understood,
2. helping customers navigate the information the firm provides, making it easy for consumers to identify the key information and their available options, and
3. having systems and processes in place to test and monitor the impact of communications on consumer understanding and using the outputs to improve their communications.³⁰¹

In the customer support stage, firms can support customers in pursuing their financial objectives by:

1. designing and delivering consumer support in a way that does not create unreasonable barriers to consumers realising the benefits of products and services or acting in their interests,
2. ensuring that their consumer support enables consumers to fully use the products and services they buy and supports them in acting in their own interests – this includes avoiding ‘sludge’ in the design of consumer journeys, which uses friction to prevent consumers from taking actions such as cancelling a product or amending terms, and
3. ensuring that the channels of support they provide work effectively and do not act as a barrier to customers utilising their products, cancelling or switching to another provider should they wish to.³⁰²

299 PRIN 2A.220G
 300 FG22/5, 544
 301 FG22/5, 545
 302 FG22/5, 546

The Consumer Duty and fiduciary relationships

Section 3B of the Financial Services and Markets Act (FSMA) 2000 sets eight regulatory principles to which the FCA are required to have regard when making rules, guidance and general policies. One of these is the general principle that consumers should take responsibility for their decisions.³⁰³

As such, the Consumer Duty DOES NOT require firms to protect their customers from risk they understood and accepted.³⁰⁴

Similarly, the Consumer Duty and the new Principle 12 DOES NOT change the nature of a firm's relationship with its customers. For example, it DOES NOT create a fiduciary relationship where one would not otherwise exist, nor require a firm to carry out any regulated activity (for example provide advice) where it would not otherwise have done so.³⁰⁵



303 PRIN 2A.1.9G

304 Policy Statement PS22/9, 4.7

305 FG22/5, 4.12; PRIN 2A.1.11G

What is a “retail customer”?

The Consumer Duty applies to products and services offered to “retail customers”. This includes prospective customers³⁰⁶ as well as actual customers, for example:

1. when approving or communicating a financial promotion,
2. when answering a question from a prospective customer, or
3. where a prospective customer applies for a product or service.³⁰⁷

In some instances, a “retail customer” may also include individuals who are declined a product or service.³⁰⁸

The concept of a “retail customer” is also capable of operating on both a collective and an individual level. For example, firms should consider the needs of their customers collectively (i.e. their target market) when designing a product, considering price and value or developing its communications or customer service approach.³⁰⁹ In contrast, when communicating with an individual customer (rather than communicating with multiple customers), firms should pay regard to the needs and characteristics of that particular customer.³¹⁰



306 PRIN 2A.15G
307 FC22/5, 25
308 FG22/5, 2.6
309 FG22/5, 2.8
310 FG22/5, 2.9

More specifically, the definition of “retail customer” also means that:

1. for consumer credit, the Consumer Duty applies to all regulated credit-related activities,
2. for deposit-taking activities, the Consumer Duty applies to consumers, micro-enterprises, charities with a turnover of less than £1 million and a natural person acting in a capacity as a trustee if acting for purposes outside their trade, business or profession (in line with the ‘banking customer’ test in the Banking Conduct of Business Sourcebook (BCOBS)),
3. for insurance, the Consumer Duty DOES NOT apply to reinsurance, contracts of large risk sold to commercial customers or other contracts of large risk where the risk is located outside the UK. Nor does it apply to activities connected to the distribution of group insurance policies or the extension of these policies to new members,
4. for investments, the Consumer Duty applies to business conducted with a customer who is not a professional client, as set out in the Conduct of Business Sourcebook (COBS),
5. for mortgages, the Consumer Duty applies to all regulated mortgage contracts within the perimeter but not, for example, unregulated buy-to-let contracts or commercial lending. Where the owner of a mortgage book is unregulated and the regulated party is an administrator, the Duty would apply in an appropriate and proportionate manner to the administrator’s function, and
6. for payment service or e-money providers, the Consumer Duty applies to business conducted with consumers, micro-enterprises and small charities (where the definitions of these terms are the same as for deposit takers, as noted above).³¹¹

Obligations of boards

General

A firm's board or equivalent governing body is responsible for ensuring that the Consumer Duty is properly embedded within their firm. Senior managers will be held accountable through the Senior Managers & Certification Regime (SM&CR).³¹²

Initial implementation of the Consumer Duty

As part of agreeing plans to implement the Consumer Duty by 31 October 2022, boards were required to be able to evidence they had scrutinised and challenged their implementation plans to ensure they were deliverable and robust.

Boards were required to maintain oversight of firm's implementation plans to ensure they remained on track and that they were sufficient to comply with the obligations under the Consumer Duty.³¹³ They were expected to be able to demonstrate progress in terms of implementation when asked to do so by the FCA.³¹⁴ More specifically, they were expected to be asked to share implementation plans, board papers and minutes with supervisors and to be challenged on their contents.

Firms were also required to have a post-implementation review.³¹⁵

Annual board report

A firm's board, or equivalent governing body, should review and approve an assessment of whether the firm is delivering good outcomes for its customers under the Consumer Duty and any actions required as a result of the monitoring.³¹⁶

The FCA expects the first such report to be considered by the board or equivalent management body within 12 months of the rules coming into force³¹⁷ and it should be conducted at least annually thereafter.³¹⁸ This assessment should include:

1. the results of the monitoring that the firm has undertaken to assess whether products and services are delivering expected outcomes in line with the Consumer 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,
2. an overview of the actions taken to address any risks or issues, and
3. how the firm's future business strategy is consistent with acting to deliver good outcomes under the Duty.³¹⁹

At least annually, the board must:

1. review and approve the firm's report on the outcomes being received by retail customers,
2. confirm whether it is satisfied that the firm is complying with its obligations under the Consumer Duty, and
3. assess whether the firm's future business strategy is consistent with its obligations under the Consumer Duty.³²⁰

When approving (and before signing off on) the report, the board must agree the action(s) required to address any identified risks, or any action required(s) to address poor outcomes experienced by customers and agree whether any changes to the firm's future business strategy are required.³²¹

312 FG22/5, 10.8
 313 Policy Statement PS22/9, 12.11
 314 Policy Statement PS22/9, 12.6
 315 Policy Statement PS22/9, 13.13
 316 PRIN 2A.8.3; FG22/5, 11.5
 317 Policy Statement PS22/9, 13.13
 318 FG22/5, 10.11; Policy Statement PS22/9, 13.2
 319 FG22/5, 10.12
 320 PRIN 2A.8.4
 321 FG22/5, 10.13; PRIN 2A.8.5

The annual board assessment will be part of the evidence used by the FCA to assess compliance with the Consumer Duty. The FCA expects that it will be provided on request together with the management information (MI) that sits behind it.³²²



Consumer Duty Champion

The FCA expects firms to have a champion at board (or equivalent governing body) level who, along with the Chair and the CEO, ensures that the Consumer Duty is being discussed regularly and raised in all relevant discussions. Where possible, the champion should be an Independent Non-Executive Director (NED). For larger organisations with group structures, the FCA expects this champion to be at an appropriate level to ensure that the Duty is discussed in a meaningful way. However, as with all things related to the Consumer Duty, this expectation applies only to the extent that is “reasonable”. As such, the FCA does not necessarily expect the same level of formality in smaller firms.³²³

322 FG22/5, 10.14
323 FG22/5, 10.10

Vulnerable customers

General

The FCA's Financial Lives 2020 survey showed that in February 2020 46% of UK adults (24.1 million people) had characteristics of vulnerability. By October 2020, the FCA's Covid-19 panel survey indicated that, as a result of the pandemic, this had increased to 53%.³²⁴

What is “vulnerability”?

