



For financial advisers only

The new Consumer Duty – time to collaborate

Your guide to the final rules

Pensions | Investments | Protection



After two rounds of consultation, the FCA has now published its final rules and non-handbook guidance on the new Consumer Duty and it's clear this will lead to major changes for all retail financial services firms. The same consumer principle and three cross-cutting rules apply to all firms, but the implications of these vary dramatically depending on which industry sector you're part of.

In this guide, Steven Cameron, Pensions Director, focuses on key considerations of the 'new Duty' for advice firms, including what's changed in the final rules and guidance.

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Introduction



Steven Cameron,
Pensions Director

“ We stand ready to support advisers on the journey to implementing the new Duty ”

At Aegon, we serve our retail customers through you, the adviser and consultant community. We've always believed that's the right way of delivering the best outcomes for our mutual customers. The FCA's new Consumer Duty is raising our 'duty' to our customers to the next level. The headlines of delivering good outcomes and helping customers meet their financial objectives may well reflect what you do every day for your clients. But the extensive and detailed new rules and guidance delve deeply into everything this may mean, and how the FCA expects all firms to test and evidence delivery.

The new Duty makes it even more important that 'manufacturers' and 'distributors' truly work together to deliver for our customers. This collaboration will include the sharing of information across the distribution chain.

While the new Duty applies across the whole UK retail financial services market, every sector and firms within sectors will

be impacted in different ways. With such a major shift in conduct and culture, there's no 'short cut' alternative to reading the final rules and guidance. But we do hope we can support advisers on the journey ahead by sharing our own insights, and those we learn from speaking to advisers, on particular areas of focus.

The FCA has said implementation will be an iterative process. They've promised future updates, regional events and sector specific guidance. Aegon will be keeping a close eye on developments and we'll use our [Consumer Duty adviser hub](#) to share new insights, be they from the FCA or industry as best practices emerge.

The new Duty, implemented well and proportionately, should be a positive change for our industry and its customers. Here at Aegon we stand ready to support you on the journey.

Steven Cameron

The new principle and cross-cutting rules

The new Consumer Principle requires your business to ‘act to deliver good outcomes for retail customers.’ This replaces and sets higher standards than Principles 6 and 7 concerning Treating Customers Fairly and ‘clear, fair and not misleading’ communications.

The principle is supported by three cross-cutting rules requiring firms to:



