Consumer Duty
Best Practice Guide

March 2023

About TISA

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 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 240-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, Governance, Conduct and Culture, CASS, ESG/RSI, Operational Resilience, Taxation** 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.

Contents

1. Foreword

The FCA's new Consumer Duty ("the Duty") represents what the regulator terms a "paradigm shift" in its expectations of firms. The Consumer Duty is a package of measures comprising of the introduction of a new Consumer Principle, which require firms "to act to deliver good outcomes for retail customers", three Cross Cutting Rules and four outcomes which are the key elements of a firm-consumer relationship. These measures are intended to provide a framework in which firms can have certainty about the standards expected of them and correspondingly, the standards consumers can expect of firms.

The regulator wants to see firms put themselves in the customers shoes- to ask themselves would they be happy to be treated in the way that the firm treats its customers, act to enable not hinder good outcomes and assess the effectiveness of their actions. In summary, the regulator wants to see firms "get it right in the first place".

The rules impact all firms which distribute or manufacture products and/or services to retail customers, even if they do not have a direct relationship with the end customer and form a crucial part of the FCA's 2022-2025 strategy. The wide-ranging proposals will require firms to review their product suite, communications, and end-to-end customer journey, and to consider changes in areas including governance and accountability, MI and reporting, product design, pricing, distribution, servicing, and staff training - all within a challenging implementation timeframe.

The final rules and guidance released in July 2022, provided some much-needed clarification of how the Consumer Duty might be implemented across different sectors. However, this new set of measures are more principles based than we have previously seen and the definition of a proportionate and reasonable response to the Duty is largely left to firms to determine. However, the new Principal 12 and supporting rules bring into sharper focus any guidance that firms have been following in respect of attaining good Consumer Outcomes, and firms may want to consider how in following that guidance they are meeting the rules that are enforceable form July 2023.

This Good Practice Guide is intended to help firms, primarily in the saving and investment space, understand their obligations under Consumer Duty, addressing particular areas of the Duty that through collaboration with our members, we have identified as the most challenging. Through that same collaborative process, we have identified considerations firms might make in deciding how the practical application of the Duty might by undertaken.

TISA will be continuing its work on Consumer Duty as the industry works towards the final implementation deadline and beyond to identify areas and issues, where it would be useful for firms in the distribution chain to take a more standardised approach and will update this guide accordingly.

This Guide is the work of industry, and many firms and individuals have contributed to it. But I'd like to acknowledge in particular the work of Abrdn, Aegon, Baillie Gifford, BNY Mellon, Hargreaves Lansdown and Model Office.

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2. Introduction

2.1 Purpose and status of guidance

This guide has been drafted in response to the FCAs new Consumer Duty. It aims to assist firms in preparing for implementation of their plan. The guide considers the final rule and guidance as at the date of publication.

The guide sets out proposed industry good practice, together with a list of resources in the Appendix at the back. These are not intended to be exhaustive but represent those standards and resources that participant firms found useful in the drafting of this guide.

TISA wishes to point out that this guide neither reduces nor extends any binding legal, regulatory or supervisory requirements as regards the Consumer Duty.

For the purposes of this guide, the terms Consumer, Customer and Client may be used interchangeably, but the FCA definition of a retail consumer/ customer should be applied to the text in this document.

2.2 The Cross Cutting Rules

The cross-cutting rules underpin the standards of conduct the FCA expect under the Consumer Principle. They set out the overarching objectives for behaviour through three common themes applying across all areas of a firm's conduct. These rules need to be consistently considered and applied when considering the detailed behaviours and procedures in order to achieve the four outcomes:

- **Firms must act in good faith towards retail customers**

  Firms must act honestly, fairly, openly in a way that is consistent with the reasonable expectations of retail customer.

  This does not mean that firms cannot pursue commercial interests providing it does so in a manner which is compliant with Principle 12 and the cross-cutting rules.

- **Firms must avoid causing foreseeable harm to retail customers**:

  Firms must ensure that that all aspects of the design, terms, marketing, sale of, and support for its products avoid causing foreseeable harm, this includes unfairly exploiting the customer's behavioural biases or vulnerabilities. Where potential for harm is identified, action should be taken, which could include updating the product or service, amending the distribution strategy or withdrawal of a product or service.

  Firms should be alive to emerging information that helps them identify sources if harm, including actions and communications from the regulator such as dear CEO letters and enforcement actions.

Under this rule, firms are not responsible for preventing all harm, for example, if a firm has taken the appropriate action under the Consumer Understanding Outcome and reasonably believes that a customer understands and accepts the risk of a product, such as loss of capital, it will not breach the rule if it fails to prevent them.

- **Firms must enable retail customers to pursue their financial objectives**

Firms must consider how they can act to empower retail customers to make choices that are in their interests, ensuring that retail customers have the information and support they need, when they need it, to make and act on informed decisions. The design of the product or service should not frustrate that customers ability to do so. Customer should be able to switch or exit the product as easily as they entered it and should be able to complain about the product or service without unreasonable barriers.

In doing so firms should take account of behavioural biases and the impact of characteristics of vulnerability in both their product and service design and customer interactions.

Firms are not required to go beyond what is reasonably expected from a prudent firm and by retail customers in the delivery of the product or service, and firms are not expected to carry out activities or services that are beyond their permissions.

3. Governance, Culture and MI

3.1 Scope of the Consumer Duty

3.1.1 Defining the Scope

The new rules apply to the "retail market business" of UK FCA regulated firms, irrespective of which retained EU law regime they fall under (i.e. MiFID/UCITS/AIFMD). The Consumer Duty will apply to all firms "that can determine or materially influence retail customer outcomes, even if they do not have a direct relationship with the customer." [insert footnote and hyperlink to the FCA Dear CEO Letter dated 3 February 2023] The Consumer Duty is aligned the scope of the Consumer Duty with the existing scope of its sectoral sourcebooks (e.g. COBS, ICOBS, BCOBS, MCOB, CONC etc.). The Consumer Duty applies to all firms that conduct regulated activities in the UK.

Retail market business is defined as the carrying on of regulated activities by a firm as part of a distribution chain which involves a retail customer. The definition of the retail client can be aligned to the sections of the FCA Handbook which are relevant to the regulated activity. For example, for MiFID business, a retail customer is defined as any customer who is not a professional client. However, it should be noted that the definition of 'Customer' in the context of Consumer Duty also includes prospective clients in relation to regulated activity such as financial promotion.

For the purpose of Consumer Duty, workplace pension scheme beneficiaries are classed as retail customers.

The new Consumer Duty applies to all firms that "have a material influence over, or determine, retail customer outcomes" across the whole distribution chain. Firms need to determine the "material influence" that the activities they are undertaking have on the end retail client, and it is acceptable that not all aspects of the Consumer Duty will apply in every case. Firms with no direct contact with retail customers can still be in scope of the rules. For example, a manager that manufactures funds that are ultimately sold to retail, but who does not have any direct contact with retail investors, will still be in scope.

For a firm to conclude that it has no "retail market business", it will need to satisfy itself that

- it does not carry on any regulated activities directly for retail customers; and
- it is not part of a distribution chain involving an end investor which is a retail customer, where the firm materially influences outcomes for those retail clients.

Firms that have influence on material aspects of the design, target market or performance of a retail financial services product or service are in scope of the Consumer Duty.

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3.1.2 Retail vs. Professional clients

While the Consumer Duty does not apply in relation to customers who choose to be treated as professional clients in line with the COBS, it does apply to the process by which a firm determines the status of a customer. If after performing a 'look-through' to identify any retail customers who are invested in the product, the firm can conclude that the product or service is only provided to professional clients, the firm should satisfy itself that for any individual persons, who have 'opted-up' to professional client status, that all regulatory processes have been followed and that they are not classified as a retail client.

Where products or services are bought by both retail and non-retail customers, firms should consider whether they will need to develop different communications or support services for the two different groups or take a consistent approach for all customer groups.

3.1.3 Outsourcing

The FCA has clarified that unless an FCA-authorised outsource provider can determine or has a material influence over retail customer outcomes, it would not be subject to the Consumer Duty. However, *all* FCA regulated parties in the distribution chain are subject to Consumer Duty, and the extent to which an outsource provider has material influence will need to be agreed between the firm and outsource provider and clearly documented. It is important to bear in mind that the Consumer Duty aims to address everything that happens along the customer journey, including any outsourced services, such as call centres. It's therefore necessary to carry out a customer journey analysis. This includes assessing the points along the customer journey where the outcome for the consumer can in any way be influenced.

The points to consider in reaching conclusions are:

- activities being performed by the outsource provider;
- contractual arrangement, (i.e to what extent the outsource provider is acting under direction of the firm); and
- regulated status of the outsource provider (i.e. do they have regulatory permissions, or simply providing third party administrative services to the regulated firm).

3.1.4 Best Practice Key Takeaways

- **Map out the UK regulated activities-consider how the firm will assess any non UK products being distributed in the UK to retail clients**
- **Align the definition of 'Retail customer' to existing sectoral sourcebooks**
- **Ensure prospective customers are captured within Consumer Duty considerations**
- **Determine and document the materiality of the firm's influence over outcomes in relation to each activity it undertakes**

- **Review all products & services to identify where the end customer is a retail client, even where the firm does not have direct contact**
- **Review 'opt-up' process to professional client to ensure in line with regulatory requirements**
- **Review outsourcing arrangements, including customer journey mapping, processes, and contractual obligations. Ensure regulatory responsibilities are agreed and understood**

3.2 The Governance Framework

3.2.1 Governance frameworks and structures

The new Consumer Duty places great emphasis on the standard of care that firms give to their clients and expect this to impact on a firm's culture and behaviours. This is expected to include governance and the decision making in place at firms.

Governance structures are a critical means by which firms will achieve and maintain compliance with the Consumer Duty. 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.

A good governance structure should include:

- Appropriate policies in place to guide behaviour.
- Risk Management systems to identify, assess and manage risk.
- Clearly defined accountabilities and documentation around key delegations

The membership and terms of reference of existing committees should be reviewed to ensure that the time and expertise is available, as well as the relevant committees have a clear Consumer Duty responsibility. Depending on the size and complexity of the business, as well as the effectiveness of the existing structure, it may be advisable to implement a 'Consumer Committee' into the structure.

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 cross cutting rules are being complied with and 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.

The framework that is designed and developed should be adequate to monitor consumer outcomes, including a focus on vulnerable customers and other customer cohorts. It should be able to review how differential outcomes could be measured between different groups of customers.

3.2.2 Best Practice Key Takeaways

- **Review and map responsibilities, objectives, capacity and adequacy of existing committees to Consumer Duty**
- **Add Consumer Duty responsibilities where appropriate**
- **Consider whether any additional committees are required to support the Board and the Board Champion with their responsibilities**
- **Design performance metrics for committee and Board reporting**
- **Consider specific focus on vulnerability**

3.3 SM&CR and Consumer Duty

3.3.1 SM&CR Responsibilities

Under the SMCR, senior managers have clear responsibility for compliance with the requirements and standards of the regulatory system. The Consumer Duty raises this standard, creating a higher standard for senior managers to meet when performing their duties.

Solo-regulated 'core' firms for SMCR purposes have not been required to allocate responsibilities in the granular way that dual-regulated firms and solo-regulated 'enhanced' firms do when considering how overall responsibilities are allocated. To meet the requirements of Consumer Duty it should be clear which senior manager is responsible for which aspects of the business and control functions.

At present, conduct rule 4 requires staff who fall within the scope of the rules to *pay due regard to the interests of customers and treat them fairly*. This is broadly consistent with the wording of Principle 6 of the FCA's Principles for Businesses. The new Principle 12: *A firm must act to deliver good outcomes for retail customers* and the final rules introduced a new individual conduct rule 6 which reflects the new higher standard of the Consumer Duty, in that all conduct rules staff must "act to deliver good outcomes for retail customers", and reflect on the obligations under the cross cutting rules.

Notably, new guidance at COCON 4.2.31 places an obligation on SMF holders to notify the FCA of other firms' breaches or its own firm's breaches of Principle 12 or PRIN 2A, if the firm itself does not do so.

A person's seniority and the scope of their role may affect the scope of their duty under the new rule. The FCA is likely to apply higher standards to someone who is senior and whose role is more relevant to the Consumer Duty.

Training is most effective when it is tailored to the role being carried out. Firms should update their training programmes and tailor training to the roles and responsibilities allocated to staff in different areas of the business.

A cornerstone of both the SMCR and the Consumer Duty is the need to be able to demonstrate compliance with their requirements. Firms should therefore review the recording of decision making for SM&CR, to ensure that how decisions are made and recorded, including in relation to pricing are robust enough to meet the consumer duty.