A vulnerable customer is someone (a natural person³²⁵) who, due to their personal circumstances, is especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care.³²⁶

Vulnerability is best considered as a spectrum of risk. All customers are at risk of becoming vulnerable and this risk is increased by characteristics of vulnerability related to 4 key drivers:

1. HEALTH conditions or illnesses that affect ability to carry out day-to-day tasks,
2. LIFE EVENTS such as bereavement, job loss or relationship breakdown,
3. RESILIENCE – low ability to withstand financial or emotional shocks, and
4. CAPABILITY – which includes low knowledge of financial matters or low confidence in managing money (financial capability) as well as low capability in other relevant areas such as literacy, or digital skills.³²⁷

The table below details characteristics associated with the 4 drivers of vulnerability.³²⁸

Health	Life events	Resilience	Capability
Physical disability	Retirement	Inadequate (outgoings exceed income) or erratic income	Low knowledge or confidence in managing finances
Severe or long-term illness	Bereavement	Over-indebtedness	Poor literacy or numeracy skills
Hearing or visual impairment	Income shock	Low savings	Poor English language skills
Mental health condition or disability	Relationship breakdown	Low emotional resilience	Poor or non-existent digital skills
Addiction	Domestic abuse (including economic control)		Learning difficulties
Low mental capacity or cognitive disability	Caring responsibilities		No or low access to help or support
	Other circumstances that affect people's experience of financial services e.g. leaving care, migration or seeking asylum, human trafficking or modern slavery, convictions.		

324 FG21/1, 27
 325 FG21/1, 112
 326 FG21/1, 11
 327 FG21/1, 25
 328 FG21/1, 29

It is important to remain aware that not all customers with characteristics of vulnerability will be vulnerable. Nonetheless, they may be more likely to have additional or different needs which, if not met by firms, could limit their ability to make decisions or to represent their own interests.³²⁹



Understanding vulnerability within the target market

The Consumer Duty requires all firms within a distribution chain to understand the nature, scale and impact of characteristics of vulnerability that exist in their target market and customer base so that it can be factored into the design, sale and support processes of product and services.³³⁰ Put simply, firms should ask themselves what types of harm or disadvantage their customers may be vulnerable to, and how this might affect the consumer experience and outcomes.³³¹

Firms must also understand the NEEDS of vulnerable customers in their target market or customer base. If they do not do this they may not be able to ensure their staff have the right skills and capability or take appropriate practical action. This may result in gaps in the provision of suitable services and products and lead to poor outcomes for vulnerable consumers.³³²

Firms do NOT need to identify the individual needs of each customer. Neither are they required to collect new data about their customers' protected characteristics (i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment).³³³ However, groups of consumers with certain protected characteristics may have, or be more likely to have, characteristics of vulnerability.³³⁴ As such, where firms hold data about customers' protected characteristics, the FCA expects them to use this as part of outcomes monitoring, where possible, in accordance with data protection law.³³⁵

329 FG21/1, 2.8

330 FG21/1, 1.10; Policy Statement PS22/9, 10.10

331 FG21/1, 1.10

332 FG 21/1, 2.2

333 Policy Statement PS22/9, 10.19

334 FG21/1, 2.12

335 Policy Statement PS22/9, 10.19

Managing vulnerability within the target market

In managing vulnerability within their target markets firms should:

1. pay appropriate regard to the nature and scale of characteristics of vulnerability that exist in any relevant target market,
2. pay appropriate regard to the impact of characteristics of vulnerability on the needs of retail customers in any relevant target market,
3. when dealing with a particular retail customer, pay appropriate regard to the needs and characteristics of that retail customer, such as characteristics of vulnerability,
4. assist frontline staff to understand how to actively identify information that could indicate vulnerability and, where relevant, seek information from retail customers with characteristics of vulnerability that will allow staff to respond to their needs, and
5. set up systems and processes in a way that supports and enables retail customers with characteristics of vulnerability to disclose their needs.³³⁶

Monitoring of vulnerability within the target market

The FCA expects firms to be able to identify when particular groups of customers, such as customers with characteristics of vulnerability or customers who share specific protected characteristics, under the Equality Act 2010 or equivalent legislation, receive systematically poorer outcomes.³³⁷ However, the Consumer Duty is underpinned by the concept of “reasonableness”, so the frequency and nature of monitoring that we require will depend on circumstances such as the size of the firm and its relationship with the customer.³³⁸

Helping frontline staff to manage vulnerability

It is important for firms to recognise the role that staff play in meeting the needs of vulnerable consumers. These consumers are more likely to suffer harm when staff do not understand how vulnerability is relevant to their role, or if frontline staff do not have the skills and capability to recognise and respond to their needs.³³⁹

Firms should:

1. embed the fair treatment of vulnerable consumers across the workforce,
2. ensure that frontline staff have the necessary skills and capability to recognise and respond to a range of characteristics of vulnerability, and
3. offer practical and emotional support to frontline staff dealing with vulnerable consumers.³⁴⁰

Embedding the fair treatment of vulnerable consumers across the workforce

Senior leaders should create and champion a firm culture that prioritises the fair treatment of vulnerable consumers. They should ensure that governance, processes and systems support staff to meet the needs of vulnerable customers when carrying out their role.³⁴¹

All relevant staff should understand how their role can affect vulnerable consumers.³⁴² Firms should ensure that all relevant staff understand the potential needs from their target market’s vulnerabilities and what this may mean in practice for their role.³⁴³

Firms should improve the skills and capability of staff in a way that is proportionate. For example, smaller firms may choose to share existing materials on vulnerabilities with their staff, such as those from professional bodies and trade associations or charity and consumer organisation websites. They may also want to hold informal information-sharing sessions for staff. Large firms may

336 PRIN 2A.74G
 337 FG22/5, 1.27
 338 Policy Statement PS22/9, 10.19
 339 FG21/1, 3.1
 340 FG21/1, 3.2; FG21/1, 1.10; FG21/1, 3.4
 341 FG21/1, 3.5
 342 FG21/1, 3.6
 343 FG21/1, 3.7

choose to adapt existing training programmes.³⁴⁴

Ensuring frontline staff have the necessary skills and capability to recognise and respond to a range of characteristics of vulnerability

Staff should be capable of recognising and responding to needs:

1. where the consumer has told the firm about a need,
2. where there are clear indicators of vulnerability, or
3. where there is relevant information noted on the consumer's file that indicates an additional need or vulnerability.³⁴⁵

Staff should take steps to encourage disclosure where they see clear indicators of vulnerability but are not expected to go further than this to proactively identify vulnerability.³⁴⁶

Staff should also be able to recognise when it is appropriate to seek additional support, such as escalating a case to the next level, seeking additional help from specialist teams or referring a consumer to third party support.³⁴⁷

Examples of how firms can put this into practice

The practical steps which firms can take to ensure that frontline staff have the necessary skills and capability to recognise and respond to a range of characteristics of vulnerability include:

1. sharing relevant briefings or training materials created by charities, trade or professional bodies with staff,
2. updating staff training to ensure it gives staff an understanding of vulnerability and skills relevant to their role,
3. giving staff opportunities to share knowledge and experiences with other colleagues to help improve the level of support and increase understanding of how to take into account vulnerable consumers when performing their duties,
4. appointing dedicated vulnerability champions or teams who can help discuss complex cases and offer support to frontline staff,
5. developing 'How To' guides and knowledge bases on vulnerability that frontline staff can use in their day-to-day role, e.g., a signposting document to additional information or support, or collection of best practice examples, and
6. firms undertaking transformation programmes or changes to their operations might consider having a lead representing the interests of vulnerable customers and considering how changes may affect their customer base.