Act in good faith

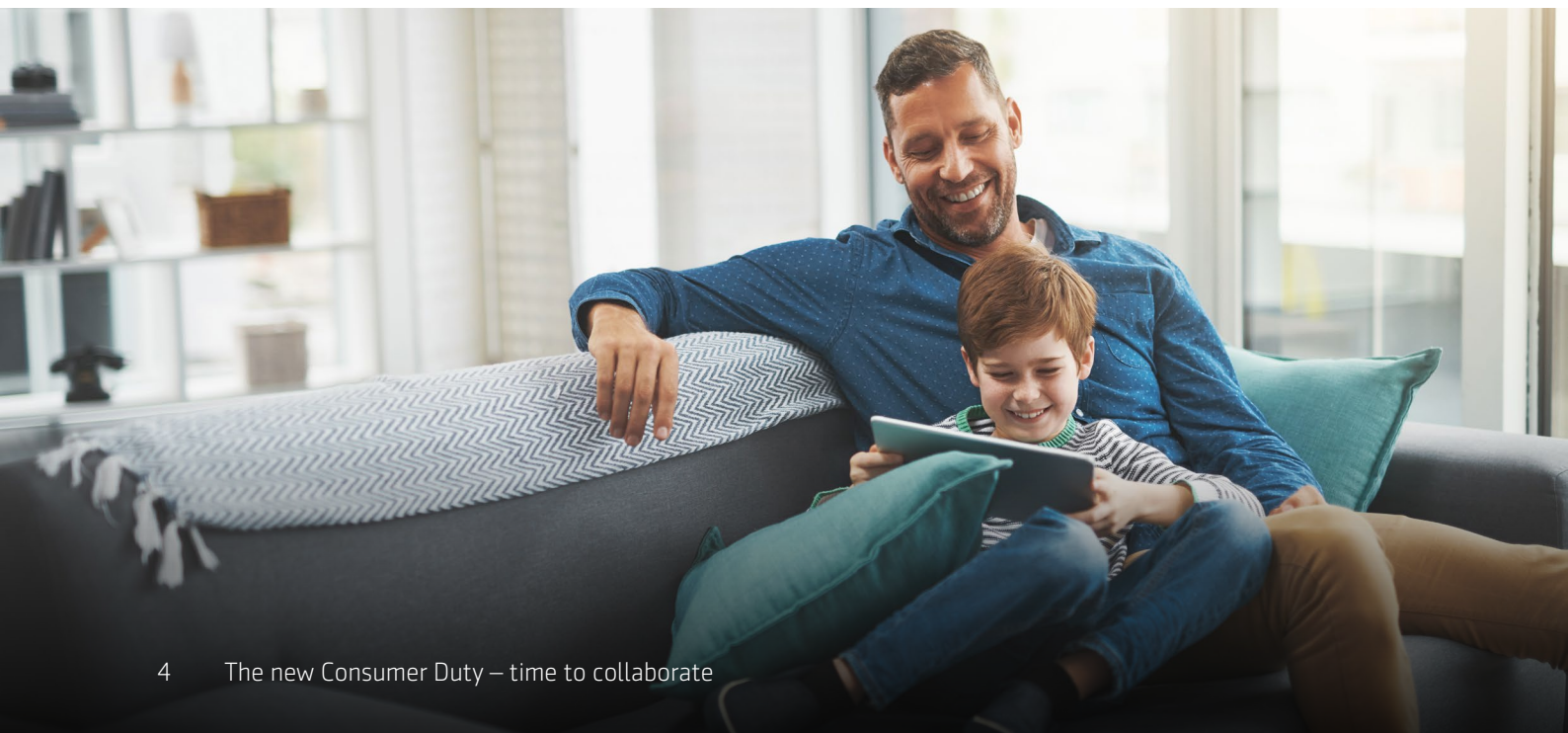


Avoid causing foreseeable harm



Enable and support retail customers to pursue their financial objectives

There are then extensive rules and guidance on the four outcomes – products and services, price and value, consumer understanding and consumer support. There’s also a considerably greater focus on culture, governance and accountability.



Consumer Principle 12

A firm must act to deliver
good outcomes for retail customers

Cross-cutting rules

Firms must:



Act in good faith



Avoid causing foreseeable harm



Enable and support retail customers to pursue their financial objectives

Four outcomes



Products and services



Price and value



Consumer understanding



Consumer support

As a package, as well as enforcing a clear consumer focus, the new Duty takes forward the FCA's aims of being a more outcomes-based and data-led regulator.

Your role

As adviser firms, it will already be second nature for you to put customers at the heart of your business and help them meet financial objectives. You also play an essential role in helping customer understanding, to allow them to make effective, timely and properly informed decisions. An increased focus on a customer's broader financial wellbeing including creating a clearer picture of their future selves and how to finance future goals may help evidence this.