Senior management will be expected to ensure that the likely outcomes customers will receive from the products and services sold, including that they represent fair value, are assessed, and documented on an on-going basis.

Appropriate MI is critical to evidencing that customer outcomes are being assessed and monitored by senior management. MI that is currently produced should be reviewed to ensure that it is fit for purpose and supports senior management in evidencing that they are taking “reasonable steps” to meet the requirements of the Consumer Duty. The MI should be discussed at a senior level within the business and sufficient time is allocated to customer issues at Board or Executive Committee meetings.

3.3.2 Best Practice Key Takeaways

- **Ensure responsibilities are allocated at a sufficiently granular level to demonstrate governance and responsibility in relation to Consumer Duty**
- **SMFs should be aware of the requirement to notify the FCA of a breach where the firm does not do so**
- **Deliver tailored training to senior managers to assist them in understanding their role in the firm’s compliance to Consumer Duty**
- **Review the procedure for recording decisions to ensure compliance can be demonstrated and evidenced**
- **Review that MI is appropriate for senior managers and Board members to understand and monitor customer outcomes, and that the review and challenge is documented and evidenced.**

3.3.3 Role of the Board

The board plays a critical role in setting the direction of a firm, setting its culture, and ensuring that there is robust governance in place to ensure the firm operates in a manner aligned with good client outcomes, regulatory expectations, good commercial outcomes.

Firms need to ensure that their board or equivalent governing body takes full responsibility for ensuring that the Duty is properly embedded within the firm, and senior managers are accountable for the outcomes their clients are experiencing, in line with their accountability under the Senior Managers and Certification Regime (SM&CR). A good way for a firm to assess if they have a functional board is to read FCA papers CP 10/3 and 15 that identified areas for immediate attention:

1. A domineering CEO
2. Posts held by individuals lacking technical competence
3. Inadequate ‘four eyes’ oversight of risk
4. A poor understanding of aggregation of risk

This means that those firms who have the right staff with excellent competence (skills) and Conduct (behaviour) that are aligned to design, deliver and monitor good practice that ensure good client outcomes across services and products stand the best chance of creating a constructive culture that provides good governance and oversight across the consumer duty requirements in this area.

Given the above it follows that firms require a competent and emotionally intelligent leadership team. There are so many examples of poor leadership leading to firm failure. So it is imperative that a firm's C-suite comprises of highly competent Senior Managers and Non-Executive Directors (NEDs) which should reflect a sound recruitment process and ensure that all communications feed throughout the organisation and staff understanding is checked regularly against good practice strategy. Indeed, with this in mind the FCA's TR16/1 also focused on functional boards and tone at the top asking firms to ensure they encourage challenge to status quo bias (a driver of group think) that can be detrimental to good practice.

More specifically, the Consumer Duty rules require firms to ensure their strategies, governance, and leadership lead to good outcomes for customers. A firm's board, or equivalent governing body, will be required to review and approve an assessment of whether the firm is delivering good outcomes for its clients which are consistent with the Duty, at least annually.

3.3.4 Strategy

The FCA are expecting firms to ensure their business strategy is consistent with acting to deliver good outcomes. The Duty may require firms to significantly shift their culture and behaviour to align with the needs of clients, and at the very least will expect much more explicit and conscious consideration of client outcomes. To achieve this, the focus on acting to deliver good outcomes should be at the centre of firms' strategy and business objectives.

Creation of a strategy and vision can take many forms. One way to ensure alignment with the duty is for firms to understand the following for its existing and future client base:

- Range of client groups for whom the firm is providing products and services e.g., range of knowledge and experience, vulnerabilities, needs and objectives.
- The outcomes that it is aiming to deliver to clients in the target market over the short, medium, and long term. This could include financial outcomes but also non-financial outcomes, for example the channels and level of client service provided.
- Whether the external environment, including the economic backdrop, is likely to change these outcomes or change the way that these need to be delivered. For example, the current economic environment may mean that different types of products or services will be needed to meet clients' needs, or that the way they are delivered may need to change depending on technological or regulatory developments.
- Whether the firm is delivering to these needs at present and identifying areas for improvement. This may include consideration of both current and future needs of existing clients and clients not yet acquired.

This is expected to provide firms with a strong overview of the outcomes and needs of current and future clients, enabling development of their strategy in alignment with the expectations of the Duty.

In most instances, firms are likely to already have a strategy in place. Where this is the case, it may be necessary to review and reassess this strategy to ensure and demonstrate alignment with the Consumer Duty. Firms may want to review their strategy in the short, medium, and long term, to ensure that:

- Where gaps have been identified, are these being addressed in the short to medium term by the implementation of the strategy. In particular, any foreseeable harm identified is likely to be an immediate priority. The FCA expect firms to prioritise acting to deliver good outcomes for retail clients.
- Any future business developments outlined in the strategy, including the launch of new products/ services or the growth of existing revenue streams, are aligned with the needs and outcomes that have been identified for future clients.
- The firm is taking steps to improve the outcomes delivered to its clients. Whilst significant gaps may not have been addressed in the initial exercise, the approach to understanding the needs of clients, and then delivering good outcomes to them, is likely to evolve over time and the strategy should allow for this continual improvement.
- The firm may want to give specific consideration to the needs and outcomes of vulnerable clients and whether the strategy has the necessary dedicated focus and resource.

In a large number of cases, firms will be demonstrating alignment of the existing strategy with outcomes, rather than having a separate section of the strategy for client outcomes. The FCA's expectation is that the Consumer Duty will be embedded throughout all activities, including prioritisation of business activities and investment spend.

An assessment of the strategy against the Consumer Duty may also cover elements of the firm's operation that are not directly client facing e.g., the 3LOD structure. Some of the areas a business may want to consider are:

- Maintaining, and further developing, systems and controls that are aligned with delivering good outcomes to clients and preventing risk events that could lead to detriment to client. This will be an important foundation to meet the foreseeable harm cross-cutting rule
- The risk, compliance, and internal audit functions providing challenge, oversight, and assurance that is focussed on the needs of clients, and the impact on clients that any weaknesses identified may present.
- Clear ownership and accountability for delivery of the strategy, with a focus on ensuring delivery is aligned with good client outcomes. This is likely to be part of a firm's approach to embedding the Consumer Duty in SMCR.
- Developing corporate and product and service governance frameworks to ensure adequate focus and consideration is given to the needs and outcomes of clients.
- Provision to develop the technical and leadership capabilities in the business, either through training or the addition of new resource, to understand and meet the needs of clients.
- Consideration of the cultural alignment with delivering good outcomes, including embedding the Duty in people policies and leadership.

The Consumer Duty requires a firm's board, or equivalent governing body, to review and approve an assessment of whether the firm is delivering good outcomes for its customers which are consistent with the Duty, at least annually. In addition to including an assessment of whether products & services are delivering good outcomes and outlining action taken to address poor outcomes, the attestation may include how the firm's future business strategy is consistent with acting to deliver good outcomes under the Duty.

The information and guidance outlined in this section may be used by firms as a reasonable set of steps to demonstrate consideration of whether the strategy is aligned with good client outcomes and will also be an important vehicle for the board to discuss and challenge the strategic alignment with the Duty and to demonstrate consideration of good client outcomes. A clear and thorough paper, and strong minutes of discussion and challenge are therefore an important part of complying with the Duty.

Before signing off the annual assessment, boards should be comfortable that the business strategy is consistent with its obligations under Principle 12 and PRIN 2A and, if changes are required, they should agree any amendments to ensure they remain aligned with Principle 12 and PRIN 2A.

3.3.5 Application to Business Model

When considering the strategy, the board should also consider whether the business model is aligned with good client outcomes and to ensure they are acting in good faith towards their clients. The FCA have made it clear that acting in good faith does not mean a firm is prevented from pursuing legitimate commercial interests or seeking a profit. However, the model should be aligned and compliant with Principle 12 and PRIN 2A.

As part of their annual attestation, firms should consider the key revenue streams and drivers of profitability. For each of these, they should review to ensure:

- Improved revenue and profitability, or indeed commercial viability, is not driven by client behaviours or decisions that is not aligned to the delivery of good outcomes. This should include ensuring that firms are avoiding foreseeable harm to clients.

Where increased client activity or transactions could lead to better commercial performance, the firm should ensure that they have controls in place to prevent clients from doing so at the expense of good outcomes. For example, if a client trading shares more frequently leads to increased revenue, the firm should ensure they have controls to prevent them from overtrading.

3.3.6 Consumer Duty Champion

The Consumer Duty sets out the expectation that firms should have a champion at board level who, along with the Chair and the CEO, ensures that the Duty is being discussed regularly and raised in all relevant discussions.

Appointing a board champion

Many firms will have already appointed the Consumer Duty Board Champion and they will have played an active role in providing oversight and challenge to the implementation plan that has been approved at board level. However, the focus should be on finding the right person for the role rather than finding someone quickly. When firms are appointing a board champion, they may want to consider:

- The champion should be an independent non-executive director where firms have one
- The expectation is that the champion will not be the Chair of the board, as the champion is expected to work with the chair and CEO.
- The champion is likely to be at an appropriate level to have a broad impact on consideration of client outcomes. For some firms with multiple legal entities, this would potentially mean to champion should sit on an overarching board or Committee rather than being on an individual legal entity board. In some instances where firms think there is rationale to do so, you may want to consider also having Consumer Duty champions on some or all of the legal entity boards.
- The skills, capabilities, and experience of the NED. A champion should be someone who understands the needs and objectives of the firm's clients. This will be crucial in ensuring that the challenge provided is effective and targeted at the key issues.
- For smaller firms, the FCA have highlighted their expectations are designed to be proportionate. Where a firm doesn't have any iNEDs then they may want to consider having an independent representative on the board/ senior Committee to act as the Consumer Duty Champion or consider having a senior executive member to act in this role.

Role of the Consumer Duty Champion

The Consumer Duty is not prescriptive about the role of the Consumer Duty Board Champion as the FCA want firms to implement the role in the context of their business models. We agree that the role varies based on the context of the firm but have provided some guidance to firms on what the Consumer Duty Board Champion could/ should be doing.

It is important to note that the role is designed to be filled by a non-executive director, who will not be involved in the day-to-day running of the business. This can create a challenge when considering the role of a board champion, who may feel the need to have more detail to perform the role effectively. We have outlined what the scope and responsibilities of the role may, and may not, include below to ensure that NEDs can perform effectively without compromising the independent status:

- The champion should ensure that papers presented to the board have adequately considered the impact of any proposals or discussion points on client outcomes. They should use their understanding of clients to challenge whether the impact on clients has been appropriately understood and presented.
- During board discussions, the champion should ensure that the board have considered client outcomes sufficiently when arriving at any decisions or approvals. If this is not the case, the champion should raise concerns and provide challenge. It is important this is documented through the minutes.
- An SME in the business with oversight of the delivery and ongoing monitoring of good client outcomes should provide an update to the board champion ahead of the board cycle. This will ensure the board champion is able to provide more effective and targeted which outlines
    - General overview of outcomes being delivered to clients which covers all Consumer Duty Outcomes.
    - Any weaknesses or concerns arising in terms of delivery of good outcomes to clients, including where any client harm is being realised and action being taken to address this
    - An update on action taken to address any known weaknesses

- Any external trends that are being monitored that may have an impact on client outcomes e.g., changes in the economic environment. This should include steps being taken to support clients.

This update will ensure the Board Champion can provide effective challenge during discussion at the board to ensure that client outcomes are being considered in the most effective manner.

- The FCA have provided useful questions in the Consumer Duty that the board should be able to answer. These should not be asked as a tick- box question during board meetings, but the champion should familiarise themselves with the questions and ensure they feel the intent is being considered in relevant discussions. Where this is not the case, the champion should provide challenge to the Committee and presenter to ensure client outcomes are considered.