Offering practical and emotional support to frontline staff dealing with vulnerable consumers

Frontline staff may come across challenging situations and firms should offer practical and emotional support to staff where appropriate. This may take the form of offering self-help information, time out following difficult or challenging phone calls or time for staff to share experiences either in face-to-face meetings or via online forums. Large firms may offer an employee assistance service.³⁴⁸

Recording and accessing information about consumers' needs

Knowing how to record and access information about consumers will enable firms to meet their needs promptly, consistently and fairly. If staff do not record and access this information, customer service and communications may not meet consumers' needs.³⁴⁹

344 FG21/1, 3.8
 345 FG21/1, 3.9
 346 FG21/1, 3.11
 347 FG21/1, 3.12
 348 FG21/1, 3.21
 349 FG21/1, 3.17

Information relating to a customer's vulnerability characteristic or needs should be recorded accurately to reflect the information as presented. This also includes differentiating factual accuracy from opinions. This should help staff when interacting with such customers in the future.³⁵⁰

Firms should consider how they ensure the data they hold remains accurate. For example, they could ask customers who have shared information relating to a vulnerability characteristic or need if or when they would like to be contacted again, or check that particular events relating to their circumstance, which the customer previously indicated were upcoming, had occurred. Recording the date alongside the information provided by the customer may also prevent any data becoming inaccurate and help staff recognise where circumstances may have changed.³⁵¹

350 FG21/1, Appendix 1.50
351 FG21/1, Appendix 1.51

Addressing vulnerability within product and service design

General

In order to ensure that the needs of vulnerable customers are met from the outset and through the entire lifecycle of a product, firms must take vulnerable consumers within their target market and customer base into account at all stages of the product and service design process, including idea generation, product development, product testing, product launch, product distribution and product review, to ensure products and services meet their needs.³⁵²

Firms should also take vulnerable customers into account if they are considering changing a product or service (for example, if they are closing a communication channel or branch or reducing the services offered by a particular channel).³⁵³

As part of this process, firms must consider:

1. the potential positive and negative impacts of a product or service on vulnerable consumers,
2. any features of a product or service that might exploit vulnerable customers (intentionally or unintentionally),³⁵⁴
3. how needs of vulnerable customers can change over time (and how products can be designed to meet evolving needs, whilst avoiding inflexibility that could result in harmful impacts).³⁵⁵



352 FG21/1, 1.10; FG21/1, 4.10; FG21/1, 4.3
 353 FG21/1, 4.12
 354 FG21/1, 4.6
 355 FG21/1, 4.8

Idea generation

During idea generation, firms should spend time understanding what vulnerable consumers might need from a product or service or how they might be affected by changes to an existing product or service.³⁵⁶

Examples of how firms can put this into practice include:

1. consulting with people in the firm who are in contact with consumers most frequently,
2. holding focus groups with vulnerable consumers or consumer representatives to get a greater understanding of their needs and how products can meet them, and
3. exploring resources provided from, and consulting with, specialist organisations offering information on how the needs of vulnerable consumers can be met.³⁵⁷

Product development

During development of a product or service, firms should:

1. build features into products or services that meet the needs of vulnerable consumers,
2. consider whether any products or services might have features that could risk harm for vulnerable consumers, for example because they are highly complex,
3. where possible, find ways to reduce any identified risks,
4. consider what distribution channels are suitable for their target market, and
5. consider how communication channels may need to adapt if a consumer was to develop characteristics of vulnerability (for example, providing a call back service for consumers who might struggle with phone menus or the option to notify the firm of a change in circumstance via an app or live web chats).³⁵⁸

Product testing

During the product testing phase, firms should consider, and potentially test, the impact the product or service has on vulnerable consumers. Firms should test any innovative features designed specifically to meet the needs of vulnerable consumers and assess how flexible the product could be to changing needs. They should adapt the product or service based on this testing to reduce the risk of harm for vulnerable consumers, or to ensure that product features designed to meet the needs of vulnerable consumers actually work.³⁵⁹

Examples of how firms can put this into practice include:

1. stress-testing the product or service to identify how it might perform in a range of market environments and how vulnerable consumers could be affected,
2. consulting with consumers or representative groups when seeking to alter or withdraw a product or service, and
3. employing third-sector organisations who can review products and services from the viewpoint of vulnerable consumers.

Product launch

When the product or service is ready to launch, firms should consider how to launch it appropriately so that vulnerable consumers are aware of and understand it. They should take steps to avoid selling products or services to vulnerable consumers if they may not be appropriate. This should also include ensuring all frontline staff are aware of the product and its features, as well as who it might be most or least appropriate for.³⁶⁰

356 FG21/1, 4.13

357 FG21/1, 4.13

358 FG21/1, 4.15; FG21/1, 4.16; FG21/1, 4.17

359 FG21/1, 4.19

360 FG21/1, 4.20

Product distribution

Firms should ensure that products are clearly explained and understood by the consumer. This remains the case even where products are sold through a broker or other intermediary (for example by following up directly with consumers).³⁶¹

Where there is a distribution chain of regulated firms they should each consider how effective their own approach to vulnerability and associated procedures is. During initial and ongoing due diligence, and particularly where they rely on third party providers and outsourcers, firms should ensure that firms they work with treat vulnerable consumers fairly.³⁶²

Product review

All firms should periodically review their products and services to check whether they still meet the needs of vulnerable consumers in their target market and customer base, and do not unintentionally disadvantage them.³⁶³

When a firm alters or withdraws a product or service they should seek to understand if and how this will affect vulnerable groups of their customers. Firms should communicate any changes from withdrawing products or services in a timely, clear and sensitive manner. They should set out what it means for the consumer, communicating alternative solutions, and the consequences to any consumers of not acting.³⁶⁴

Customer service for vulnerable customers

Vulnerable consumers are more likely to have different service needs. For example, they may find some channels of communication challenging or stressful or need more time to understand information and make decisions. If firms do not ensure their customer service provision meets the needs of vulnerable consumers, they can exacerbate the risk of harm from being vulnerable.³⁶⁵

In order to meet the needs of vulnerable customers, firms should:

1. set up systems and processes in a way that will support and enable vulnerable consumers to disclose their needs,
2. adopt a flexible approach to customer service that responds to the needs of vulnerable consumers,
3. make consumers aware of support available to them (for example, any options for third party representation or specialist support services), and
4. put in place systems and processes that support the delivery of good customer service, including systems to note and retrieve information about a customer's needs.³⁶⁶

Systems and processes that support and enable vulnerable consumers to disclose their needs

Frontline staff should have the skills and capability to recognise characteristics of vulnerability and respond to individual consumer needs where a consumer has shared a need or where there are clear indicators of vulnerability.³⁶⁷

Examples of how firms can put this into practice include:

1. encouraging consumers to talk about their needs by promoting their support services,
2. providing easy to understand information on the services they can offer to vulnerable consumers (for example, via a website link if the customer is interacting online),
3. supporting vulnerable consumers to explain their needs and what support would help them

361 FG21/1, 4.25
 362 FG21/1, 4.26
 363 FG21/1/, 4.21
 364 FG21/1, 4.22
 365 FG21/1, 4.29
 366 FG21/1, 1.10
 367 FG21/1, 4.33

(for example, by asking questions about needs and preferences across key points of the customer journey, such as when taking out a new product or service),

4. using targeted online questions and FAQs or open text boxes that encourage customers to volunteer any relevant additional information, and
5. employing online tools that flag support available from a human adviser if customers display certain behaviours, such as hovering for a long time before inputting information, pressing help buttons, or entering inconsistent information.³⁶⁸

Customer service that responds flexibly to the needs of vulnerable consumers

The needs of some vulnerable consumers may be met by building flexibility into existing customer services. Frontline staff should be able to adapt their approach to deliver a service that meets the individual needs of vulnerable consumers.³⁶⁹ Firms should support staff to do this by ensuring that their culture and systems, do not discourage staff from taking extra time or flexible steps to respond to vulnerable consumers' needs. For example, staff should be able to 'stop the clock' on a case if they feel the consumer needs more time or support to understand information and make a decision. As a result, pay and reward structures should not just look at volumes or speed of consumers served, but the quality of service and outcomes.³⁷⁰

Firms should ensure that they can alter their customer service processes to help consumers with additional needs. For example, changing a process that may usually involve automated letters, so that a person who may be visually-impaired receives a more appropriate communication, such as using Braille or audio.³⁷¹

Telling consumers about the support available to them

Firms should proactively tell consumers about the options of help and support they offer to meet the needs of vulnerable consumers. This should happen where the firm recognises that an individual consumer has a specific need and also through their communications and websites.³⁷² Help and support on offer should be easy to access and use.³⁷³

Supporting decision-making and third-party representation

Firms should also consider how to meet the needs of consumers who need a third party to access their account or to support them on a short or medium-term basis. Flexibility that doesn't undermine important safeguards may be appropriate in the case of an emergency or short-term need. For example, to allow a third party to pay an emergency bill to prevent a consumer from going into debt, to freeze accounts where there are concerns over fraudulent activity or to let a debt adviser negotiate with a lender on the customer's behalf.³⁷⁴

Specialist support

Even with inclusive design, some vulnerable consumers will have complex needs or be in situations that will be difficult for firms to address within their standard processes. These consumers may need more targeted support or referral to specialist services.³⁷⁵

Larger firms or those with many vulnerable consumers may consider introducing specialist teams or staff trained to provide specialist support. If specialist support is available internally, firms should ensure that frontline staff know and make it easy for vulnerable consumers to access that support.³⁷⁶

Examples of how firms can put this into practice include:

368	FG21/1, 4.37
369	FG21/1, 4.39
370	FG21/1, 4.40
371	FG21/1, 4.41
372	FG21/1, 4.44
373	FG21/1, 4.45
374	FG21/1, 4.53
375	FG21/1, 4.55
376	FG21/1, 4.56

1. creating dedicated vulnerability units that have the skills, knowledge and time to support consumers with complex or specialist needs as well as offer advice and support to frontline staff, or
2. nominating individuals to become vulnerability champions or “super-users” to provide support and expertise to colleagues.³⁷⁷

Putting in place systems and processes that support the delivery of good customer service

Firms should ensure that they have systems and processes that allow customer service staff to record and access information that will be required in the future to respond to vulnerable consumers' needs. Consumers should not have to repeat information.³⁷⁸

Communications

In order to meet their obligations under the Consumer Duty, firms should consider the needs of vulnerable consumers in the target market and customer base when designing communications.³⁷⁹ At a high level, there are two elements to this requirement:

1. ensuring that all communications and information about products and services are understandable for consumers in the target market and customer base, and
2. giving consideration as to how to communicate with vulnerable consumers.³⁸⁰

Ensuring all communications are understandable

Firms should ensure that communications relating to a product and service are clear throughout its entire life-cycle and provided to vulnerable consumers in a way that they can understand.³⁸¹ As part of this process, firms should consider the challenges vulnerable consumers may face in understanding features of a product or service and the ways in which they process information more generally.³⁸² Vulnerable customers may require more time to assimilate information, particularly if it is complex.³⁸³

If this cannot be accommodated within standard communications, firms should provide different formats of communication, particularly for key documents.³⁸⁴ This might include:

1. providing a means of communicating using British/Irish Sign Language (such as through video services),
2. simplified versions of communications (e.g. using infographics),
3. colour schemes friendly to people with conditions such as dyslexia,
4. large print,
5. accessible websites,
6. Next Generation Text (a service used primarily by the deaf and hard of hearing which makes use of a text phone to make and receive telephone calls),
7. easy grip pens in branch, and
8. audio options.³⁸⁵

377 FG21/1, 4.57
 378 FG21/1, 4.60
 379 FG21/1, 4.66
 380 FG21/1, 1.10
 381 Fg21/1, 4.65
 382 FG21/1, 4.70
 383 FG21.1, 4.71
 384 FG21/1, 4.67
 385 FG21/1, 4.68

Considering how to communicate with vulnerable consumers

Where possible firms should offer multiple communication channels so vulnerable consumers have a choice.³⁸⁶ This will allow vulnerable consumers to communicate through a channel that they can use effectively.³⁸⁷ Once established, firms should proactively raise awareness of the different communication channels available.³⁸⁸

Monitoring and evaluation

Firms can expect to be asked to demonstrate how their business model, processes, the actions they have taken and their culture ensure the fair treatment of all customers, including vulnerable customers.³⁸⁹ Firms are not required to monitor or report on specific metrics, but should be able to provide the FCA with the information they are using to monitor whether they are achieving outcomes for consumers with characteristics of vulnerability that are as good as those for other consumers.³⁹⁰ For larger firms with a diverse customer base, monitoring may be an ongoing process. For smaller firms it may involve a regular review.³⁹¹

Implementing processes to evaluate where the needs of vulnerable consumers are not met

Firms should implement quality assurance processes throughout the whole customer journey to highlight areas where:

1. they do not fully understand vulnerable customers' needs,
2. the performance of staff has led to poor outcomes for vulnerable customers,
3. products or services unintentionally cause harm to vulnerable customers, and
4. customer service processes are not meeting vulnerable customers' needs.³⁹²

In practical terms, firms could consider:

1. looking at complaints data (in tandem with ensuring it is easy for vulnerable consumers to make complaints, and that complaints can be made through multiple channels),
2. using feedback that may not be sent to the firm directly, including online reviews and social media complaints,
3. testing experiences of vulnerable customers through processes such as mystery shopping, auditing, focus groups and deep dives,
4. using insights from organisations with an understanding of the 'lived experience' of vulnerable consumers, such as consumer bodies, charities and other third sector organisations,
5. allowing staff to feedback honestly when they think processes for vulnerable consumers could be improved, and
6. reviewing whether processes and policies are effective in the fair treatment of vulnerable customers.