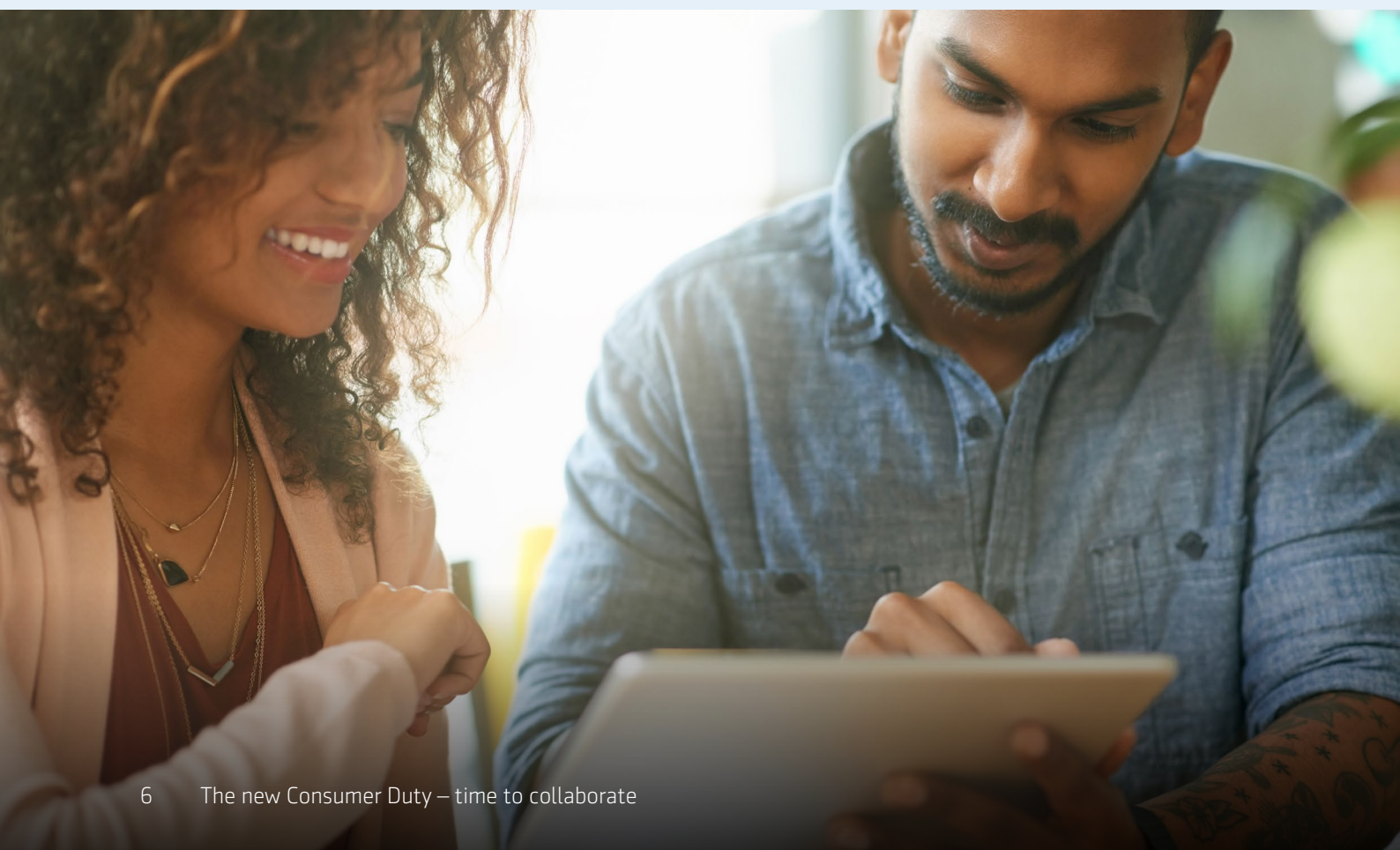
Still, however aligned the Duty appears at high level to an adviser's business, there will be many detailed areas of impact and a major emphasis on **evidencing** good outcomes.

The new timelines and what to look out for next

In response to intense industry lobbying, the FCA has extended deadlines beyond the originally proposed 30 April 2023.

New products and services, and existing ones which remain on sale or open for renewal, must comply by the end of July 2023. For closed products and services, it's a year later at end July 2024. These extensions will allow firms to implement in a more thorough way and the separation of open and closed products will allow prioritisation which will benefit both firms and customers.

However, there's a price to pay for these extensions. The FCA wants to make sure firms use the longer implementation periods fully. Critically, it has set an earlier date of 31 October 2022 for firms' Boards or equivalent management bodies to have agreed on an implementation plan which they've scrutinised and challenged. At the time of writing this is less than three months away, creating a very tight timescale and the need for immediate action by all firms.



