Consumer Duty: Short Best Practice Guide to Board Approval of the Implementation Plan

Introduction

The Consumer Duty[1] sets a clear and very high standard for firms in dealing with retail consumers and is one of the most significant pieces of regulation to be released in the last decade. It represents what the regulator terms a “paradigm shift” in its expectations of firms, and a key feature is that the Consumer Duty is an ‘Outcome Based Regulation’, which leaves firms to interpret the end state that should be achieved to comply with the duty.

TISA recognises that this makes the implementation planning challenging, which is exacerbated by the requirement for Board, or equivalent, sign off by the end of October 2022[2]. This deadline was introduced in the final policy statement, signifying that although the regulator has moved on the final implementation dates, it expects firms to advance their planning, and for Boards to be fully engaged in the implementation of Consumer Duty. The Board approval process is an opportunity to highlight the expectation of the Board and ensure that Consumer Duty is considered in all relevant discussions such as strategy and renumeration.

A firm’s implementation plan needs to cover the high-level requirements relating to whole consumer journey, starting with governance and oversight, through to its products and services, sales and servicing, marketing and distribution, consumer support, and risk and control functions. The FCA will expect the firms plans to be sufficiently detailed and well-reasoned and has already stated that firms should work on the assumption that they will be asked to share these plans with the FCA.

The FCA expects boards to be fully engaged in preparations and all directors should be able to show that they are familiar with the Consumer Duty, understand how it will impact on the business of the firm and are comfortable that the plan is sufficient to meet regulatory requirements. The plan should therefore present detail of how all requirements will be addressed based on in scope areas of the business, the requirements of Consumer Duty, and the assessed gaps.

The FCA have provided a useful set of questions in the Consumer Duty that firms should ask of themselves. The implementation plan should include the steps a firm will take to answer those questions, the timelines for delivery and how compliance will be demonstrated.

Whilst the board will ultimately approve the implementation plan and timetable, there are likely to be other Committees (depending on the size of the firm) involved and required in the implementation and oversight of the Consumer Duty. Where this is the case, we think it would be wise for these Committees to also have a chance to review and challenge the plan before it is presented to the board.

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[1] https://www.fca.org.uk/publication/policy/ps22-9.pdf

[2] https://www.fca.org.uk/publication/documents/consumer-duty-detailed-timeline.pdf

This guide is intended to provide additional information and considerations both for those responsible for delivery of the implementation plan, and for Board members.

Elements for a successful project implementation and effective Board sign off

Best practice for programmes of this type is to develop a detailed plan which is broken down into distinct, but linked, workstream activities, with owners assigned, and clear lines of dependency established. The presentation of the project should include an overarching summary of how the firm intends to meet the requirements of the duty. Workstreams should be defined, and key people, roles and responsibilities detailed.

The Board should be presented with evidence that the plan is achievable within the required timeframe to comply with the Consumer Duty. Time and resource will be required to implement changes to the systems, processes and procedures, educate and train staff or indeed make any cultural changes to the business. If this is underestimated, then the plan will face significant challenges. Realistic assessment of capacity and capability, and consideration to existing workloads should be made.

The plan should show the key activities required to implement the Consumer Duty, and the timelines for completion of these. Key milestones that the board will need to be aware of could be incorporated e.g., gap analysis completed. The level of detail included in this plan is likely to vary based on the type of activity and how far out the activity is within the timeline. For example, there may be more granularity around the activities to identify gaps against the requirements of the Duty. Less granularity may be expected for remediating these gaps, because the effort and work will not be known until gap analysis has been completed. It is important to recognise that plans should be dynamic and will evolve throughout the implementation period.

Although the structure and scope of each firm's implementation plan will vary, we have outlined areas below that we think it would be good practice to include. It should be noted that we do not expect all firms to have completed each of the below, but the plan should give consideration for how and when each element will be addressed.

All projects are undertaken with associated risk and these risks, together with reasonable mitigations, should be presented clearly and honestly within the plan. The Board should challenge a plan that does not present a sufficient view of what can go wrong.

Given that the plans will be presented for Board approval at an early stage in the implementation process, a provision for some reworking and revisions should be built into the plan as there should be an expectation that requirements for additional work and changes may be uncovered as the plan progresses. Thorough initial analysis will mitigate for this risk, but it should be included, nonetheless.