The role of the Consumer Duty Champion does not entail:

- Being responsible for delivery of good client outcomes across the organisation
- Being the only board member to provide challenge and engage in discussion around Consumer Duty. The FCA have been clear that this does not impact on the board's collective responsibilities and is over and above the additional layers of challenge from the board.
- Engaging with individuals across the organisation to ensure they are conducting their roles in a manner aligned with good client outcomes (outside of board meetings)
- Please also note that this is not a prescribed responsibility under SMCR

3.3.7 Best Practice Key Takeaways

- **Design and implement an assessment of whether the firm is delivering good outcomes in line with the firm's definition of good outcomes and obtain Board approval of the completed assessment at least annually. It is recommended this assessment also includes how the firm's future strategy is aligned with Consumer Duty.**
- **Evidentially align strategy with good outcomes for the current and future client base (target market)**
- **Ensure Consumer Duty is evidentially considered in decision related to prioritisation of business activities and investment**
- **Give specific consideration to the needs and outcomes of vulnerable clients and whether the strategy has the necessary dedicated focus and resource**
- **Clear and thorough papers, and strong minutes of discussion and challenge are an important part of complying with the Duty. A Consumer Duty Champion should consider the production of a Board report to include the MI referred to in section 3.10.1 of this document.**
- **Ensure improved revenue and profitability, or indeed commercial viability, is not driven by client behaviours or decisions that is not aligned to the delivery of good outcomes**
- **Ensure the Consumer Duty Champion has appropriate skills and seniority to carry out the role, as well as independence from the operational responsibilities. Where appointing an iNed is not practicable, these elements should be carefully considered**

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3.4 Culture, and Mindset

3.4.1 Culture

Culture is at the heart of how the FCA authorise and supervise firms. Each firm's culture is different. One size fits all model and the FCA do not prescribe what any firm's culture should be. It is up to leaders in firms to manage the drivers of behaviour in their firms to create and maintain cultures which reduce the potential for harm. Firms should be able to articulate and assess what is really meant by culture and values, and how the culture will lead to delivery of good outcomes to consumers. A firm may need to consider taking steps to achieve an alignment between their organisational cultures and the objectives of the new Duty.

Firms' cultures have been a major root cause of conduct failures, and the FCA will continually focus on this area as part of Consumer Duty. Firms will need to implement programmes which will help prevent harm caused to customers by inappropriate behaviours.

To ensure good practice is replicated and permeates throughout the organisation, firms should ensure they recruit staff who fully understand its importance to generating client good outcomes and are able to clearly articulate the tools and strategies used to other individuals involved, gaining their. They can be viewed as culture carriers, ensuring that good practice is maintained, something that should be helpful to those who do not necessarily have a designated Non-Executive Director(s) Consumer Duty champion

Culture is the habitual behaviours and mind-sets that characterise an organisation. The FCA recognise that there are many drivers of behaviour which firms can identify and manage. The focus on 4 key drivers which can lead to harm:

- Purpose
- Leadership
- Governance
- People – 'approach to rewarding and managing people'

In addition, firms should have in place mechanisms to make and assessment of culture, therefore proactively identifying harms and will prevent foreseeable harm. Firms also need to ensure that their culture supports and is conducive to their staff acting in good faith.

The FCA have stated in their guidance on consumer duty that:

- Firms must '*ensure that the interests of their customers are central to their culture and purpose and embedded throughout the organisation*'.
- *'Firms should embed a focus of acting to deliver good outcomes in each of their business functions and put customer interests at the heart of their business model and culture.'*

The starting point for firms is to look at what practical action can be taken in regard to the four drivers.

Below are some questions firms might want to consider in relation to aligning culture to the effective delivery of the Consumer Duty:

- Does the firm's purpose (whether publicly articulated or not) align with its obligations under the Duty? How is it embedded and understood throughout the organisation?
- How does the organisation's culture support the delivery of good outcomes for customers?
- How does the organisation ensure that individuals throughout the organisation – including those in control and support functions – understand their role in delivering the Duty?
- 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?
- Is the Duty being considered in all relevant discussions such as strategy and remuneration? Are customers outcomes a key lens for Risk and Internal Audit?
- How is the firm ensuring that its remuneration and incentive structures drive good outcomes for customers?
- Are staff encouraged to be as supportive to customers wanting to exit a product as to cancel it?
- Is customer feedback and complaints routinely analysed to help improve the customer journey?
- Are the products and services equipped to support customers with different needs, including those in circumstances or with characteristics that can lead to vulnerability?

3.4.2 Purpose

The firm's purpose should be consistent with the Duty. Staff should understand how the firm's purpose is relevant to delivering good outcomes for customers.

- Communications and engagement plans should be in place, part of this firms should link consumer duty to strategy and purpose.
- An effective comms plan will clearly define different audiences for both internal and external stakeholders and the tone of the messages should align to a firms internal values.
- Subject to proportionality firms may wish to review their purpose in light of the new requirements.
- Firms and their management body should also review their strategy and identify if their strategic objectives are consistent with the duty, if there are any activities which are not consistent then the management body should take action.

3.4.3 Leadership

The firm's leaders should be competent and accountable, and they should demonstrate commitment to delivering good outcomes for customers:

- Leaders should be the carriers of culture. Creating a culture where people feel empowered and are able challenge issues. In addition leaders need to be seen to act on issues when they are raised.
- Identifying the key influencers in the business and engaging them early will help promote the key outcomes which firms' consumer duty project(s) are trying to achieve.
- Targeted training and communications for leaders will be key so they can ensure consumer duty is integrated into their day-to-day processes.

3.4.4 Governance

Governance structures are a critical means by which firms will achieve and maintain compliance with the Consumer Duty.

- Appropriate policies in place to guide behaviour.
- Risk Management systems to identify, assess and manage risk.
- Clearly defined accountabilities and documentation around key delegations.
- Please see 3.2 governance section for more information.

Firms should also review the FCA questions outlined in FG22/5.

3.4.5 People

Delivering good outcomes for customers should be reflected in the way in which people are managed and rewarded. They should be trained to be able to deliver good outcomes for customers:

- Early engagement with key decision-making committees e.g. reward committee or executive committee. Committee members should be fully briefed on the consumer duty requirements in order for them to assess whether reward schemes are consistent with the overall duty.
- Assess how current reward structures are used including any data which may be fed into the process and identify enhancements. These should be consistent and aligned with outcomes defined by the firm.
- It is up to each individual firm to decide what an appropriate level of reward should be attributable to consumer outcomes.

3.4.6 Best Practice Key Takeaways

- **Focus on the four drivers of culture- Purpose; Leadership; Governance; and People and align to Consumer Duty**
- **Ensure the culture is conducive to, and encourages staff to act in good faith and act to achieve good outcomes**
- **Ensure the purpose is understood throughout the organisation**

- **Individuals throughout the organisation – including those in control and support functions – should understand their role in delivering the Duty**
- **Leader should demonstrate commitment to delivering good outcomes**
- **Appropriate governance structures should be in place to define key accountabilities, identify and mitigate risk and have appropriate policies to guides behaviours**
- **People should be trained to put the customer at the heart of the business and deliver good outcomes**
- **An element of reward, appropriate to the roles and responsibilities should be attributed to Consumer Duty and consumer outcomes**
- **Staff should feel empowered and feel safe to challenge and raise issues where they feel the firm might not be acting to deliver good outcomes for customers- these are acted on**
- **The Duty is considered in all relevant discussions such as strategy and remuneration**
- **Products and services equipped to support customers with different needs, including those in circumstances or with characteristics that can lead to vulnerability**

3.5 Role of Second and Third Line

Below sets out a list of responsibilities that is recommended to be undertaken by each of the elements in the three lines of defence. Firms should, of course, undertake their own review as where these responsibilities best sit, whilst ensuring that there is sufficient segregation of duties to provide an adequate risk management model:

3.5.1 First Line

- Key that training and tools should be delivered to support first line, including universal approach but also recognition of roles and responsibilities (not one size fits all).
- Should be empowered to challenge where they think processes/procedures are not delivering good outcomes.
- Should be supported to challenge where they think processes/procedures are not delivering good outcomes.
- Appropriate tools and resources in place to support consumers to make effective decisions.
- Clear processes to ensure any change to products and services is carried out in a Duty-compliant manner.
- Direct communications/interactions with consumers are effectively reviewed and tested to the standards required by the Duty.
- Able to show consideration of different customer types across all aspects of first line interaction.
- Proactive approach to avoiding harm embedded across the first line.
- Understand the consumers end to end experience with the firm to understand if good outcomes are being achieved.
- Identification and management of risk events and helping to drive a strong risk and customer culture.

3.5.2. Second Line

- Embedded in the change approach for Duty.
- Able to evidence effective challenge on consumer outcomes through RMF, Duty project and into Board/Champion.
- There should be clarity on how the 2nd line feeds into the Duty Champion and possibly other committees/forums.
- Able to evidence that the higher expectation on standard of care is being achieved.
- Evidence continuous assessment and oversight of firm's adherence to the Duty, developing appropriate MI and insight.
- Effective monitoring plans in place which are reviewed and improved based on outputs and findings, with appropriate actions and mitigants recorded.
- The provision of advice and guidance on matters around decision making and driving good outcomes.
- Promoting appropriate training and education

3.5.3 Third Line

- The Internal Audit Annual Plan includes adequate/sufficient coverage of all changes made to the firm's controls (i.e. newly created controls or enhanced controls) as a result of Consumer Duty to provide assurance that the controls are designed and operating effectively.
- Challenge the business on the data/information included in the annual Board Report to ensure it is reliable and is validated.
- Internal Audit could be engaged in the programme set-up, planning, and design and build phases of Consumer Duty so that the Chief Audit Officer is able to provide their opinion – but still need to retain and evidence independence.

3.5.4 Across the lines of defence

- Able to demonstrate how the Duty interacts with the four drivers of culture (Leadership, People policies, Governance, Purpose) to achieve good outcomes.
- Defined for the firm what good outcomes and foreseeable harm look like for their business, colleagues, and customers.
- Remuneration and performance management frameworks are Duty-aligned to ensure staff act in good faith to deliver good outcomes for customers.
- Production of appropriate MI evidencing adherence to the duty (which can be provided on request to FCA).
- Able to evidence all conduct staff across the business, reasonably and proportionately in line with job and seniority, meet the standards of conduct rule 6.

3.5.5 Best Practice Key Takeaways

- **Undertake a review if the business to determine where responsibilities best sit**
- **Ensure segregation of duties and preserve the independence of second and third line**
- **Embed the second line into the approach to implementation of Consumer Duty**
- **Clarify how each line feeds into the Board and other governance committees**

3.6 Outcomes, Foreseeable Harm and Reasonable Steps

3.6.1 Defining foreseeable harm and reasonable steps

Overall, the Consumer Principle places a new emphasis on consumer outcomes and firms' obligations to be proactive in delivering those outcomes. The FCA do not directly define 'harm'. Instead, they offer multiple examples across all 11 sections to illustrate it. Therefore, a firm, supported by these examples, should review its products, services and regulated activity and consider what harms a customer is at risk of being subject to, to arrive at their own definition of harm. The list of harms may not be exhaustive and should be reviewed regularly in line with M.I. such as customer feedback and complaints.

The Consumer Duty is underpinned by the concept of 'reasonableness'. In practice, this means that firms are responsible only for what was reasonably foreseeable. Therefore, what a firm knew at the time about its customers, or what a firm should be reasonably expected to have known, is the key factor in being able to define the term of reasonableness. However, 'reasonableness' does remain an objective standard, and there is a risk that firms may not be able to reach this definition for themselves. Therefore, it is recommended that the rationale for any conclusions be fully documented and reviewed by the appropriate governing structure.

If any of those 'knowns' can lead to harm, then the scenario should be considered as 'reasonably foreseeable harm', and firms should take action to mitigate such occurrences.

3.6.2 Defining Outcomes

Firms should focus on the impact of their actions on consumers, rather than just on the process itself. The delivery of a "good outcome" does not have an established legal meaning, but below is a non-exhaustive list of some of the factors that a firm might consider in establishing the meaning of a 'good outcome' in relation the firms business:

- Whether the products and services offer fair value
- Whether products and services are well designed for the target market and effectively distributed to that target market
- Whether products and services are inclusive by design
- The effectiveness, visibility, and accessibility of support available to customers
- The flexibility of the firm, and how it deals with non-standard issues

- How the firm deals with vulnerability and changing needs of consumers
- Operational resilience and availability of services
- Data privacy and protection

3.6.3 Best Practice Key Takeaways

- **Define the outcomes that customers can reasonably expect in relation to each product and service offered**
- **Consider what harms customer or prospective customers are at risk of in engaging with the products or services, and take steps to mitigate**
- **Ensure that characteristic and circumstances that can lead to vulnerability are consider in these definitions**
- **Consider what is known about the customer or target market or what could be reasonably expected to have been known, in defining foreseeable harms**
- **Be aware the 'reasonableness' is an objective standard in law, but consider what is reasonable in the context of the materiality of the firms influence over the outcome for the customer.**

3.7 Proportionality

The Consumer Duty applies proportionately and the FCA does not expect firms to go beyond what is reasonably expected given the nature of the product or service they offer and the characteristics of the customer, and the firms role in the distribution chain. Firms are not expected to review products and services for each customer, but to consider the product or service as a whole. Firms are not responsible for the activities/actions of others within the distribution chain (except in the case of specific regulatory or contractual requirements), and are only responsible for their own acts and omissions. However, they must notify the FCA if they become aware that:

- another firm in a distribution chain is not *"or may not be*" complying with the Duty; or
- another firm in a distribution chain may have caused, or contributed to, harm to retail customers.