Implementation challenges

One of the biggest challenges with implementation is how different firms in the distribution chain will work together. Crucially, advisers have a duty to consider value across the whole chain, which means to comply, they need information from manufacturers. In a sensible move, the FCA has set an earlier 30 April 2023 deadline for manufacturers to provide adviser firms with necessary information including on target markets and the outcome of product value assessments.

The other newly set date is that Boards or equivalent management committees must produce their first annual report on compliance with the Duty by end July 2024.

Implementation timeline

Deadline	Requirement
31 October 2022	Firm's Board or equivalent management body must have agreed on implementation plans
30 April 2023	Manufacturers must provide distributors of their products with the information distributors need to comply – such as target markets and outcomes of value assessments
31 July 2023	Full compliance for new products and services and all existing which remain on sale or open for renewal
31 July 2024	Full compliance for closed products and services
31 July 2024	First Board or management body report on compliance with new Duty

Monitoring progress

The FCA will be checking firms' progress during the implementation period. It will also be sending portfolio letters with updates tailored to business models. The first, later this year, will focus on expectations and priority issues. The second, in the first half of 2023, will highlight good and poor practices the FCA has identified with ongoing implementation. There will also be regional events and sector specific webinars in the autumn. More sector specific guidance has also been promised. While additional FCA support is to be welcomed, the sooner this is provided the better as firms can't delay in pushing ahead with implementation.

Key changes from the draft regulations and guidance

The final rules differ significantly from the draft regulations in two key areas where the FCA has included members of trust-based pension schemes and placed more emphasis on culture, governance and accountability.

Trust-based pension schemes

The FCA has extended the scope of 'retail customers' to include beneficiaries of trust-based schemes being supported by FCA regulated firms. This avoids master trust members being out of scope while members of group personal pensions are covered. It does, however, mean members of master trusts and other trust-based schemes offered without the involvement of an FCA regulated firm don't benefit from the protections of the new Duty.

There's also a new requirement for firms with Independent Governance Committees (IGC) (or Governance Advisory Arrangements) to consider their IGC assessment of value for money. IGCs look specifically at group personal pensions and investment pathways. Their approach to assessing value for money may change in future following a consultation on developing a consistent new value for money framework across all pensions. This means there are a few 'moving pieces' here and ongoing consistency will be essential.

Culture, governance and accountability

The final rules and guidance place much more emphasis on culture, governance and accountability. Firms are required to appoint a new Duty 'champion'. For firms with Boards, this should be a non-executive director who alongside the Chair and CEO will make sure the new Duty is considered in all relevant discussions from strategy down. The FCA will also use the Senior Managers and Certification Regime to hold relevant individuals to account.

HR and people policies are also called out, highlighting approaches to remuneration and bonus must be consistent with good consumer outcomes.