Management information

Firms should identify and regularly³⁹³ monitor MI that allows them to review the outcomes vulnerable consumers experience in comparison to other consumers.³⁹⁴ The type of information, and frequency with which it is collected will depend on the firm type, their products and target market, although some sources of MI are likely to be common across all types of firm, for example analysis of complaints. Firms should ensure they collect MI at different points in the customer journey. This should include key points of interaction with consumers.³⁹⁵

386 FG21/1, 1.10
 387 FG21/1, 4.76
 388 FG21/1, 4.75
 389 FG21/1, 1.26
 390 FG21/1, 1.28; FG21/1, 5.4; Fg21/1, 5.2
 391 FG21/1, 5.3
 392 FG21/1, 5.6
 393 FG21/1, 5.11
 394 FG21/1, 5.9
 395 FG21/1, 5.10

Types of MI firms may want to collect include:

1. business persistence: analysis of customer retention records – e.g. claims and cancellation rates and details of why customers leave (this may flag where poor treatment is contributing to high turnover of customers),
2. distribution of legacy products/pricing and fees and charges: review of whether consumers with characteristics of vulnerability (where known) are more likely to incur particular fees and charges or are receiving rates not as good as other customers,
3. behavioural insights: consumer interactions and drop off rates and use of different communications channels (this may flag where policies, processes and systems need to be improved e.g. where there are barriers to consumer engagement or understanding),
4. additional support: contact rates with vulnerability teams, referrals to and feedback from specialist services,
5. training and competence records: analysis of records of staff training, including remedial actions where staff knowledge or actions were found to be below expectations,
6. file reviews: reviewing customer files and monitoring calls to check for errors and assess if customers were treated fairly,
7. customer feedback: using formal and informal feedback from customers to identify trends and areas for improvement (e.g. complaints and comments made to the firm but also comments and complaints on social media),
8. numbers of complaints: trends in numbers of complaints involving vulnerable customers in comparison to other customers,
9. complaint root cause analysis: investigating complaints fully to understand the cause of customer complaints, not just dealing with the symptoms,
10. compliance reports: to check if standards are being met in terms of treating customers fairly and good outcomes are being achieved for consumers,³⁹⁶
11. results of the regular testing and monitoring required under the outcome rules,
12. feedback from other parties in the distribution chain,
13. customer experience data gathered through processes such as mystery shopping, auditing customer journeys, focus groups and deep dives, or working with consumer organisations to gain insight into the needs and experiences of consumers,
14. staff feedback, and
15. external sources of data about consumer outcomes (such as the Financial Lives survey).³⁹⁷

Where firms see poor outcomes for vulnerable customers, they should take action to understand what is driving those outcomes. They should ensure learning is effectively fed back into product and service design to ensure that improvements can be made.³⁹⁸

396 FG21/1, 5.12

397 FG22/5, 11.33; FG21/1, 5.12

398 FG21/1, 5.12

Retrospective effect

The Consumer Duty DOES NOT have retrospective effect in the sense that it does not apply to past actions.³⁹⁹ Rather, from its implementation date, the Consumer Duty will apply on a forward-looking basis to existing products and services (including closed book products and services).

This means that, with respect to closed book products and services, firms will still be required to perform analysis regarding price and value outcomes and to review closed products and services against the cross-cutting rules. However, they should do so within the context of the conditions that applied at the time the products were designed and sold.⁴⁰⁰ For example, when assessing fair value, lenders can take account of the costs of providing credit at the relevant time.⁴⁰¹ If a firm identifies that a legacy product does not provide fair value, the FCA has confirmed that it will NOT be necessary to amend vested contractual rights to address the issue. Instead, firms would need to take appropriate action to avoid causing foreseeable harm and provide fair value (for example, by changing non-vested charges).⁴⁰²



399 Policy Statement PS22/9, 1.36, FG22/5, 3.1

400 Policy Statement PS22/9, 3.14

401 Policy Statement PS22/9, 3.14

402 Policy Statement PS22/9, 3.14

Purchases of product books

Firms which purchase a product or service book from another firm will be expected to use their “best endeavours” to meet the requirements under the products and services outcome and the price and value outcome under the Consumer Duty.⁴⁰³ Any firm selling such a book of work will be expected to provide the purchaser with information to assist with the purchaser’s compliance with the Consumer Duty.⁴⁰⁴ Any regulated firm purchasing such a book of work will be required to gather relevant information from the selling firm to be able to comply with the Consumer Duty.⁴⁰⁵



403 Policy Statement PS22/9, 3.21
404 Policy Statement PS22/9, 3.21
405 Policy Statement PS22/9, 3.21

Existing vs closed products

Review of existing products and services

Firms need to comply with the Consumer Duty in full for existing products or services. They must review products or services against all aspects of the Consumer Duty before the end of the implementation period and on an ongoing basis.⁴⁰⁶ If firms identify issues with an existing product or service, these need to be addressed before they can sell it to new customers.⁴⁰⁷

Review of closed products and services

The Consumer Duty also applies in full to closed products and services. However, the products and services outcome does not apply in the same way as for new or existing products and services. For example, as there would be no further sales, there are no requirements for firms to have a target market or distribution strategy for the product or service.⁴⁰⁸



With respect to closed products and services, the FCA expects firms to:

1. have reviewed the product or service during the implementation period, and on an ongoing basis, under the cross-cutting rules. Firms should identify whether there are aspects of the design of the product or service which means they are not meeting the requirements of the Consumer Duty. For example, they should consider if any aspect of the product or service could lead to foreseeable harm or frustrate customers pursuing their financial objectives. Where they identify that aspects of the design could cause the product or service to breach the cross-cutting rules, they should take appropriate action to mitigate harm,
2. ensure that products continue to offer fair value under the price value outcome rules, and
3. ensure that they meet the consumer understanding and consumer support outcomes.