It should be noted that Consumers will remain responsible for the decisions they make, but firms must use more judgement when considering the impact of their actions on consumers.

3.8 Staff Training

3.8.1 The Training Plan

Firms should have in place a training management plan for customer support staff that addresses the needs of frontline staff at different points of their career journey. From trainee to manager, firms must be able to evidence how their customer support culture reflects the objectives of the consumer duty and the learning/development aspect is an important indicator of culture. Firms should assess how their target market is likely to need or consume support and tailor their training programmes accordingly.

A firm's training framework should be documented in detail, with appropriate records kept of key personal development activity.

Ongoing assessment of competence and/or the requirement to address performance issues in frontline staff should be a priority for firms. Quality assurance monitoring programmes and performance management systems should take account of the principles of the consumer duty. Similarly, customer feedback in the form of complaints or compliments should be reviewed and action taken to highlight how frontline staff are performing in relation to customer expectations.

However, firms should be aware that at times a happy customer is not necessarily one that has been treated correctly. In considering staff training modules, it's important to recognise that behavioural biases may make customers seek a specific outcome that may be to their detriment and staff should have the skills and knowledge to identify these situations.

Firms should ensure that training is impactful and contributing to achieving good outcomes, relates to the live environment and is ongoing.

Firms should also consider specific and targeted training for Committee members, chairs, Company Secretary support to ensure they understand the need to consider client outcomes and that this is robustly challenged, and oversight is properly recorded. This is a very important way to demonstrate and evidence compliance.

3.8.2 Information cascades

Frontline staff should have sufficient information resources to answer customer queries. Where there is a particularly material or detailed event happening, firms should consider the likely questions that customers will have. Even where these questions are covered in written communications, it is likely that additional questions will be offered from customers asking about their own personal circumstances. Firms should engage with frontline staff in advance of a material event to ensure a good understanding is achieved and for consistency of messaging to customers. Firms might consider:

- In person / online briefings for frontline staff
- Development of FAQs
- Ongoing access to internal subject matter experts

- Resource hub (intranet, Sharepoint etc) where actual customer questions and feedback can be stored, accessed and recycled.

3.8.3 Best Practice Key Takeaways

- **Training should be impactful and contributing to achieving good outcomes, relates to the live environment and is ongoing**
- **Training should be tailored to experience and seniority/ level of responsibility**
- **Training should be tailored to the needs of the target market**
- **Ongoing assessment of competence/ performance should be a priority**
- **Information cascades and additional resource should be available to staff to support customers and deliver good outcomes**

3.9 Management Information

3.9.1 Developing MI

There has always been a requirement for firms to monitor outcomes and provide sufficient MI to senior management. This is reflected in SYSC, PRIN, COCON and the SMCR rules. Consumer Duty brings a widening and deepening of these requirements.

The Consumer Duty principle has an expectation that firms will:

- Help customers meet their financial objectives by better understanding what they value from products and services and what their needs are.
- Reduce the risk of customers experiencing foreseeable harm by being more active in assessing where detriment could occur

It is clear that meeting these requirements will require firms to enhance the current range of MI they capture and bring in additional data points and analysis to effectively monitor that they are delivering customer outcomes in line with the objectives.

Meeting the monitoring and MI requirements of Consumer Duty requires:

- A greater use of qualitative data: The FCA has an expectation that firms will seek greater insights into the needs and motivations of their customers. Equally, they will gain a greater understanding of how customers interact with and understand the products and the sales process. This will be difficult to achieve by merely relying on quantitative data.
- A greater focus on customer behaviours: Linked to the point above, firms should focus more on monitoring how customers behave during the sales process, and in their use of the product. This is a particular challenge with online-only channels, where firms will need to devote greater efforts and

resources to be able to demonstrate they can evidence a level of comfort and assurance that customers are getting good outcomes

- A greater use of leading indicators: The cross-cutting rule of preventing 'foreseeable harm' has a clear expectation that firms will take a much more forward-looking view of what could go wrong with their product or service. The FCA has an expectation is that firms will identify and prevent issues before they impact customers. Achieving this will require far greater use of indicators that highlight problems and issues before risks crystalise.
- A use of a variety of internal and external sources: Honest and open staff feedback can be a useful indicator of how customers are being treated. Equally, there are external sources such as the FCA's financial lives surveys.

Below is a non-exhaustive list of the types of MI that a firms might consider relevant :

- Business persistence data
- Behavioural indicators
- Number and root cause of complaints
- Customer feedback
- Results of testing and monitoring activity
- Second and third line reports
- Training and competence records
- Feedback from other parties in distribution chain
- Staff feedback

The MI should be consider through the lens of the cross-cutting rules, and measured against the expected outcomes for customers.

3.9.2 Challenges in developing effective MI

Achieving the right results for Consumer Duty will mean many firms will have to uplift their current processes, and potentially address some long-standing weaknesses in the existing framework:

- An over-focus on lagging indicators – It is commonplace to see firms build their reporting based on historic data and indicators that relate to poor customer outcomes that have already occurred. MI such as customer complaints, cancellations or funds withdrawals are important metrics, but they are lagging indicators. It is more difficult to develop leading indicators, but these should be considered a core part of any effective MI suite.
- An over-focus on a snapshot view: Linked to the point above, it is difficult to develop a forward-looking assessment of potential issues if the firm is only taking an isolated view of the position, each month. It is important to show trends and projections in order to provide an early indicator of where corrections are required.
- An over-reliance on available information – This was a common issue within firms long before Consumer Duty, and it continues to be a challenge. Firms should focus their efforts on what information is required, as opposed to what information is available.

- A misalignment between the metrics and the risks – Linked to the point above, firms should start their assessment of MI and reporting requirements based on the identified risks they are seeking to control against. The journey to a comprehensive Consumer Duty MI suite should start with an assessment of what the Key Risk Indicators (KRIs) are, and how they can be tracked and monitored.
- A narrow range of metrics: As highlighted in the FCA's guidance, there is an expectation that firms will be considering a broad range of data. There are clear weaknesses in any MI framework if customer complaints are the predominant indicator. Or if there is an over-focus on commercial metrics rather than data on customer outcomes.

3.9.3 Reporting and Monitoring

But merely having a comprehensive suite of MI is not sufficient. Firms will need to demonstrate that they are using this information to make effective decisions to control risk and improve customer outcomes.

Firms will need to demonstrate that:

- There is sufficient reporting at a 1st Line level to track issues and make the required course corrections
- Insights and information is being used effectively in decisions on product, pricing and target market
- Senior management are providing MI and information at the right level of detail, so they can make informed decisions (e.g. the detail provided in Board and Exco packs)
- Senior management can demonstrate (and evidence) that they are reacting appropriately to the information they are receiving, and taking the necessary actions (e.g. the minutes and outputs from committees and forums)
- There is effective information sharing with counterparties. The FCA have a clear expectation that manufacturers and distributors will be working closely together and sharing relevant information regarding customer outcomes. Where firms cannot gain the necessary insights from their counterparties, there should be a serious consideration as to whether they can continue the relationship.

The combination of – the right information, shared with the right people, leading to the right outcome, will be the yardstick by which firms' approach to MI and reporting will be measured.

Specific best practices relating to each outcome are detailed in the relevant sections of this guide.

3.9.4 Best Practice Key Takeaways

- **Current range of MI captured will likely need enhancement and bring in additional data points and analysis to effectively monitor that they are delivering good customer outcomes**
- **MI should provide greater insights into the needs and motivations of their customers using qualitative data**
- **More focus should be placed on monitoring how customers behave during the sales process, and in their use of the product or service**

- **Firms should identify and prevent issues before they impact customers. Achieving this will require far greater use of indicators that highlight problems and issues before risks crystalise**
- **Honest and open staff feedback can be a useful indicator of how customers are being treated. Equally, there are external sources such as the FCA's financial lives surveys**
- **Firms should be able to demonstrate that they are using MI to make effective decisions to control risk and improve customer outcomes**
- **The data should incorporate the four outcomes' in line with Consumer Duty requirements**

TISA

4. Products and Services

4.1 Introduction

4.1.1 Summary of Outcome

The objective of the Consumer Duty in relation to products and services, is that they should be fit for purpose i.e., designed to meet the needs of the consumers in the target market. The rules apply to all products and/or services marketed or distributed to retail consumers, for both current (open) and closed (legacy) business. The rules also apply to existing products and services before they are sold to new customers. Senior management, and the Board, will be expected to ensure that the likely outcomes customers will receive from the products and services are properly assessed and documented

The product and services outcome builds on the existing product governance (PROD) requirements for firms. Firms are expected to comply with these obligations through the lens of the Consumer Principle and the cross-cutting rules.

The rules provide a range of requirements, including the need for firms to ensure that:

- the design of the product or service meets the needs, characteristics and objectives of customers in the identified target market
- the intended distribution strategy for the product or service is appropriate for the target market
- it carries out regular reviews to ensure that the product or service continues to meet the needs, characteristics and objectives of the target market
- the product or service does not adversely affect groups of customers in the target market, including groups with characteristics of vulnerability
- the product or service avoids causing foreseeable harm to customers in the target market

The consumer principle is underpinned by cross-cutting rules providing greater clarity on the FCA's expectations under the new Principle and these cross-cutting rules should be the key driver in achieving the four outcomes. Under these rules, retail clients should receive products and services that meet their needs and offer fair value.

In complying with these cross-cutting rules, behaviours across all of the firm's activities, from high-level strategic planning to individual customer interactions need to be considered. The FCA's proposals note that these behaviours will need to be interpreted by firms in the context of:

- The nature of the product/service offered (i.e. high levels of complexity will require further information/assistance for customers).
- The relevant distribution chain.
- The reasonable expectations of consumers for that particular service/product (i.e. where the added value marketed by the firm is to be delivered via customer service).
- The specific characteristics of the customers (i.e. vulnerability).

The Consumer Duty identifies design as a means of preventing foreseeable harm. As well as the role of manufacturers in the design process, the product and services outcome also focuses on the role of distributors, including those in the distribution chain that do not have a direct customer relationship. The scope of the Consumer Principle covers all parties in the distribution chain for retail customers, but in a manner proportionate with their influence on the design, operation and distribution of the relevant product or service.

It is essential that a firm understands and documents its services and products and how they relate in the distribution chain. Any ancillary activities including unregulated activities necessary to the completion of regulated activities, should also be considered, for example, product design or customer support are not themselves regulated activities but are necessary activities linked to regulated activities.

It is worth noting unregulated firms are bound by the general consumer law including consumer protection from unfair trading regulation 2008.

The products and services outcome shouldn't be considered in isolation. The price and value outcome will be particularly relevant and, essentially, runs alongside the products and services outcome. The cross-cutting rules are also a very important consideration and should drive the outcomes.

4.1.2 Best Practice Key Takeaways

- **Products and services, should be fit for purpose i.e., designed to meet the needs of the consumers in the target market**
- **The rules apply to all products and/or services marketed or distributed to retail consumers**
- **Firms should review the requirements of the rules in relation to design, distribution strategy, characteristics and objectives of target market, vulnerability, and foreseeable harm.**
- **The requirements should be consider with the cross-cutting rules in mind, and in the context of the product/service, firms role in distribution chain, reasonable expectations of consumer and vulnerability.**
- **Firms should document how its products and services relate to the distribution chain and the materiality of their influence over the outcome for the end customer. Rationale for these decisions should be clearly documented and relevant approvals, in line with the firm's governance, recorded.**
- **Ancillary services, that are necessary for the regulated activity are in scope and any customer outcomes or foreseeable harm that these activities could drive should be identified and reviewed.**

4.2 Product Governance

4.2.1 Product Governance

The products and services outcome is intended to ensure consumers are sold and receive products and services that have been designed to meet their needs, characteristics and objectives and are distributed appropriately.

The FCA have confirmed that firms complying with the existing product governance rules in the Product Intervention and Product Governance sourcebook (PROD) will satisfy this outcome. The product governance provisions in PROD 3 apply as guidance to asset managers, and some firms in this sector follow the guidance as if it were rules. The Consumer Duty includes clarification (PRIN 2A.3) that firms aren't subject to both sets of rules. Firms that currently follow PROD 3 as guidance may choose whether to follow the rules in PROD or those under the Consumer Duty products and services outcome. The Consumer Duty guidance provides a list of example material that firms could use to show that it has followed the provisions of PROD.

Failing to comply with PROD would be taken as failing to comply with the products and services outcome.

The FCA has confirmed that firms that comply with COLL 6.6, COLL 8.5 or COLL 15.7 for asset management, will meet the expectations of the price and value outcome (see further details in Price and Value section).