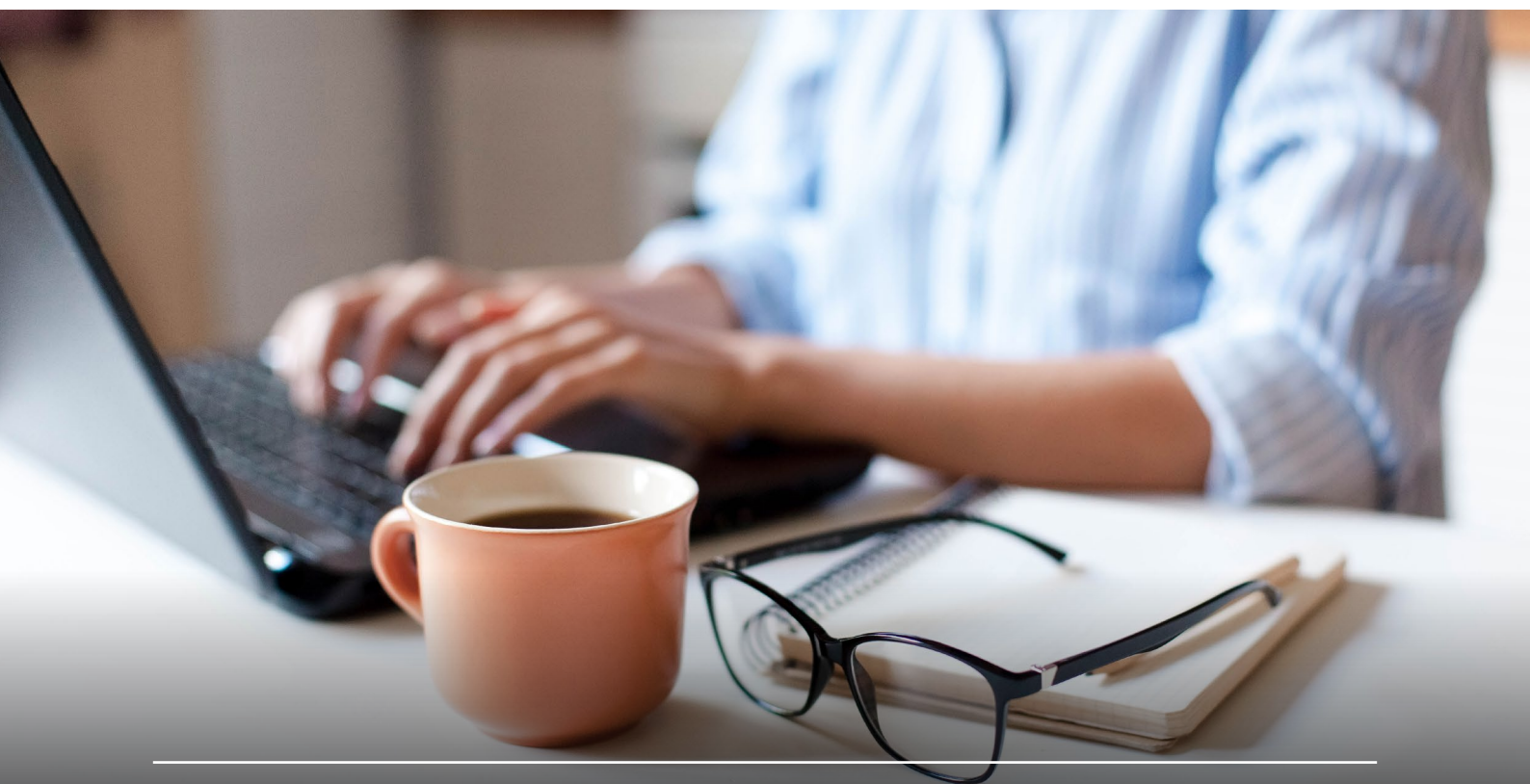


The distribution chain and different impacts on manufacturers and advisers

In our consultation response, we stressed one particularly complex aspect of implementation will be understanding and reflecting roles and responsibilities across the distribution chain.

Complexity of the distribution chain

While the Responsibilities of Providers and Distributors for the Fair Treatment of Customers (RPPD) guidance is still referred to where a manufacturer has purchased a closed book of business, it can no longer be relied upon for broader new Duty purposes. But the FCA non-handbook guidance has added considerable further detail here, accepting that distribution chains can be complex.





One key clarification is that generally, firms will be responsible and liable only for their own actions and omissions, not those of other firms.

However, firms will need to reflect on the roles, responsibilities and actions of others in the chain – and inform the FCA if they're aware of another firm in the distribution chain not meeting responsibilities.

Applying the duty proportionately

The Duty applies to the extent a firm is responsible for determining or materially influencing retail customer outcomes. Throughout, the FCA talks of applying it proportionately, whether by size of firm or based on the extent of influence. So requirements will be less for non advised and execution only services where, for example, firms can assume the client's financial objective is to 'purchase, use and enjoy the full benefits of the product'.