406 FG 22/5, 3.3
 407 FG 22/5, 3.4
 408 FG 22/5, 3.6

Unilateral changes to products or services

The FCA has made clear that, generally, it does not expect firms to make unilateral changes to the terms and conditions associated with a product or service. Furthermore, the FCA does not expect firms to make any changes that would adversely impact vested contractual rights. Firms should not even withdraw products without considering the Consumer Duty and the impact that this could have on customer outcomes.⁴⁰⁹



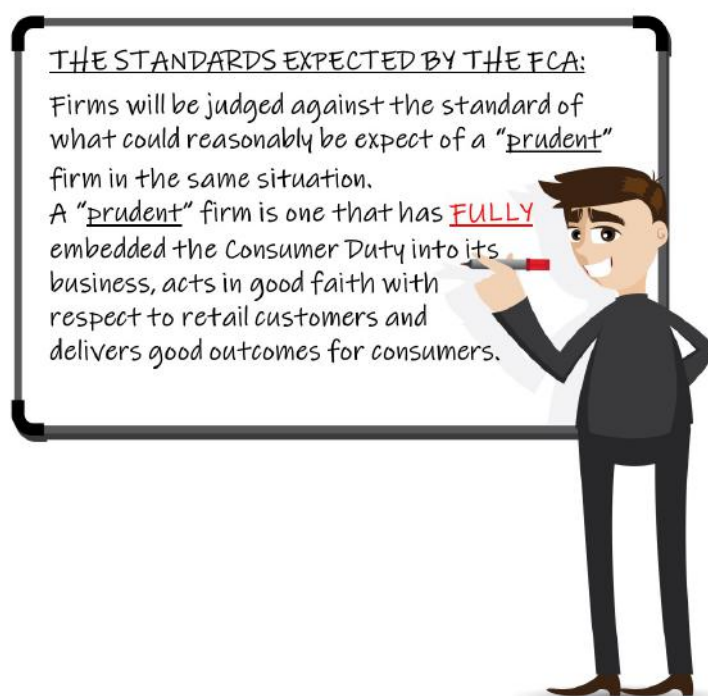
Proportionality under the Consumer Duty

The Consumer Duty applies proportionately, based on what is reasonable in the circumstances.⁴¹⁰ In turn, what is 'reasonable in the circumstances' will depend on a number of factors, including the role of the firm and its influence on retail customer outcomes. This is a matter of fact and is not solely determined by reference to the contractual arrangements in place between firms in a distribution chain.⁴¹¹ Nonetheless, it is recognised that a firm that is remote from a retail customer, and which has no direct client relationship, may have more limited obligations under the Consumer Duty.⁴¹²

The Consumer Duty only requires firms to do that which can be reasonably expected of a prudent firm carrying on the same activity in relation to the same product or service.⁴¹³ A "prudent" firm is one which has FULLY embedded the Consumer Duty, acts in good faith to meet its requirements, comply with all other relevant law and deliver good outcomes for consumers.⁴¹⁴

What is reasonable depends on all the relevant circumstances, including:

1. the nature of the product being offered or provided,
2. the characteristics of their retail customers, and
3. the firm's role in relation to the product.



⁴¹⁰ Policy Statement PS22/9, 2.14

⁴¹¹ Policy Statement PS22/9, 2.14

⁴¹² Policy Statement PS22/9, 2.14

⁴¹³ Policy Statement PS22/9, 4.8, PRIN 2A.7.1R

⁴¹⁴ Policy Statement PS22/9, 4.11

The nature of the product being offered or provided

In determining what is “reasonable” in the circumstances, firms should consider the RISK OF HARM to retail customers. For example, if a product is higher risk, firms should take additional care to ensure it meets retail customers’ needs, characteristics and objectives and is targeted appropriately.

Firms should also consider the product’s relative COMPLEXITY. Retail customers may find it more difficult to assess the features, suitability or value offered by more complicated products. Other elements of a product which may contribute to its complexity would include long-term maturity where the outcome is not easy to predict and non-standard charging structures. Factors such as this would require firms to take great care.

It almost goes without saying, but firms should also consider the costs, fees and charges involved with the product as well as the relative utility to retail customers of the product (as a whole but also of specific features) particularly if these are subject to separate fees or charges.

The characteristics of the retail customer(s)

In determining what is “reasonable” in the circumstances, firms must give consideration to the characteristics of their retail customer(s) (both those they know about and those they should reasonably have known about). In particular, firms should consider their:

1. reasonable expectations in relation to the product,
2. resources,
3. degree of financial capability or sophistication, and
4. characteristics of vulnerability.

The firm’s role in relation to the product

In determining what is “reasonable” in the circumstances, the firm must give consideration to its role in relation to the product. This includes:

1. the firm’s relationship with the retail customer,
2. whether the firm has provided or will provide advice to the retail customer (what is reasonable may be different where advice is being provided),
3. the firm’s role in the product’s distribution chain (in particular whether it can determine or materially influence outcomes for retail customers in relation to the product), and
4. the stage in the firm’s relationship with the retail customer. There will be times when retail customers are particularly exposed to harm, for example when they fall into arrears or are considering long-term investment decisions. The actions a firm needs to take to be acting reasonably in such circumstances may be greater than when a retail customer is making decisions which carry a lesser risk of adverse outcomes.⁴¹⁵

Acting in a way that could reasonably be expected of a prudent firm requires more than adopting a single solution that is reasonable. It includes (among other things) considering whether the preferred solution provides good outcomes for all retail customers affected or only some – and if only some, why it does not work for all, and how best to identify additional actions which might mitigate the outcome for those adversely affected.⁴¹⁶ However, acting reasonably does not require a firm to assume a fiduciary duty or require an advisory service where it does not already exist.

⁴¹⁵ PRIN 2A.72G (see page 134)

⁴¹⁶ PRIN 2A.73G (see page 135)

Notifications of breaches of the Consumer Duty

Under Principle 11, firms must inform the FCA of anything relating to the firm of which the FCA would reasonably expect notice.⁴¹⁷

A firm is also required to notify the FCA if it becomes aware that another firm in its distribution chain is not complying with the Consumer Duty. In addition, a firm must notify other firms in a distribution chain if it thinks that they have caused, or contributed to, harm to retail customers.⁴¹⁸



417 PRIN 2A.9.16G

418 Policy Statement PS22/9, 2.18; PRIN 2A.9.17R

Private Right of Action

There is no private right of action attaching to breaches of the Consumer Duty.⁴¹⁹ In other words, there is no right for the individual retail customer to enforce the requirements of the Consumer Duty against a firm.



Culture, governance and accountability

The Consumer Duty requires firms to ensure that acting to deliver good outcomes is reflected in their strategies, governance, leadership and people policies. Customer outcomes should be a central focus of their risk and internal audit processes. Firms must also ensure that their staff incentives, performance management frameworks and remuneration structures are designed in a way that is consistent with ensuring good outcomes for customers.⁴²⁰

Key questions firms could ask themselves to ensure that they are compliant with this requirement include:

1. Does the firm's purpose (whether publicly articulated or not) align with its obligations under the Consumer Duty? How is it embedded and understood throughout the organisation?
2. How does the organisation's culture support the delivery of good outcomes for customers?
3. How does the organisation ensure that individuals throughout the organisation – including those in control and support functions – understand their role in delivering the Consumer Duty?
4. 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?
5. Is the Consumer Duty being considered in all relevant discussions such as strategy and remuneration? Are customers outcomes a key lens for Risk and Internal Audit?
6. How is the firm ensuring that its remuneration and incentive structures drive good outcomes for customers?