Where the duty goes further than PROD is the need to produce evidential data. If there is no evidence to support actions taken, then the FCA view will be that it did not happen. Firms should therefore review and update existing arrangements and materials to ensure the existing PROD arrangements also meet the cross-cutting rules, the new Consumer Duty Principle, and also, that vulnerable customer considerations feature throughout all PROD compliance arrangements.

4.2.2 Best Practice Key Takeaways

- **Firms should identify where PROD, PRIN and COLL apply, and document and approve a decision as to which set of rules to follow**
- **Where firms follow existing rules, a review should be conducted to ensure that the consumer outcomes are in line with the cross-cutting rules**
- **The available evidential data should be reviewed to ensure that firms can evidence that they are acting in accordance with the cross-cutting rules and update as necessary**

4.3 Manufacturers and Distributors

4.3.1 Manufacturers and Distributors

The products and services outcome rules make a distinction in requirements to meet the Consumer Duty between manufacturers and distributors. The definition of 'manufacturer' is broader than MIFID II. IN addition to firms that create, develop, design and issue products/services, this outcome also captures firms that operate or underwrite a product or service. Firms should undertake an exercise to review each of their products and services to understand whether they are acting a manufacturer, Distributor, or both. This an essential step in determining the materiality of the influence a firm has over the outcome for the end consumer, and therefore its responsibilities under Consumer Duty. This is not always clear cut and these decisions and the rationale, should be documented and approved by the relevant governance processes as implemented by the firm.

Where firms are working together to design, manufacture or change an existing product or service, this will be considered co-manufacturing when firms can determine or materially influence the manufacture of a product or service, including its target market.

Where firms collaborate in this way, they must have a written agreement outlining their respective roles and responsibilities to comply with the rules.

It must be clear who is responsible for which element of compliance under the Consumer Duty and in the situation of a problem or dispute.

Firms should consider the points below when deciding their role in the distribution chain for each line of business:

- A manufacturer can also be a distributor
- There may be more than one manufacturer in respect of a product. Where this is the case, there needs to be a written agreement allocating responsibilities between each manufacturer.
- Manufacturers are required to set a distribution strategy for the product.
- Manufacturers and distributors will need to share data to enable each participant in the distribution chain to meet its own obligations under the Consumer Duty
- A distributor might choose to distribute products where the manufacturer falls outside the scope of the Consumer Duty (such as overseas products) but the distributor still needs to take reasonable steps to comply with its obligations
- All processes and arrangements should be documented clearly

Firms distributing a products or services developed by a firm outside the UK must take *"all reasonable steps"* to understand the product or service, the target market it would serve and the value it provides. The Duty does not define *"reasonable steps", but an example of data that might be considered, in addition to the available product literature, is the European MiFID Template for EU funds, or any equivalent from other jurisdictions.*

4.3.2 Best Practice Key Takeaways

- **Determine for each product or service line whether the firm is a manufacturer, Distributor, or both under Consumer Duty. Document and approve the decision and the rationale**
- **Identify any instances of co-manufacturing (even within the same group) and ensure there is a written agreement in place setting out each parties responsibilities under Consumer Duty**
- **Distributors should consider and document how they will satisfy the requirement to ensure that products that fall outside of Consumer Duty (such as overseas products) are understood in terms of the target market it would serve and the value it provides.**

4.4 New Product Approvals and Existing Product Reviews

4.4.1. Manufacturers

A product manufacturer must maintain, operate and review a process for the approval of a product and where significant adaptations are being made to an existing product. This must occur **before** the product is marketed or distributed.

Firms complying with PROD will have product approval processes in place and a mechanism for all new products, and material changes to existing products, to be reviewed and approved. Firms should review these processes, and the content of their approval submissions through the lens of the intended customer outcomes and any foreseeable harms, to ensure compliance with this Consumer Duty outcome.

The below is a non-exhaustive list of areas that should be considered as part of the product review:

- Product description
- Client Segmentation
- Target market
- Negative target market
- Distribution strategy
- Competitor analysis- (for example: is the product or service within market rates for features, what is the rationale for pricing, what is the impact on the final price for underlying customer)
- Pricing
- Business case
- Client benefit/suitability assessment, including an assessment of the needs of vulnerable clients
- Product and stress testing outcomes
- Scenario analysis
- Product risks and how they are matched to the target market
- Staff training needs
- Client communications (please see Consumer Understanding chapter of this Guide)
- Client support – Pre, post-sale and ongoing
- Conflict of interest
- Changes to customer journey or product features

The manufacturer must select distribution channels that are appropriate to the target market and must provide information to distributors in good time to enable them to comply with the rules.

A product manufacturer must regularly review its products and services taking into account any event that could materially affect the potential risk to the target market. In doing so, the manufacturer should assess at least the following:

- How the products and services are functioning in practice;
- whether the product meets the identified needs, characteristics and objectives of the target market, including identified needs, characteristics and objectives of retail customers with characteristics of vulnerability, including consideration as to whether these needs are altering;

- 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; and
- whether the product or service can be improved

If any circumstances are identified that may have an adverse impact on customers that could lead to harm, then mitigating action should be taken. The mitigating action required will depend on the particular circumstances identified but the FCA gives examples:

- Making changes to the product or service
- Amending the distribution strategy before making further sales;
- Offering existing customers the option to leave the product or service without additional cost; and
- Providing appropriate mitigation of any harm suffered
- Withdrawing a product

4.4.2. Distributors

A product distributor must maintain, operate and review its product distribution arrangements for each new product or service it distributes to ensure the needs, characteristics and objectives of the target market are duly taken into account.

The Distributor will need to satisfy itself that the product manufacturer has complied with the Consumer Duty and/or PROD as appropriate. Although the FCA are clear that a firm is not responsible for another actions or inaction, neither can a firm be in a distribution chain with another firm where it has not reasonably satisfied itself that it has met its regulatory responsibilities. Therefore, is it advisable for distribution firms to obtain the following, at a minimum, from the manufacturer:

- Product characteristics
- Assurance that the design of the products meets the needs, characteristics and objectives of clients in the identified target market, including vulnerable clients
- Details of the distribution strategy and assurance it is appropriate for the target market.
- Evidence of regular reviews to ensure the products or services continues to meet the needs, characteristics and objectives of the target market.
- Value Assessments and outcome (please see Price and Value chapter of this Guide)

The distributor will need to consider the information it will require from manufacturers to fulfil its obligations under consumer duty. Firms should not distribute a product or service if they do not understand it sufficiently.

A product distributor must regularly review its product distribution arrangements, for each existing product or service it distributes, to ensure they remain up to date and that it is only distributing to the identified target market.

4.4.3. Product issues

Firms will need to establish the quantitative and qualitative data it needs to be able to evidence adherence to this outcome.

Where this data flags an issue with a product, a firm must ensure they have taken the appropriate action and are able to evidence the potential detriment to the client has been remediated/resolved, as appropriate, which may include closing or withdrawing a product.

If a firm withdraws a product, it will need to consider the duty and what impact it could have on customer outcomes.

If significant changes are made either as a result of mitigating actions, or for other reasons then the rules will apply as if the products were new. A change is 'significant' if it has a potential impact on the customer, for example, if a feature is added or removed, if there are changes to the target market or any significant change to the terms and conditions. Firms should bear in mind when defining 'significant' that they should think about the change from the customer point of view and not from the firms. It is also worth noting that *what is deemed to be significant may change and evolve over time,* particularly as the characteristic of the target market may also alter and evolve over time.

4.4.4 Best Practice Key Takeaways

- **Firms should review product governance processes, and the content of their approval submissions through the lens of the intended customer outcomes and any foreseeable harms.**
- **The manufacturer must select distribution channels that are appropriate to the target market and must provide information to distributors in good time to enable them to comply with the rules.**
- **A product manufacturer must regularly review its products and services taking into account any event that could materially affect the potential risk to the target market.**
- **If any circumstances are identified that may have an adverse impact on customers that could lead to harm, then mitigating action should be taken.**
- **A product distributor must maintain, operate and review its product distribution arrangements for each new product or service it distributes to ensure the needs, characteristics and objectives of the target market are duly taken into account.**
- **The Distributor will need to satisfy itself that the product manufacturer has complied with the Consumer Duty and/or PROD as appropriate.**
- **A firm is not responsible for another actions or inaction, <u>but</u> neither can a firm be in a distribution chain with another firm where it has not reasonably satisfied itself that it has met its regulatory responsibilities**
- **Firms should not distribute a product or service if they do not understand it sufficiently.**
- **Firms will need to establish the quantitative and qualitative data it needs to be able to evidence adherence to this outcome.**

- **If an issue is identified with a product, a firm must ensure they have taken the appropriate action and are able to evidence the potential detriment to the client has been remediated/resolved, as appropriate, which may include closing or withdrawing a product**
- **If a firm withdraws a product, it will need to consider the duty and what impact it could have on customer outcomes.**
- **If significant changes are made either as a result of mitigating actions, or for other reasons then the rules will apply as if the products were new. 'Significant' should be determined from the customer point if view, not the firm.**

4.5 Target Market

4.5.1 Identification of the Target Market and Suitability

The Consumer Duty covers all financial products or services sold or intended for sale to a retail client, at whatever stage of the distribution chain a firm sits. This is underpinned by the concept of reasonableness and defined in the guidance as 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, who is carrying on the same activity or offering the same product or service and with similar needs and characteristics in its target market.

The target market is the end-users of the product or service, not other firms in the distribution chain.

Within the Target Market, firms should undertake an exercise to understand the different groups of clients. There are a number of different ways to look at client segmentation in target market, and the regulator said firms must "identify a target market and their needs and objectives at a sufficiently granular level", and that customer needs, characteristics and objectives should be included at "all stages of the design process". For complex or niche products firms need to define target markets in more detail, considering increased risk of consumer harm.

Firms should be able to demonstrate a clear correlation between the understood needs of the target market and the products and/services being offered. In order to achieve this, it is important that firms go through a process to identify different groups of clients (Client segmentation), understanding their needs, objectives and characteristics, that can then be mapped to the key features of the proposition. This should include consideration as to whether the distribution strategy is suitable for the target market.

There are a number of different approaches to client segmentation, and each firm must decide which is most appropriate for their business and the products and services being sold. Such approaches may include:

- Life stage segmentation (e.g. saving for life events vs, those already in retirement)
- Groups more likely to be experienced investors (e.g. some more complex or higher risk products may not be suitable)
- Size of amount to invest (e.g. charges may be disproportionate to those with small amounts)

An example of client segmentation is below:

Segment	Sub-Segment	Investment Solution	Platform Selection	Advisory Service	Review service	Clients in vulnerable circumstances
Young Accumulators	Job starters	Savings acc, LISA	Simple low cost	Light Touch, Tech, Sustainability	1x pa	
	Young Execs	ISA	DFM	Standard, Tech, Sustainability	1x pa	
Runway to Retirement	Employed	DC, Auto Enrolment	CIP/Model Portfolio Discretionary	Standard, Advanced. Sustainability	1xpa	
	Self-Employed	PPP	CIP	Light/Standard Sustainability	2xpa	
Retirement Income	Low/No Income	CRP	Invest/ Annuity	Standard, Sustainability	2x pa	
	High Income	Growth	Invest/ Withdrawal	Cashflow/ Bespoke, Sustainability	2x pa	
Outliers					1xpa	
Vulnerable	Mental Physical	Protected	Invest/ withdrawal	Tailored Sustainability	3xpa	

Analysis of customer behaviours, and data around vulnerabilities, may also be considered as part of the client segmentation process, and may also act as triggers to review the target market.

It is not necessary to have more than one product or service proposition, but a firm may want to consider whether it is appropriate to have different offering for certain sub-groups. In any event, the firm should document the types of client each product or service is suitable for.
Having understood the target market, firms should consider whether there could be any clients within this group that could suffer harm due the product or service being incompatible to their needs. This is otherwise

known as the 'negative target market'. Firms should take reasonable steps to exclude these clients from the target market.

Continued testing of the target market is required, and firms should consider if customers might suffer harm from the product or service and use this to refine their target market.

Firms should carry out regular reviews to ensure the products or services continues to meet the needs, objectives and characteristics of the target market. The Consumer Duty does not prescribe the frequency of such reviews, but best practice would be to conduct these on at least an annual basis, or when there is any material change to the product or service.

Such reviews should include consideration as to:

- How products and services function in practice
- Whether the target market (the needs, characteristics and objectives) have changed
- Whether the product or service can be improved.
- Customer Behaviours

Manufacturers and distributors will both have to carry out reviews. Distributors, in particular, will need to provide information to manufacturers so they can establish whether the distribution strategy is effective, and the target market is being reached.

4.5.2 Target market documentation

The target market documentation should have sufficient granularity, the more complex and riskier the product or service, the more detail it should have.