The Guidance continues to have some sections aimed specifically at 'manufacturers' and others for 'distributors', which includes adviser firms. But adviser firms which can determine or materially influence a product may be considered co-manufacturers. They'll need to consider their separate manufacturer duties, which I've not covered here. Each individual firm will need to assess the requirements based on their precise business model and different services provided.

The four outcomes and impact on your business

Rules and guidance on four specific outcomes offered to 'distributors,' including adviser firms.



Products and services

Design services to deliver good outcomes for target audiences.



Price and value

Demonstrate charging approaches offer fair value, including between groups.



Consumer understanding

Truly promote understanding, helping customers avoid foreseeable harm and pursue their financial objectives.



Consumer support

A tailored approach to the needs of vulnerable customers.



Products and services

Adviser firms must already understand the products they advise on. This requires information from manufacturers including product characteristics, identified target market and appropriate distribution strategies. The granularity of manufacturers' target markets will reflect the characteristics, complexity and risk of consumer harm of the product.

Considerations

Adviser firms might want to revisit how they describe each of their service propositions. Each must be designed to meet the needs of consumers in the target market for the service. Unhelpful references to 'average customers' in the draft rules have been removed. An increased emphasis on financial wellbeing as part of the service may be worth considering.

Designing different services

The implications will differ where holistic and ongoing advice is offered compared to transactional advice. Non-advised or execution only services are also covered although the proportionality test should mean the FCA expects less here. Specialist advice services such as on defined benefit transfers may also warrant specific consideration.

One specific example retained in the final guidance is if charging a high or fixed monetary adviser charge, the target market may need to exclude customers with small amounts to invest as for them, the fixed charge may not represent value.

Accessing advice can be the most effective way for consumers to avoid foreseeable harm. Advisers should consider how long a time horizon they take into account. If there's an ongoing relationship, firms should regularly review if any new risks of harm become reasonably foreseeable – be that from external developments or changes in individual circumstances.

Whether or not ongoing advice is being offered has a big influence here. The new Duty isn't pushing firms to always offer this. The benefits should be considered when designing services for target markets. Price and value aspects may justify ongoing advice in some, but not all, circumstances.

Target markets

The new Duty will require adviser firms to regularly review they're recommending products in line with intended target markets – and provide such information on request to manufacturers to support manufacturers' reviews. If issues emerge, firms must act – including preventing further harm and informing others in the distribution chain. This will further add to information exchanges between advisers and providers.



Price and value

The FCA defines 'value' as the relationship between the overall price the customer will pay over their lifetime with the product or service, and the benefits they're likely to receive. So it's not just about charges. The FCA suggests any firm assessing the value of a service might consider what it costs them to provide it and market rates for comparable services.

Considerations

In one example, the FCA refers to charges expressed as a fixed percentage of fund. Here, customers with larger funds pay substantially more than those with smaller funds, even though the costs of providing the service and the benefit the customer receives may be similar. Adviser firms should consider their approach to charging, if it's reasonable, and also how they will evidence fairness between groups.

Product value assessments

Manufacturers must undertake product value assessments and share the outcomes of these with advisers by end April 2023. The FCA is leaving it up to each manufacturer to decide how to describe this, which may be unhelpful for advisers if what they receive from different firms lacks consistency. It does clarify that manufacturers won't be required to share commercially sensitive pricing information. Instead it suggests the value assessment outcome can be 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 the total costs.' Manufacturers should also allow for their selected distribution methods in value assessments, which might take into account an element of likely adviser charging. There may be lessons to take from similar requirements for general insurance pricing in Policy Statement 21/5.

As well as assessing value for their services on a standalone basis, advisers must also use this information to assess whether customers will continue to receive fair value from the product after they've added in their own remuneration. It would be helpful for the FCA to set out a worked example of how it expects advisers to do this, building on likely manufacturer information.