Monitoring and governance

General

A key part of the Consumer Duty is that firms assess, test, understand and are able to evidence the outcomes their customers are receiving. Without this, it will be impossible for firms to know that their products and services are working as they and their customers would have expected and in a way that is consistent with the Consumer Duty.⁴²¹

As a baseline, a firm must regularly monitor the outcomes retail customers receive from:

1. the products the firm manufactures or distributes,
2. the communications the firm has with retail customers, and
3. the customer support the firm provides to retail customers.⁴²²

However, firms should be aware that “customer outcomes” in this context are broader than the areas covered by the four outcome rules under the Consumer Duty. They also include the overall outcomes that consumers receive when they buy a product or service, or interact with a financial services firm, such as whether they use the products or service as expected, the benefits that they receive, and whether they are incurring harm.⁴²³

Firms can expect at every stage of the regulatory lifecycle to be asked to demonstrate how their business models, the actions they have taken, and their culture are focused on good customer outcomes.⁴²⁴ To this end, this must maintain records and provide the same to the FCA on request.⁴²⁵



421 FG22/5, 11.1
422 PRIN 2A.98R
423 FG22/5, 11.17
424 FG22/5, 11.3
425 FG22/5, 11.26

Developing a strategy towards monitoring

Firms will need to develop a strategy to gather the relevant information and data to inform their assessment of whether they are delivering good outcomes for customers and to meet their governance obligations. As part of this, firms must have in place processes to identify the root causes of any failure to deliver the outcomes required by the Consumer Duty for retail customers. The FCA expects firms to continually review and develop their frameworks.⁴²⁶

Monitoring objectives

Firms are specifically required to:

1. monitor whether retail customers are being, or have been, sold products that have been designed to meet their needs, characteristics and objectives,
2. monitor whether the products that retail customers purchase provide fair value and appropriate action has been taken to address products identified as not providing fair value,
3. monitor whether retail customers are equipped with the right information to make effective, timely and properly informed decisions,
4. monitor whether retail customers receive the support they need,⁴²⁷
5. monitor and regularly review the outcomes their customers are experiencing to ensure that the products and services that firms provide are delivering outcomes consistent with the Consumer Duty,⁴²⁸
6. identify whether for any product the firm manufactures or distributes, any group of retail customers is experiencing DIFFERENT outcomes compared to another group of retail customers of the same product,
7. identify where customers or groups of customers are not getting GOOD OUTOMES or are suffering HARM and understand why this is the case (groups that firms could consider might include longstanding customers, customers from a particular geographical region or customers who buy a product through a particular distribution channel),⁴²⁹
8. have processes in place investigate the causes of poor outcomes, to adapt and change products and services, or policies and practices, to address any risks or issues identified and stop it occurring again in the future,⁴³⁰
9. be able to demonstrate how they have identified and addressed issues leading to poor outcomes,⁴³¹ and
10. explain (if asked) how they reached a decision on the most appropriate intervention, demonstrate how it has delivered good outcomes and, if not, what they have done further to address the issue.⁴³²

426 FG22/5, 11.21; PRIN 2A.9.11R

427 PRIN 2A.9.9R

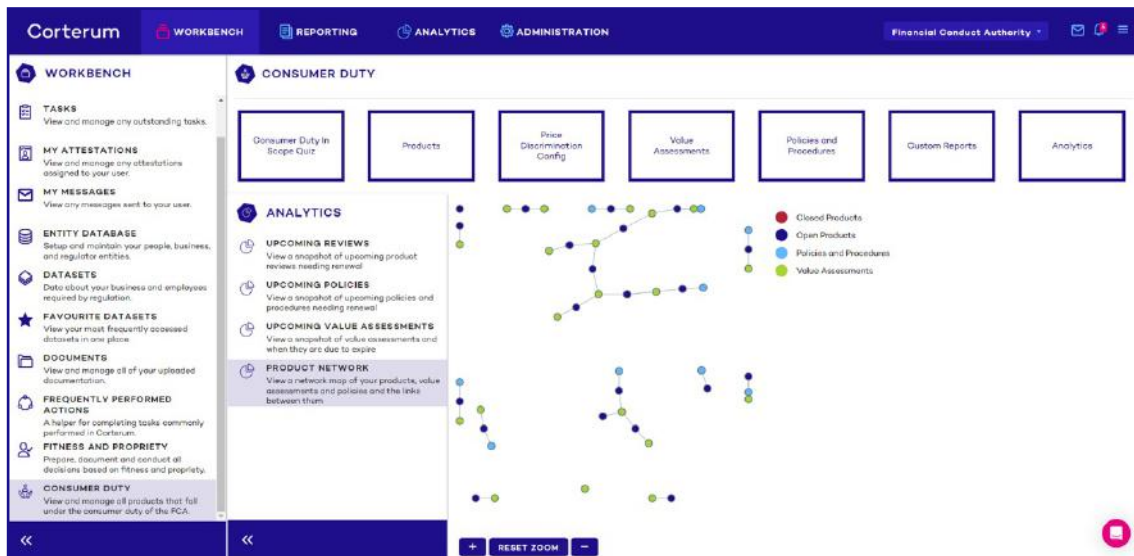
428 Policy Statement PS22/9, 13.1

429 FG22/5, 11.12; PRIN 2A.9.10R

430 FG22/5, 11.4; FG22/5, 11.11; Policy Statement PS22/9, 13.11; FG22/5, 1.28

431 FG22/5, 11.7

432 FG22/5, 11.9; FG22/5, 11.27



Corterum provides the framework you need to demonstrate compliance with the Consumer Duty

Action required of firms

Firms must take “appropriate action” where they identify that:

1. retail customers do not (or there is a RISK that they will not) receive the outcomes required under the Consumer Duty,
2. any group of retail customers for a product are receiving worse outcomes than another group of retail customers for the same product, or
3. the firm is otherwise not complying with the requirements of the Consumer Duty.⁴³³

Nonetheless, this does not require a firm to take action to remove the effects of risks inherent in a product that the firm reasonably believed the retail customer understood and accepted.⁴³⁴

“Reasonableness” in the context of monitoring

The FCA’s expectations apply based on what is “reasonable”. Firms will need to produce and regularly review MI on customer outcomes, but the frequency of monitoring, and the nature of the information a firm should collect should be appropriate to the nature, scale and complexity of their business, considering the size of the firm, the products and services they offer, and the customer base they serve.⁴³⁵ However, even in the context of ‘what is reasonable’, some forms of monitoring will undoubtedly be more frequent than others. For example, the FCA expects firms to gather and review customer support data, transaction data and complaints data on an ongoing basis whereas file reviews, sludge audits and focus groups are more likely to be carried out at regular intervals or on an ad hoc basis.⁴³⁶

In addition, the FCA does not expect firms to exhaustively segment their customer base to identify differences in outcomes between all possible groups of customers.⁴³⁷ Moreover, it is possible for distinct groups of customers to receive different outcomes within a framework that remains compatible with the Consumer Duty (for example, because of risk-based pricing). However, where this occurs, the firm would need to be able to evidence compliance.⁴³⁸

As with the whole Consumer Duty, one good rule-of-thumb question firms can ask themselves is whether they are applying the same standards and capabilities to monitoring customer outcomes

433 PRIN 2A.912R

434 PRIN 2A.913R

435 FG22/5, 11.19; PRIN 2A.9.3G

436 FG22/5, 11.24

437 Policy Statement PS22/9, 13.11

438 FG22/5, 11.14

as they are to generating sales and revenue. For example, is the firm using the same levels of segmentation and analysis to monitor outcomes as they are to target sales?⁴³⁹

Monitoring within distribution chains

The monitoring obligation applies proportionately to a firm's role in the distribution chain.