The European MiFID Template is the current baseline for MiFID firms captured under existing PROD rules and a good place to start developing a target market template. This example covers the main areas of criteria around defining the target market for a product or service. This template can be amended to better reflect the requirements of the Consumer Duty, and firms are encouraged to adopt any industry wide standardisation in respect of this.

Regulated products and services, both new, existing or closed, targeting or servicing retail clients requires a defined target market, and this will need to be shared with those who distribute the firms' products or services. When sharing this information, the outcome of the price and value assessments should be included, as Distributors will need this information in order to perform their own value assessments of the product, once any charges related to the distribution are added.

Distributors are not expected to challenge how manufacturers have arrived at the outcome of their value assessment, but they should have confirmation that it has been performed, what the outcome was and whether there are outstanding actions to be completed relating to the value of the product.
Distributors should have a clear understanding of the target market and the way products operate. The FCA expects distributors to get the information they need from manufacturers, and manufacturers to be

monitoring that their products are delivering good consumer outcomes. Distributors are generally not expected to share information without being asked, and the manufacturer should consider what information would be helpful and to take reasonable steps to gather it, an example given by the FCA is, through focus groups or sending surveys to distributors.

TISA is currently working collaboratively with other industry bodies to produce a framework for this data sharing, and this will be referenced here in this guide once finalised.

4.5.3 Best Practice Key Takeaways

- **The target market is the end-users of the product or service, not other firms in the distribution chain.**
- **Regulated products and services, targeting or servicing retail clients, requires a defined target market, and this will need to be shared with those who distribute the firms' products or services.**
- **Within the Target Market, firms should undertake an exercise to understand the different groups of clients at a sufficiently granular level- 'Client Segmentation'.**
- **The customer needs, characteristics and objectives should be included at "all stages of the design process.**
- **For complex or niche products firms need to define target markets in more detail, considering increased risk of consumer harm.**
- **Firms should be able to demonstrate a clear correlation between the understood needs of the target market and the products and/services being offered.**
- **Having understood the target market, firms should consider whether there could be any clients within this group that could suffer harm due the product or service being incompatible to their needs (negative target market).**
- **Continued testing of the target market is required, and firms should consider if customers might suffer harm from the product or service and use this to refine their target market.**
- **Firms should carry out regular reviews to ensure the products or services continues to meet the needs, objectives and characteristics of the target market. Manufacturers and distributors will both have to carry out reviews.**
- **Distributors are not expected to challenge how manufacturers have arrived at the outcome of their value assessment, but they should have confirmation that it has been performed, and what the outcome was.**

4.6 Positive and Negative Friction

4.6.1 Positive friction and unreasonable barriers

In the design process, the FCA expects firms to take account of behavioural biases for customers, and aspects of the product that may deter customers from acting in their own interests (e.g.. sludge practices, unreasonable exit fees).
When designing or amending products and services, firms should consider the purpose and impact of friction points on the client journey.

Firms are expecting to apply judgement and understand the difference between positive friction and nudges and frictions that create unreasonable barriers, known as sludge practices, in their practices for manufacturing and / or distribution of products and services.

Monitoring activity should be undertaken, to demonstrate that positive friction is working as expected and that there are no unreasonable barriers created for customers. Action should be taken to address any findings or concerns and a record kept of the decisions taken.

4.6.2 Positive friction and nudges

Sales or other practices without appropriate friction or nudges can risk customers purchasing products and services they don't fully understand or feel rushed into buying.

Positive friction is defined as points in the costumer journey which benefit the customer. They should help with areas like customer understanding and support customers to make an informed decision and reduce the risk of foreseeable harm that could arise if they buy a product that is not suitable for them. They should enable customers to be provided with the right information and appropriate time to make decisions.

Steps that protect customers from scams, fraud or highlighting the consequences of entering a contract and subsequently cancelling it, are considered to be in the customers interest and not an unreasonable barrier.

Firms will be expected to demonstrate the benefit to their customers of additional steps in their customer processes.

4.6.3 Unreasonable barriers

Sludge practices or unreasonable barriers are considered to be practices which deter customers from taking action in their interests. Firms should consider the steps they take to support customers wanting to buy their products and services and make it at least as easy to switch out of a product, leave their service or make a change, as it is to buy in the first place.

The FCA requires that:

- The steps in a customer journey must have a purpose that is aligned to the Consumer Duty. Positive friction may be permissible under the Consumer Duty where the break or pause in a process is clearly explained to a customer. For example, a warning to a customer of a particular risk in taking an action and getting them to actively confirm they have acknowledged this before proceeding.

- An unreasonable barrier which frustrates a customer's use of a product or service without reasonable explanation, or that can be clearly linked to a good outcome or the avoidance of harm is not permissable.
- A customer journey, particularly a digital journey, which plays on behavioural or cognitive biases to facilitate seamless product purchases may benefit from a degree of positive friction being built into it.
- It should be at least as easy to exit a product as it is to enter.
- The channels through which a product or service is provided are appropriate to deliver support to customers with particular regard given to the needs of customers in vulnerable circumstances

It is important that firms consider the balance between positive friction and ease of the journey in reviewing the existing product suite and in developing new products going forward.

4.6.4 Best Practice Key Takeaways

- **The FCA expects firms to take account of behavioural biases for customers, and aspects of the product that may deter customers from acting in their own interests'.**
- **Sludge practices or unreasonable barriers are considered to be practices which deter customers from taking action in their interests.**
- **It should be least as easy to switch out of a product, leave their service or make a change, as it is to buy in the first place.**
- **When designing or amending products and services, firms should consider the purpose and impact of friction points on the client journey.**
- **Positive friction is defined as points in the costumer journey which benefit the customer. They should help with areas like customer understanding and support customers to make an informed decision and reduce the risk of foreseeable harm.**
- **Firms will be expected to demonstrate the benefit to their customers of additional steps in their customer processes.**
- **Monitoring activity should be undertaken, to demonstrate that positive friction is working as expected and that there are no unreasonable barriers created for customers**

4.7 Vulnerable Customers

4.7.1 Vulnerability Considerations

The FCA expect that vulnerable customers experience outcomes as good as those for other customers and receive consistently fair treatment and that fair treatment of vulnerable customers is embedded as part of a healthy culture throughout firms, not just on the frontline but also in areas such as product development.

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The FCA expects firms to consider the needs, objectives and characteristics of customers with characteristics of vulnerability at all stages of the design process, including idea generation, development, testing, launch and ongoing reviews.

Failing to consider the needs of vulnerable customers, can lead to harm such as higher risk of poor market outcomes, inability to choose or access suitable products and increased susceptibility to harm from certain market practices.

When creating the target market for a product or service, vulnerability should be included as part of the overall criteria assessment, and firms should take accounts of any additional or different needs that might be relevant for customers with characteristics or circumstances that can lead to vulnerability.

The FCA give the following examples of what firms can do to identify the needs of vulnerable customers –

- holding focus groups with customers with characteristics of vulnerability or consumer representatives at the development stage to get a greater understanding of their needs and how products can meet them
- 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
- consulting with customers or representative groups when seeking to alter or withdraw a product
- employing third-sector organisations who can review products from the viewpoint of customers with characteristics of vulnerability

The TISA have produced a detailed Best Practice Guide in customer vulnerability to supplement the FCAs Guidance for Fair Treatment of Vulnerable Customers, which can be found here:

https://www.tisa.uk.com/wp-content/uploads/2022/04/Best-Practice-Guide-Vulnerable-Customers-Final.pdf

4.7.2 Best Practice Key Takeaways

- **Customers with characteristics that could lead to vulnerability should experience outcomes as good as those for other customers and receive consistently fair treatment.**
- **Fair treatment of vulnerable customers should be embedded as part of a healthy culture throughout firms, not just on the frontline but also in areas such as product development.**
- **The needs, objectives and characteristics of customers with characteristics of vulnerability should be considered at all stages of the design process, including idea generation, development, testing, launch and ongoing reviews.**
- **When creating the target market for a product or service, vulnerability should be included as part of the overall criteria assessment.**
- **It is recommended firms use the FCAs guidance, TISA Vulnerability Best Practice Guide, resources from specialist organisations, and views if customers with characteristics of vulnerability to inform their processes and ensure fair treatment.**

4.8 MI and Reporting

4.8.1 Type of Data & MI that should be captured

The duty further enhances the requirements on firms to monitor the outcomes being delivered to its customers. This monitoring will cover the Consumer Duty as a whole, but there are elements specific to the Products & Services outcome.

This section sets out some of the data & MI that firms may want to monitor as part of their ongoing assessment of the delivery of good client outcomes. In addition to this information, firms may like to consider this information alongside the output of relevant customer research, including focus groups or testing.

4.8.2 Manufacturers

It is recommended that manufacturers monitor data & MI on at least the following areas to ensure they have adequate oversight of the outcomes being delivered by their products & services:

- Whether the product/ service is meeting the needs, characteristics, and objectives of the target market. For example, manufacturers may monitor:
    - whether the product is performing and functioning as expected and in alignment with its stated objective,
    - whether it is being managed in line with the target market's risk expectations,
    - whether it is operating in line with any product limits or thresholds, for example prospectus limits
- Whether the product or services have been distributed to its target market
    - There are a number of industry working groups working together to develop a common solution to information sharing standards between product manufacturers and distributors. The manufacturer is likely to want to use this information to understand if the product its being distributed to the target market and identify if there are any instances of sales outside of the target market.
    - Depending on the information available, firms may also want to consider how customers in the target market are using the product/ service and whether this is in line with expectations, and whether there have been any complaints. For complaints, firms are likely to consider analysis of complaints, and the root cause analysis.
- Whether the distribution strategy remains appropriate for the target market. For example, manufacturers may monitor:
    - Whether there have been any sales outside the target market
    - Whether sales outside of the target market have been driven through certain distribution channels
    - Whether any other outcomes-based monitoring indicates worse outcomes for clients through a certain distribution channel, or for a certain group of clients
    - Information on business persistency

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4.8.3 Distributors

It is recommended that Distributors monitor data & MI on at least the following areas to ensure they have adequate oversight of their distribution arrangements:

- Whether products and services have been distributed to customers in the target market
    - The distributor should monitor who they are distributing the product and service to, ensuring that the positive target market are using the product or service. If this isn't the case, they may need to review the distribution strategy or further enhance information presented to clients in journeys.
    - Depending on the information available, firms may also want to consider how customers in the target market are using the product/ service and whether this is in line with expectations, and whether there have been any complaints.
- their distribution arrangements are appropriate and up to date. As per the above point in the distribution arrangements
    - Whether there have been any sales outside the target market
    - Whether sales outside of the target market have been driven through certain distribution channels
    - Whether any other outcomes-based monitoring indicates worse outcomes for clients through a certain distribution channel, or for a certain group of clients

4.8.4 Ongoing Oversight & Monitoring

The Consumer Duty also highlights the need to use MI & Data to identify potential harm to customers, or opportunities for further enhancement to outcomes delivered, and take necessary action to address areas identified.

To align with this, firms may want to consider how they will ensure the data collected will be monitored and used. This includes defining the reporting that will be presented to relevant Committees, including the board.

For some larger firms, there could be a dedicated team (or an alternative but equally appropriate solution) that will monitor this data and ensure action is taken where necessary, but for other firms this may not exist. It is still important that the MI & Data is used in an appropriate manner to driver better outcomes, but the structure needs to be proportionate and align with the firms operating model. Roles and responsibilities firms may want to consider are:

- Reviewing data & MI regularly to identify any trends of note which require action or should drive prioritisation.
- Identifying, and reporting to, relevant Committees on outcomes being delivered, any gaps identified, and any other key areas of note.
- Using the data as part of the boards assessment of whether the firm is delivering good outcomes.

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5. Price and Value

5.1 Introduction

5.1.1 Fair Value

The Duty aims to tackle factors that can result in products or services which are unfair or poor value, such as unsuitable features that can lead to foreseeable harm or frustrate the customer's use of the product or service, or poor communications and consumer support.

Fair value is about more than just price. This Outcome requires that the price of products and services must be proportionate to their value. Customers should be confident that the firm they deal with, and each other firm in the distribution chain, has taken steps to ensure that the product or service represents fair value.

The FCA define value as the relationship between the amount paid by a retail customer for the product and the benefits they can reasonably expect to get from the product. A product or service is deemed to provide *fair* value where the amount paid for the product is reasonable, relative to the benefits of the product. Value needs to be considered in the round and low prices do not always mean fair value.