It is good practice to include assessments of the plan as it progresses, to provide assurance that the project is delivering against all requirements, and that the business is expected to be operating in compliance with the Consumer Duty within the timeframe set out by the FCA. The Board should review these assessments of progress on a regular basis, and where possible these should be conducted by the second or third line.

Finally, the Board should be given time to reflect on, and where necessary challenge the plan, before final approval is given.

The table below sets out key considerations under each element of the plan. If the activity is not completed, and therefore details cannot be provided, the plan should detail how and when completion of the activity will be achieved:

Scope	• Which products and services are in scope for Consumer Duty • Which products are back book, and which are live • Is the firm acting as a manufacturer or a distributor • What constitutes ancillary activity • Defines key terms in the duty, including 'foreseeable harm', 'unreasonable barriers', etc.
Requirements mapping	• Includes assessment of the Policy Statement, the rules, and the Final Guidance, as they relate to the firm • How the products and services meet the needs of consumers in the target market • Sets out what testing is planned • Shows the Duty being considered at all relevant levels including governance, culture, people processes, and across the 3 lines of defence such as remuneration, strategy and risk and audit • Gives full consideration of the FCA Final Guidance should be given to assess the FCA's expectations
Gap analysis	• Based on scope and requirements, should highlight areas the firm currently does not meet duty, or a plan to identify these areas • Provides clarity on the scale of work required
Roles and responsibilities	• Clearly defines and allocates responsibility for delivery, governance, and oversight. • Confirms appointment of a Board level 'Consumer Duty Champion' • Allocates responsibility for monitoring and oversight of delivery of the plan
Assessment of capability and capacity	• Evidence that the plan is achievable within the required timeframe to comply with the Consumer Duty • Includes realistic assessment of capacity and capability • Considers the impact on the BAU workload and existing projects- should there be a re-prioritisation
Risks, opportunities and dependencies	• Details the risks to success of the project • Describes how these risks mitigated from materialising • Includes contingency for changes to requirements and additional work built into the plan • Considers the dependencies between each workstream • Identifies opportunities and converts them into deliverables
Monitoring and oversight	• How will the project be overseen, both in terms of formal governance and 2nd/ 3rd line monitoring • Is the oversight independent to those with delivery responsibilities • What MI and reporting will be provided to relevant stakeholders and Committees to show progress against the plan • clear responsibilities for signing off project milestones
Measures of Success	• Considers how the changes will be embedded in the organisation and BAU compliance achieved • Provides clarity on what sign-off is required for the completion of the individual workstreams and the overall project

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Scoping, requirements and gap analysis

Firms will need to undertake a comprehensive review of their business to identify which of its products and services are in scope of the Consumer Duty, as well as defining the retail customer. It will need to satisfy itself that it has all the data and information it needs to complete gap analysis and identify any areas that do not comply with the Duty.

Consumer Duty rules need to be mapped against a firms' specific business model. The Consumer Duty is an overarching principle that should be embedded throughout the firm, while the supporting three cross-cutting rules and four consumer outcomes should form the basis of the mapping exercise.

Within the plan presented to the Board, the project should outline the approach to:

- identifying whether each rule (and associated guidance) applies to them, with rationale for the conclusion;
- interpreting each rule to determine how the firm does/ should comply with it;
- demonstrating how each rule has been implemented and is being complied with. This would enable others to trace the rule back to frameworks/ policies/ processes where appropriate; and
- second- and third-line assurance of the regulatory interpretation and traceability.

There are some steps that would be useful for firms to go through when considering the Consumer Duty against its specific business model. A summary of the approach to this work should be presented to the Board, and the Board should be prepared to request further detail as required:

- Define 'what good looks like' for each of the four outcomes. Define good outcomes and foreseeable harm. Conducting an end-to-end assessment is critical to understanding the product lifecycle;
- Assess how the current internal and external environment may impact customer outcomes;
- Clarify distribution chains with mapped, documented and agreed responsibilities;
- Consider the concepts of 'Higher, clearer standards', 'major shift', 'raises the bar' - set out how this will be achieved for firm including culturally, recognising the expectation of FCA to see material, measurable change;
- Define the closed book;
- Agree a 'day one' target state. Firms should intentionally focus on the areas of greatest potential for customer harm, clearly documenting their prioritisation approach and decisions;
- Review the governance and oversight framework to ensure that existing committees are sufficient to oversee the firm's compliance to the Consumer Duty. For example, consider whether meetings are attended by people with the right level of expertise and seniority, and whether meetings are long enough encompass Consumer Duty;
- Clarify plans for terms of reference and Board templates for committees to reflect Consumer Duty considerations;
- Set out Board oversight approach including lead up to implementation and on an ongoing basis (as well as the annual report);
- Map and define responsibilities across the three lines of defence;
- Appoint Consumer Duty champion at the earliest opportunity;