Non-financial costs and benefits

The final rules and guidance also clarify non-financial costs and benefits to customers including their time and effort and the 'cost' to them of allowing firms to use their data. Such costs don't need to be quantified in money terms but should be considered qualitatively, which could be part of a broader financial wellbeing approach.

Consumer understanding

This outcome relates to all forms of communication – verbal, visual and written. The many existing regulatory requirements around communications must continue to be met in full.

Considerations

Advisers might consider if there's scope to improve suitability reports – perhaps making them easier to navigate or reviewing the use of any generic paragraphs.

The FCA accepts that some EU regulations may be unhelpfully prescriptive and is open to constructive suggestions around possible future improvements.

Promoting understanding

A key new Duty requirement is to step back and consider if communications truly promote understanding, helping customers to avoid foreseeable harm and pursue financial objectives.

Where interacting one-to-one, communications must be tailored to the individual, and their understanding checked. This is something firms should also consider recording evidence of.

Bulk communications

If issuing bulk communications, the FCA has dropped references to 'average' customers. Instead, these should be designed and tailored to be likely to be understood by the customers intended to receive them. This should include considering any characteristics of vulnerability likely within the target audience. Communications firms regard as significant should be tested both in advance and afterwards to assess effectiveness against expected outcomes.

The FCA also recommends communications should include the consequences of **not** taking action.



Consumer support

This outcome may be more relevant to those responsible for products once they've been purchased. But adviser firms should consider aspects such as managing and monitoring complaints and carrying out root cause analysis.

Considerations

What's considered as 'acting reasonably' in terms of ongoing support is likely to depend on whether ongoing advice is being provided. Again, a key consideration will be building an evidence base.

Vulnerable customers

Whether under consumer support or other outcomes, the new Duty places considerable emphasis on taking account of characteristics of vulnerability. Assessing which customers exhibit vulnerabilities is not a straightforward question and when offering ongoing advice, it's important to reassess regularly. Firms should also consider how they adapt their service when a vulnerability is identified – and how they evidence additional support. The final rules include references alongside vulnerabilities to customers with protected characteristics.





Evidence and monitoring

The FCA is placing a major emphasis not only on delivering good outcomes but evidencing this through MI. Adviser firms should review all existing MI for completeness against the Duty, including making sure it truly is measuring outcomes, not just customer satisfaction, inputs or transactional data. Demonstrating improved financial wellbeing could be part of this. The guidance does say appropriate MI will vary depending on the size, client base and types of products or services offered, so expectations of adviser firms will differ from those of manufacturers. Section 11 of the Guidance includes a long but helpful list of suggested MI.

A firm's Board or equivalent management body must review and approve the firm's assessment against the Duty at least once a year, producing a report. The first is due by July 2024.

What the Duty doesn't require

The FCA recognises no firm can protect customer from all risks of harm. They'll not expect you to protect against risks you 'reasonably believed the retail customer understood and accepted'. This could cover investment risks which were clearly explained. Also, the new Duty doesn't stop firms from supporting insistent customers who act against their advice – provided they've set out how the client's actions risk harm. Importantly, you will not be held responsible for the actions of others.

Next steps

The extension of the final deadlines is good news, but the requirement for Boards or management bodies to have an implementation plan in place by end October means urgent action is required. The [Feedback Statement](#) and [Final Guidance](#) are very lengthy documents but do need scrutinised at firm specific level.

Considerations

Helpfully, the Guidance now includes lists of key questions on each outcome and also on culture, governance and accountability. Search the Guidance for 'Key questions for firms'. There are 39 examples, many containing two related questions, and while not all may be relevant to adviser firms, they're well worth a read as a sense check of where gaps lie and should help shape implementation plans. Use our [Consumer Duty – key questions](#) to ask to find out if any gaps exist for your firm.

We'll continue to work with advisers like you, as we collaborate on this major regulatory milestone, with a shared obligation to deliver good outcomes for consumers.

To keep up to date with the latest Consumer Duty news and access further resources and insights, visit aegon.co.uk/consumer-duty

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