In 2019, the FCA introduced rules requiring UK authorised fund managers to assess the overall value that their funds deliver to investors. The criteria set out by the FCA are based on three key elements: cost, performance against objectives, and quality of service. The FCA expects to see firms making rigorous and robust assessments of the value that their funds will deliver to investors, overseen by strong governance. It has conducted significant multi-firm review work since the introduction of the rules, to evaluate the processes used by firms when carrying out assessments of value and has continued to find residual issues. It is recommended that firms consider these issues in designing their value assessment:

https://www.fca.org.uk/publications/multi-firm-reviews/mifid-ii-product-governance-review

The specific focus of the price and value outcome rules is on ensuring the price the customer pays for a product or service is reasonable compared to the overall benefits (the nature, quality and benefits the customer will experience considering all these factors). The FCA expects firms to think about price when assessing fair value but not at the expense of other factors.

All firms need to be able to demonstrate that the price the consumer pays for their product or service is reasonable relative to the overall benefits. This applies to manufacturers and distributors of financial products and services. A firm may be both the manufacturer and distributor of a particular product or service.

When assessing price and value outcomes firms need to consider whether the product or service meets other aspects of the Duty such as:

- That it meets the needs of the target market and is sold appropriately.
- Customers are able to use the product or service appropriately to support their objectives.

- Customers are provided with appropriate information about the benefits and any limitations.
- Customers are appropriately supported throughout the life of the product or service and do not face unreasonable barriers or costs

Firms should not take a narrow focus when assessing fair value, but consider matters such as:

- Are there elements of the pricing structure that could lead to foreseeable harm?
- Are there costs or fees that are unreasonably high compared to the benefits?
- Have changes to benefits been reflected in the price
- Has vulnerability been considered and are there any increased risks of poor outcomes or harm, for customers with characteristics or circumstances that could lead to vulnerability.

The regulator has been clear that it will be working closely with the Financial Ombudsman Service during the implementation period and beyond, through the Wider Implications Framework. This is to ensure consistency in the interpretation of the Duty, and to monitor the decisions they make from customer complaints about fees, charges, and inappropriate sales. Firms should therefore be aware that the FCA may be made aware of poor value products and through the Financial Ombudsman Service.

5.1.2 Defining Value

Fair value is about more than just price. The Duty aims to tackle factors that can result in products or services which are unfair or poor value, such as unsuitable features that can lead to foreseeable harm or frustrate the customer's use of the product or service, or poor communications and consumer support.

The specific focus of the price and value outcome rules is on ensuring the price the customer pays for a product or service is reasonable compared to the overall benefits (the nature, quality and benefits the customer will experience considering all these factors). Value needs to be considered in the round and low prices do not always mean fair value. The FCA expects firms to think about price when assessing fair value but not at the expense of other factors.

Firms are required to consider the following when defining the value of their products and services:

- the nature of the product or service, including the benefits that will be provided or may reasonably be expected and their qualities,
- any limitations that are part of the product or service (e.g. limits on products advised upon, or access to financial markets), and
- the expected total price customers will pay, including all applicable fees and charges over the lifetime of the relationship between customers and firms.

All of these can be broken down further into a range of factors for consideration. They may include the following points:

- the costs firms incur to manufacture and/or distribute the product or service, including the cost of servicing (e.g. digital vs face-to-face meetings). Difference in costs may for example explain why otherwise similar products are priced differently, and/or explain changes in the price charged over time.

- The market rates and charges for comparable products or services and whether the product is a significant outlier compared to these. Where a product or service is an outlier, it might prompt the firm to check that other elements of the product or service are functioning properly, and to evidence they are still confident the price is reasonable compared to the benefits received.
- Whether there are any products in the firm's portfolio which are priced significantly lower for a similar or better level of benefit.
- Any accrued costs and/or benefits for existing or closed products.
- Non-monetary costs such as time wasted
- Characteristics of vulnerability and the impact this may have on receiving fair value from the product

5.1.3 Best Practice Key Takeaways

- **Value is the relationship between the amount paid by a retail customer for the product and the benefits they can reasonably expect to get from the product**
- **Fair value is about more than just price, low prices do not always mean fair value.**
- **To define value, the interaction with other outcomes must be considered**
- **Firms need to be confident that each other firm in the distribution chain, has taken steps to ensure that the product or service represents fair value**
- **Firms should make rigorous and robust assessments of the value that their funds will deliver to investors, overseen by strong governance.**
- **Firms should not take a narrow focus when assessing fair value, but consider matters such as foreseeable harm, relationship to benefits, changes to expected benefits and consumer vulnerability**.
- **FCA may be made aware of poor value products and through the Financial Ombudsman Service.**

5.2 Measuring Value

5.2.1 The Value Assessment- Qualitative and Quantitative Measurements

Firms have the discretion to decide on the factors they use in their value assessments, provided those factors allow them to demonstrate that there remains a reasonable relationship between the total price of the product or service and the benefits the customer receives. The FCA also expects 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.

When exercising that discretion, there are three factors firms must take into account, points firms may choose to include and references to other points that firms might want to consider (e.g. customer research, testing or use of internal data).

When assessing whether a product represent fair value, the FCA states that firms must consider:

- The nature of the product or service, including the benefits provided or that may reasonably be expected and their qualities;

- Any limitations that are part of the product or service (e.g. limitations on the scope of cover, in the case of insurance products); and
- The expected total price customers will pay, including all applicable fees and charges over the lifetime of the customer-firm relationship.

They may also consider:

- The costs firms incur to manufacture and/or distribute the product or service (including the cost of funding, in the case of, for instance, loans);
- The benefits received by consumers and the utility of the product or service to them;
- Market rates and charges for comparable products and services;
- Possible savings from economies of scale that could be shared with customers;
- Possible returns from investment products or services; and
- Any assumptions on credit or other risk the firm is exposed to.

Firms should ensure there is evidential data to back up the assessments they undertake. This could include;

- Customer research
- Product and/or scenario testing
- Outcomes based MI
- Market comparisons.

The FCA however is clear that individual customer feedback should not be solely relied upon to consider whether the price provides fair value.

Value should be considered widely, and include whether the features and benefits of a product or service are suitable for the customer, whether the customer can use and benefit from all of the features of the product or service, level of customer support provided and the quality of communications and information provided to the customer. A product or service that doesn't meet the needs of the customer it's sold to, causes foreseeable harm or frustrates the customer's objectives is unlikely to offer fair value whatever the price. The Price and Value Outcome is therefore intrinsically linked with the other three Outcomes and cannot be considered in isolation.

Firms must also monitor and assess the value of their products and services throughout their life, conducting regular reviews of their value assessment. Where a firm identifies that a product or service no longer provides fair value, it must take appropriate action to address the issue. This will allow consumers to be confident that the product or service will continue to provide fair value

5.2.2 Reliance on Existing Value Assessments

The existing rules (e.g. COLL 6.6.20, Assessment of value) which some firms must adhere to, have similar objectives to Consumer Duty. Generally, compliance with these rules will also be evidence of compliance with the Consumer Duty Price & Fair Value outcome. However, the Duty as a whole is much broader than this and firms should review whether there is additional evidence or input required to ensure value.

Authorised Fund Managers are required to act in the best interests of the funds they manage and those who invest in those funds, under rules in the Conduct of Business Sourcebook (COBS), the Collective Investment Schemes Sourcebook (COLL) and the FCA's Principles for Businesses. While PROD rules apply to AFMs as guidance, it is best practice for firms to consider them. Notably, acting in line with PROD will enable AFMs to comply with some of their obligations under Consumer Duty.

5.2.3 Fees and Charges Design

When considering the price charged, manufacturer firms must consider all the costs and charges a consumer may pay for the product or service over time. When designing charges and charging structures, firms need to focus on how their target market is likely to use the product or service.

For distributors, they need to obtain relevant information from manufacturers to understand the value a product or service is intended to provide and to enable them to understand whether their distribution arrangements change or remove the value provided.

This also means that the distributor will need to consider the cumulative impact of the remuneration added by each person in the chain on the overall value of the product to the customer. This is important as fees charged by different firms along the distribution chain might together result in a higher overall fee that does not represent fair value for consumers.

5.2.4 Non- Financial Costs to the Consumer

Non-financial costs to consumers should be considered as part of the assessment of whether a product is providing fair value and may include:

- The time and effort it take a consumer to access, assess and act to buy, amend, switch or cancel a product or service. Firms will need to determine the thresholds of what is reasonable foe each product and service and document the decisions they reach. Any friction that is positive i.e. in the customers best interest, should be taken into account when determining these thresholds.
- Firms' use of consumer data where consumers knowingly or unknowingly 'pay' with their data or privacy. This includes where there are plans to use this data in the future. It is likely that over the lifetime of a product or service, customer service and support will change in the future as digital services and support services evolve, so firms should document what is currently in place and ensure this is kept under review as part of ongoing assesments.

5.2.5 Best Practice Key Takeaways

- **Value assessments need to demonstrate that there remains a reasonable relationship between the total price of the product or service and the benefits the customer receives**
- **Firms should ensure there is evidential data to validate the assessments they undertake**
- **Value should be considered widely**
- **A product or service that doesn't meet the needs of the customer it's sold to, causes foreseeable harm or frustrates the customer's objectives is unlikely to offer fair value**
- **Firms must also monitor and assess the value of their products and services throughout their life, conducting regular reviews of their value assessment**
- **Where a firm identifies that a product or service no longer provides fair value, it must take appropriate action to address the issue**
- **The Duty as a whole is much broader than existing rules and firms should review whether there is additional evidence or input required to ensure value**
- **Firms must consider all the costs and charges a consumer may pay for the product or service over time**
- **The distributor will need to consider the cumulative impact of the remuneration added by each person in the chain on the overall value of the product to the customer**
- **Non-financial costs to consumers should be considered as part of the assessment of whether a product is providing fair value**

5.3 Roles in the Distribution Chain

5.3.1 Roles and Responsibilities

Before exploring roles and responsibilities in detail, it's important for firms to familiarise themselves with the key elements of the FCA Guidance in terms of outcome expected for customers which apply irrespective of a firms overall role and responsibility (Section 7. Price & Value Outcome of the FCA's FG22/5: Final non-Handbook Guidance for firms on the Consumer Duty (fca.org.uk)).

Where different firms are involved in the distribution chain for an investment product, they all have responsibility to consider fair value as part of avoiding foreseeable harm and helping support customers in pursuing their financial objectives. Asset managers and product distributors need to prioritise effective cooperation and information sharing to address the potential harm to consumers from poor product design and distribution processes:

- **The fund manager**: The firm must assess whether their charges levied are justified in the context of the overall value of the product.
- **The platform provider**: The firm must set fair value charges for using the platform. In some cases, the platform provider will be the final firm in the distribution chain. As such, the platform provider will need to consider the overall impact of the remuneration added by each person in the chain on the value of the product to the consumer.

- **The financial adviser:** The firm must consider if its advice charges provide fair value. In addition, it must consider the relationship between the overall cost to the customer (including all product and distribution charges in the distribution chain) and the expected benefits from the product. Advice has a value in its own right, and indeed no products may be purchased as part of the advice process, however the overall value to the customer must be considered.

There is a reliance on intermediated services in the UK investment market and therefore manufacturers will be reliant on those who distribute their products to give them relevant information on the target market, negative target market, and issues that might impact the end consumer such as vulnerabilities. Firms might also consider other data such as complaints and length of investment to inform them as to how the product is being received into the target market. Manufacturers and Distributors should ensure arrangements are in place to pass this information on to effectively meet best practice on product governance and establish collaborative relationship that allows asset managers to meet their obligations to act in clients' best interests.

5.3.2 Manufacturers

Firms are manufactures if they create, develop, design, issue, manage, operate, carry out a product or service.

In this situation this category of firm will be fully responsible for ensuring the product or service they bring to market offers fair price and value to its intended target market/ audience.

In the same way manufacturer's must ensure its products or services, including existing products and services are designed to meet the target market's needs, characteristics and objectives, this includes price and value.

They will also be responsible for ensuring customers understand the pricing structure utilised including how it is presented to them and testing it to evidence this, ensuring financial capability, financial literacy and any vulnerability of its customers is sufficient to use that approach. For example, many people do not understand how to calculate percentages so clear and fair presentation is key to ensure transparency and understanding.

Manufacturers also need to consider the benefits offered as part of the price and value outcome, when designing products to meet the needs, characteristics and objectives of the target market. Different products and services will have different benefits, which will have an impact on the value assessment. In order to realise these benefits, manufacturers should consider the intended use of the product and be prepared to share this information with distributors.

A manufacturer must consider the needs of the customers with characteristics of vulnerability in its target market, this applies equally to the nature, value and understanding of its pricing. Information relating to vulnerability considerations should also be shared with other participants in the distribution chain- at a minimum it should be confirmed that these considerations have been made in line with the four Outcomes, and the FCAs 'Fair Treatment of Vulnerable Customers' guidance.