- Determine the metrics and data to monitor the firm's performance against the Consumer Duty. The firm will need to decide how it will measure performance against the regulator's expectations;
- Review customer communications channels and create an inventory of the documents that will need to be reviewed;
- Review policies and procedures to become compliant with the Consumer Duty;
- Create a training plan to ensure staff are aware of their general and specific responsibilities;
- Address drivers of culture (Purpose, Leadership, People, Governance) through Duty lens;
- Demonstrate clear consideration of characteristics that may lead to vulnerability; and
- Set out the approach to Oversight/Monitoring plans and relevant MI.

Roles and responsibilities

The implementation plan presented to the Board should clearly define and allocate responsibility for delivery, governance, and oversight. Senior management accountability is a core aspect of the Consumer Duty. Senior managers will be accountable for delivering good consumer outcomes within their areas of responsibility, in line with the Duty of Responsibility and the Conduct Rules under the Senior Managers and Certification Regime. For example, in most cases the senior managers in operational areas will be responsible for overseeing the work in their respective business units. Firms should consider and set out within the plan where the responsibilities for oversight and assurance will be allocated. The Board should seek assurance that the people allocated responsibility have the capacity and the capability to oversee or deliver the requirements.

To support an effective governance the FCA expects a firm to appoint a Board level Consumer Duty Champion at the earliest opportunity, which ideally should be an independent non-executive director. The non-executive director should have the required capability and capacity to perform the role and undertake any additional training as necessary. If the firm decides to appoint a Consumer Duty Champion that is not an independent non- executive director, it should set out clearly how the appointee will maintain independence and carry the appropriate influence within the firm.

Firms operating under SM&CR should have awareness that the Consumer Duty has the potential to attract personal liability for Senior Management Functions (SMFs). If, in the future, there are significant issues arising within the business in relation to Consumer Duty, the regulator is likely to use the Board approval of the plan as part of the evidence of whether senior managers demonstrated 'reasonable steps'.

Capability and capacity

Depending on the size and nature of a firm, it is likely that additional resource and budget will need to be allocated to ensure the Consumer Duty is delivered. Where the project has already agreed this, it should be provided alongside the implementation plan for noting. Where the budget or resourcing requirements haven't been agreed, approval should be sought. Firms need to understand the priority areas to ensure delivery of good outcomes for customers and ensure that the delivery timeline takes account of this prioritisation.

Evidence should be sought by the Board that the delivery is realistic based on the resources offered, taking into account both capability and capacity. Consideration should be given to BAU processes, on-going and future projects, and where necessary re-planning should be presented to the Board in order to accommodate the regulatory deadlines for implementation of the Consumer Duty.

The Consumer Duty requires that firms have sufficient oversight and decision-making capabilities both to implement compliance with the requirements as they come into effect, but also to ensure ongoing compliance.

Risks, opportunities, and dependencies

As with all projects, there will be risks that could prevent the project being delivered to the required quality and timelines expected by the regulator. Risks should be identified, assessed, and mitigations outlined. It is good practice to include a contingency plan/ approach in the case that the risk does arise. Some of these risks may have already become issues as the risk has materialised. Issues should also be raised as part of the implementation plan with an approach to resolving.

There are likely to be risks to the business if the project isn't delivered as expected or if the implementation prevents progress on strategic initiatives. For example, if the work to meet the Consumer Duty is much larger than expected before the gap analysis, or if compliance cannot be achieved by the regulatory deadline. The Board should be kept appraised if there are any elements of the project that are at risk of not being able to deliver to the agreed deadlines, and revised plans and dates should be represented to the Board at the earliest opportunity. Any failures of the project to deliver to deadline may give rise to risks to the business (regulatory, financial, reputational, etc.). These risks, together with the mitigating actions, should be presented to the Board with any revised plans.