Where a firm does not have direct contact with retail customers it should monitor the outcomes of the service it provides, having regard to any information it has about the outcomes experienced by retail customers at the end of the distribution chain. A firm that does not have direct contact with retail customers should act reasonably to obtain information about the outcomes experienced by retail customers of the products the firm has distributed.⁴⁴⁰

Types of data used in monitoring

There is no prescribed format for the way in which firms evidence their monitoring of customer outcomes.⁴⁴¹ The type of information firms use will vary depending on their size, client base, and the types of products or services they offer. Firms should tailor the information to these factors. The objective for firms is to ensure that they have sufficient information to be able to identify whether they are delivering good customer outcomes.⁴⁴²

Monitoring outcomes for vulnerable consumers

Firms should produce and regularly review MI on the outcomes they are delivering for customers with characteristics of vulnerability. MI should be of sufficient quality and depth for firms to be able to identify which products and processes are working well, and which might be causing detriment and need changing to improve outcomes.⁴⁴³

Firms must have the ability to capture information about customer needs (such as communication needs or information about customers' characteristics of vulnerability). It is highly UNLIKELY that firms will be able to meet the needs of all of their customers if they are not capturing such information.⁴⁴⁴

Nonetheless, firms are NOT required to systematically collect data about customers' protected characteristics (e.g. ethnicity). However, where firms do already collect data about customers' protected characteristics, they are expected to use this data to monitor differences in outcomes between different groups, where possible.⁴⁴⁵ There are a number of ways that firms can gain insight into the experiences and outcomes of customers who share protected characteristics, without requiring their customers to disclose this information. For example, firms could consider:

1. conducting research into the experiences and needs of a particular group of customers (e.g. a focus group with older customers),
2. working with a consumer organisation that represents a particular group of consumers in order to gain insight into the needs and experiences of that group,
3. conducting an audit of customer journeys which could identify differences in experience or frictions that affect certain groups of customers but not others,
4. drawing on the diversity of their staff (for example, a network of staff with a particular sexual orientation could provide insight into the experiences that this group has when dealing with financial services), and
5. using proxy data to infer outcomes experienced by different groups of customers (for example, it may be possible for firms to use customer name and post code as a proxy for ethnicity in certain circumstances).⁴⁴⁶

439 FG22/5, 11.13; FG22/5, 11.20

440 PRIN 2A.94G

441 FG22/5, 11.26

442 FG22/5, 11.32

443 FG22/5, 11.36

444 FG22/5, 11.37

445 FG22/5, 11.38

446 FG22/5, 11.42

Monitoring requirements under different regulations

Where relevant existing requirements for investment funds, insurance and funeral plans meet the FCA's outcome rules, then the associated monitoring requirements will be sufficient to meet the monitoring requirements of the Consumer Duty for that outcome.⁴⁴⁷

Interaction with the Senior Managers Regime

General

The Senior Managers & Certification Regime (SM&CR) as well as the Senior Manager Conduct Rules establish clear senior management responsibility for complying with the requirements and standards of the regulatory system. These requirements apply equally to the Consumer Duty as they do to other Principles and rules.⁴⁴⁸

Specifically, every senior manager should be clear about what they are responsible and accountable for, and how they are ensuring that the business of the firm complies with the requirements of the Consumer Duty on an ongoing basis. Senior managers will be accountable for delivering good consumer outcomes within their areas of responsibility. They 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 the FCA.⁴⁴⁹



New conduct rule

The new Consumer Duty regulations introduce an additional “individual conduct rule” into COCON 2.1 under the SM&CR. This states that:

“Rule 6: You must act to deliver good outcomes for retail customers”.⁴⁵⁰

Rule 6 applies to ALL conduct rules staff, regardless of whether the person has direct contact or dealings with retail customers.⁴⁵¹ However, it is worth noting that a person’s conduct is not within the scope of Rule 6 above if the related activities of the firm fall outside the scope of Principle 12 (i.e. the new FCA Principle that “A firm must act to deliver good outcomes for retail customers”).⁴⁵²

448 FG22/5, 10.18
449 FG22/5, 10.20; Policy Statement PS22/9, 13.13
450 COCON 2.1.6R
451 COCON 4.1.28G
452 COCON 1.17DG

Note also that a person may be a “retail customer” of a firm for the purposes of Rule 6 even though that person is NOT a direct client of the firm and there is no direct relationship between them.⁴⁵³

Rule 6 applies within the context of what is “reasonable”

Rule 6 must be interpreted in accordance with the standard that would be reasonable and proportionate to expect of a prudent member of a firm’s conduct rules staff. In simple terms, the more senior a person is and the more relevant their role is to the Consumer Duty, the more the FCA expects from that individual in delivering good outcomes for retail customers.⁴⁵⁴ More specifically, factors relevant to this standard include:

1. the individual’s seniority,
2. the scope of the individual’s job and in particular the degree to which the responsibilities of the job are able to affect the outcomes experienced by retail customers,
3. the individual’s level of expertise and experience,
4. the expertise and experience that the firm reasonably expects the individual to have,
5. the expertise and experience that the firm should (under the regulatory system) ensure that the individual has, and
6. the degree of discretion and judgment the person has in their job (for example, whether they are bound to a script or process when dealing with retail customers).⁴⁵⁵

Individual conduct rule 6 versus individual conduct rule 4

To the extent that individual conduct rule 6 applies, individual conduct rule 4 (“You must pay due regard to the interests of customers and treat them fairly”) DOES NOT APPLY to that conduct of that person.⁴⁵⁶

However, individual conduct rule 6 imposes a HIGHER and MORE EXACTING standard of conduct in relation to a firm’s retail market business relative to what individual conduct rule 4 would have otherwise required. Individual conduct rule 6 also has a BROADER application in relation to a firm’s retail market business relative to individual conduct rule 4, with a greater focus on consumer protection outcomes for retail customers, including where those retail customers do not stand in a client relationship with that firm in the distribution chain.⁴⁵⁷

To the extent that the guidance on individual conduct rule 4 says that behaviour would amount to a breach of individual conduct rule 4 (in the event that individual conduct rule 4 had applied), that behaviour is likely to amount to a breach of the new individual conduct rule 6.⁴⁵⁸ However, where a person is acting in accordance with guidance on individual conduct rule 4, that should NOT be relied on alone in considering whether individual conduct rule 6 has been complied with.⁴⁵⁹

453 COCON 2.4.4G - this is the effect of paragraphs (2)(f) and (2)(g) of the definition of “retail customer”

454 FG22/5, 10.23

455 COCON 4.1.29G

456 COCON 1.17ER

457 COCON 4.1.24G

458 COCON 4.1.26G

459 COCON 4.1.27G

THAT'S IT FOLKS!!

We hope that you have found this guide useful.

If you have any questions on the Consumer Duty or if you'd like to see what Corterum can do to help your business, drop us a line at:

hello@parallel-51.com





Marlborough House
Marlborough Crescent
Newcastle-upon-Tyne
NE1 4EE

hello@corterum.com

corterum.com

Corterum