The Consumer Duty presents a number of opportunities for firms, including making positive cultural changes relevant to the delivery of good outcomes for customers. It is good practice to articulate these opportunities within the plan, to ensure these opportunities are maximised and considered as part of measuring the success of the implementation.

Governance, monitoring and oversight

Governance structures are a critical means by which firms will achieve and maintain compliance with the Consumer Duty. It will be good practice to design the governance structure at the earliest opportunity, and ideally, prior to Board approval of the plan. Governance functions will need to have sufficient seniority and expertise to take decisions, for instance, pricing and lines of business. It should include activities such as monitoring internal data, for example the types of customer complaints, and overseeing any resulting changes to ensure continuing compliance. Some existing governance structures may be required to undertake additional roles, and some, such as the product governance committee, may already achieve the necessary standard. Regardless, explicit responsibilities mapped to the Consumer Duty should be documented.

The firm will need to decide how it will measure business performance against the Consumer Duty. At the outset metrics that will give the governance functions an indication as to whether the four consumer outcomes are being achieved should be defined. Reporting on the performance of these metrics should be planned, as well as oversight and assurance of the firm's compliance to the Consumer Duty to be conducted across the three lines of defence.

Throughout the project, it is good practice to ensure that the 2nd and 3rd line provide independent oversight and assurance of the work being undertaken to comply with the Duty. Where assumptions have been made in coming to the plan, these should also be outlined and monitored through the project.

Measuring of success

Due to the nature of the Consumer Duty, it can be difficult to identify the point that the firm is compliant with the regulatory expectations and when it therefore transitions into BAU activity.

The implementation plan will be insufficient if it does not consider how the changes will be embedded in the organisation. In addition to plans to implementing the Consumer Duty, the FCA highlight the importance of embedding the Consumer Duty, and therefore client outcomes, into culture. Firms may want to consider the activities they will undertake to do so, which could include a communications plan, training, amending people processes, and other cultural change activities. Firms should define how they will assess when the project has sufficiently implemented and embedded the expectations of the duty, and therefore when it can be considered as 'done', embedded in the culture and normal activity of the firm.

The plan should set out the process and responsibilities for final sign off of each workstream, and of completion of the project.

The plan should also include how ongoing monitoring of compliance to the Consumer Duty will be achieved, not only by the 2nd and 3rd line, but by the Board and any relevant Board committees.

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The Investing and Saving Alliance (TISA) is a unique, rapidly growing membership organisation for UK financial services.

Our ambition is to improve the financial wellbeing of all UK consumers. We do this by focusing the convening the power of our broad industry membership base around the key issues to deliver practical solutions and devise innovative, evidence-based strategic proposals for government, policy makers and regulators that address major consumer issues.

TISA membership is representative of **all sectors of the financial services industry.** We have **over 200-member firms involved in the supply and distribution of savings, investment products and associated services**, including the UK's major investment managers, retail banks, online platforms, insurance companies, pension providers, distributors, building societies, wealth managers, third party administrators, Fintech businesses, financial consultants, financial advisers, industry infrastructure providers and stockbrokers.

As consumers, the financial services industry and the economy react to and recover from the effects of the pandemic, the importance of the three key pillars of work that TISA prioritises has never been more apparent:

- **Strategic policy initiatives that influence policymakers** regarding the financial wellbeing of UK consumers & thereby enhancing the environment within which the industry operates in the key areas of **consumer guidance, retirement planning, later lifetime lending, vulnerable customers, financial education, savings and investments**.
- TISA is recognised for the **expert technical support provided to members** on a range of operational and regulatory issues targeted at improving infrastructure and processes, establishing standards of good practice and the interpretation and implementation of new rules and regulations covering **consumer duty, MiFID II, CASS, ESG/RSI, operational resilience, governance, conduct and culture, financial crime prevention** and a range of other areas.
- **Digital transformation initiatives** that are driving ground-breaking innovation and the development of industry infrastructure for greater operational effectiveness and revenue promoting opportunity for firms. TISA has become a major industry delivery organisation for consumer focused, digital industry infrastructure initiatives – **TISAtech** (a digital marketplace that brings together financial institutions and FinTechs for greater collaboration and innovation) and **TURN** (TISA Universal Reporting Network – a digital platform providing a secure data exchange for financial services using blockchain technology) – alongside projects **Digital ID** and **Open Savings, Investments & Pensions**. This reflects TISA's commitment to open standards and independent governance.

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