To support the requirement for in-going assessments of value, manufacturers should consider what data and information that they will require from Distributors in order to inform them as to whether the product or service is being received by the intended target market, whether the benefits are being realised and the fair value is being provided. This may include but is not limited to:

- Product holder profile
- Persistence of investment
- Sales to negative target market
- Customer feedback
- Complaints
- Information relating to vulnerabilities present in target market

5.3.3 Co-manufactures (Firms working together to manufacture a product or service)

A firm would be considered a co-manufacturer where they can determine or materially influence the manufacture of a product or service. This would include a firm that can determine the essential features and main elements of a product or service, including its target market.

Where firms collaborate in this manner, they must have a written agreement in place explaining their roles and responsibilities.

In this situation each party should be jointly accountable for price and fair value given the product or service cannot be brought to market without the collaboration of two manufacturers.

All of the overall points under 5.3.3 Manufactures would of course also apply to co-manufacturers

5.3.4 Distributors

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

Distributors must have distribution arrangements for each product or service they distribute

The distribution arrangements must:

- avoid causing and, where that is not practical, mitigate foreseeable harm to customers for pricing fair value for each element of distribution chain
- support management of conflicts of interest
- ensure the needs, characteristics and objectives of the target market are fully taken into account

Distributors need to understand the value the product or service is intended to provide, based on information from the manufacturer. Distributors are likely to require information from the manufactures that helps them understand not only the costs and charge and the target market, but the benefits of the products, whether those benefits can be realised by all groups of customers with different characteristics within the target market, and how the product is intended to be used in order to realise the intended benefits. Distributors need to make their own decision regarding the granularity of the information they require from manufacturers, but it should be sufficiently detailed to allow them to make these assessments. Information from manufacturers that might need to be considered includes but is not limited to:

- Outcome of value assessment
- Whether product is governed by PROD and/or COLL
- Transaction costs in line with PRIIPS
- Costs outside of OCF
- Complexity if the product
- Levels of investment knowledge/experience required
- Whether product is intended to be a core or component of a portfolio
- Distribution strategy
- Whether key information has been reviewed and tested for understanding
- Needs of vulnerable customers

The impact that the distribution arrangements have on that value then need to be considered as part of the overall value assessment by Distributors. This should take into account:

- The benefits the product or service is intended to provide
- The quality of service the distributor provides
- Whether any remuneration the distributor receives would result in the product or service ceasing to provide fair value.

The FCA doesn't limit the remuneration firms can receive or specify all of the types of remuneration to be taken into account. However, remuneration over the lifetime of the product or service should be taken into account when determining the price paid by the customer and may have a significant impact on whether the product or service represents fair value.

Where a product is intended to be provided as part of a package, such as a ready-made portfolio, firms need to consider the value of each component product or service and the overall value of the package.

5.3.5 Management of conflict of interests (irrespective of role)

In relation to management of conflicts of interest, for example, firms should not make any arrangements, such as by way of remuneration or sales targets, that could provide an incentive to employees to recommend a particular product or service when an alternative would better meet a customer's needs.

Firms should also ensure that each party in the distribution chain, so manufacturer/co-manufacturer and all distributors offers fair value in its pricing offered taking into account target market characteristics and objectives

Where there are multiple distributors involved e.g. where an adviser, and/or broker and Discretionary manager is involved in the distribution of a manufacturer's product, whilst each party will be accountable for the price and value of their specific service, collectively all regulated firms involved will collectively be responsible to ensure overall pricing offers fair value in the market place as part of its consumer duty to ensure no foreseeable harm to customers.

5.3.6 Best Practice Key Takeaways

- **Where different firms are involved in the distribution chain for an investment product, they all have responsibility to consider fair value as part of avoiding foreseeable harm and helping support customers in pursuing their financial objectives**
- **Asset managers and product distributors need to prioritise effective cooperation and information sharing to address the potential harm to consumers from poor product design and distribution processes**
- **Manufacturers and Distributors should ensure arrangements are in place to pass this information on to effectively meet best practice on product governance**
- **Manufacturers are responsible for ensuring customers understand the pricing structure including how it is presented to them and testing to evidence this**
- **Manufacturers also need to consider the benefits offered as part of the price and value outcome, and in order to realise these benefits, manufacturers should consider the intended use of the product**
- **A manufacturer must consider the needs of the customers with characteristics of vulnerability in its target market**
- **Co- manufacturers must have a written agreement in place explaining their roles and responsibilities.**
- **Distributors need to understand the value the product or service is intended to provide, based on information from the manufacturer**
- **Distributors will information from the manufactures that helps them understand**
    - **costs and charge**
    - **the target market**
    - **benefits of the products**
    - **whether those benefits can be realised by all groups of customers with different characteristics within the target market**
    - **how the product is intended to be used in order to realise the intended benefits**
- **The impact that the distribution arrangements have on that value need to be considered as part of the overall value assessment by Distributors**
- **Remuneration over the lifetime of the product or service should be taken into account when determining the price paid by the customer**

5.4 Consideration of Characteristics of Target Market

5.4.1. Different Client Groups

The price and value outcome rules do not require firms to charge all customers the same amount. However, where firms charge different prices to separate groups of consumers, they must consider whether the price charged for the product/service provides fair value for customers in each pricing group, while having regard to whether any customers who have characteristics of vulnerability may be disadvantaged.

When firms have different products serving similar target markets, they should consider if customers with one product are more likely to incur fees and charges or appear to be receiving outcomes that are not as good, as customers in equivalent products. For example, service fees can be charged as a percentage of the value of a product. In this case, some consumers may pay substantially larger fees than others, even though the costs of providing the service and benefits received may be similar. In these circumstances firms must consider whether the relationship of the price different groups pay is reasonable relative to the benefits received.

5.4.2 Vulnerabilities

The cross-cutting rules dictate that firms need to ensure clients are not subject to foreseeable harm. This is especially true of customers with vulnerabilities who may have additional needs or be at greater risk of harm if things go wrong. Awareness of this must be incorporated in all areas from designing charging structures to assessing value. It is recommended that customer research, scenario testing and specific MI should be used to make adjustments to products where appropriate.

5.4.3 Best Practice Key Takeaways

- **The price and value outcome rules do not require firms to charge all customers the same amount**
- **The price charged for the product/service must provide fair value for customers in each pricing group, including those with characteristics of vulnerability**
- **Customers with vulnerabilities or who may have additional needs may be at greater risk of harm. Therefore consideration needs to be made and evidenced in assessing fair value**
- **Customer research, scenario testing and specific MI should be used to make adjusted to products where appropriate**

5.5 Evaluating Outcomes

5.5.1 Regular product and service value assessments

Firms should define their timetable by which they will review each product or service. They should have appropriate systems and controls to ensure such reviews are then undertaken.

Firms should take a proportionate approach to the frequency at which they complete value assessments. Lower risk and/or less complex products and services will require proportionality less frequent reviews than higher risk or more complex products or services. Where the underlying nature, purpose and expected benefits of a products or service remains consistent less frequent reviews will be required.

Firms should have controls through their outcome monitoring to identify where value assessment trigger events have occurred. This should be linked to the annual attestation required under the Duty to validate that value assessments remain appropriate.

Where a value assessment identifies elements of a product or service that do not provide fair value firms must take action to address this. This may include changing or withdrawing the product or service or amending the pricing or benefit structure.

Firms should maintain records of their value assessments on an ongoing basis. All decision making in respect of value assessments should be documented to evidence how the firm has met its obligations. This should be supported by appropriate MI from the firm's ongoing monitoring.

Where it is identified that consumers have suffered harm due to a lack of fair value firms should consider appropriate redress. Firms should act proactively in this regard and not seek to avoid redress because the client has not made a complaint.

5.5.2 Ongoing and triggers for assessments

Value needs to be assessed at the initial product or service design stage. It must be assessed on a regular basis throughout the product or service's lifecycle. Value assessment outcomes are not fixed; internal and external factors can lead a product or service to no longer provide fair value. Firms must have arrangements to monitor and identify where this is the case and to act accordingly.

Firms should actively review their MI on consumer outcomes to identify indicators of harm. This should include testing and consumer feedback, through formal and informal channels. This should enable the firm to identify whether different outcomes are being achieved for different groups of customers, including those with characteristics of vulnerability.

Material changes to the nature, purpose and expected benefits of a product or service should trigger consideration of a reassessment. For example, the addition or withdrawal of features or benefits in relation to an existing product. This could include product design such as the changes to the investment approach, or changes in relation to how a consumer access the product (the consumer support outcome). For a distributor of advised services, it could be a change to the frequency of scheduled meetings, or the way in which meetings are delivered (e.g. moving to on-line from face to face).

Manufacturers and distributors should monitor their distribution strategies to assess the extent to which they remain consistent with the original value assessment. An increase in sales being made without advice may require a manufacturer to re-assess the levels of expected distributor remuneration within their assessment, for example.

Firms should consider whether legislative, tax, economic or other external factors affect the value that their products and services provided. Market events could affect products or services in different ways. For example, an extended period of restrictions on redemptions from property funds may lead to the need to consider re-assessment.

Changes to the firm's costs in delivering a product or service may require revaluation. Where increased costs are to be passed on by way of higher charges there will need to be appropriate validation that the expected client outcomes will still provide fair value. Similarly, where firms achieve operational efficiencies, they should consider whether they are able to pass on any savings achieved to customers.

Where there are indicators that consumers are not receiving good outcomes, they should be investigated to identify the causes, and whether they are related to price and value. Where they are, a reassessment of value is likely to be required.

Firms should document their decision-making process in respect of potential trigger events and why a re-assessment of value was or was not undertaken.

5.5.3 Investment Performance

Investment performance is likely to be a component element of all fair value assessments relating to investment products and services. Care should be taken on the extent to which investment performance is directly linked to the fair value assessment outcome as short-term values are outside of an adviser's or investment manager's direct control.

For each product and service firms should establish what good looks like, for example, to consider the expected investment characteristics, including performance over different time frames and volatility. Appropriate benchmarks should be established so the product or service can be measured against its peer group, and similar pricing groups.

The Duty does not impose an obligation to avoid all client harm. Where investment risk is appropriate, understood and accepted, a reduction in value due to normal market movements will not constitute a poor outcome.

Firms should monitor the underlying causes to satisfy themselves whether falls in value are due to normal market movements or some other factor. Performance should be monitored over time and instances of consistent underperformance should be addressed where there is an impact on the value clients receive. Advisers should take care to avoid performance being used as the only measure of a product's suitability or value.

The timeframe for performance considerations in value assessments is important. This will vary between funds, products and in relation to the needs of the target market. Switching out of funds on a reactive basis based on short term conditions may lead to poorer client outcomes over the longer term.

Considerations relating to investment performance will vary across sectors so need to be tailored and relevant to the product. Platform providers will have multiple sectors to consider across different value assessments for example.

Investment performance should be considered in the round and in relation to a product or services overall objectives. An actively managed investment fund may have higher costs than a passive fund for example. The value assessment may justify such costs due to the specialist research capabilities, investment opportunities and potential for outperformance this affords. There is no guarantee that the active fund will outperform the tracker, but this does not, in itself, not mean that the higher costs for active management represent poor value.

5.5.4 Best Practice Key Takeaways

- **Firms should define their timetable by which they will review each product or service, and have appropriate control to ensure they are completed**
- **Firms should maintain records of their value assessments on an ongoing basis**
- **Firms should take a proportionate approach to the frequency at which they complete value assessments.**
- **Firms should have controls through their outcome monitoring to identify where value assessment trigger events have occurred**
- **Firms should actively review their MI on consumer outcomes to identify indicators of harm**
- **Material changes to the nature, purpose and expected benefits of a product or service should trigger consideration of a reassessment**
- **Manufacturers and distributors should monitor their distribution strategies to assess the extent to which they remain consistent with the original value assessment**
- **Firms should consider whether legislative, tax, economic or other external factors affect the value that their products and services provided**
- **Changes to the firm's costs in delivering a product or service may require revaluation**
- **Investment performance is likely to be a component element of all fair value assessments relating to investment products and services**
- **Appropriate benchmarks should be established so the product or service can be measured against its peer group, and similar pricing groups**
- **Where investment risk is appropriate, understood and accepted, a reduction in value due to normal market movements will not constitute a poor outcome.**
- **Where a value assessment identifies elements of a product or service that do not provide fair value firms must take action to address this**
- **Where it is identified that consumers have suffered harm due to a lack of fair value firms should consider appropriate redress**

6. Consumer Understanding

6.1 Introduction

Consumer understanding should be considered as a key component of the consumer outcomes. Under the consumer understanding outcome rules, firms are required to test, monitor and adapt communications to support understanding and good outcomes for customers. The consumer support outcome complements this by requiring firms to enable customers to act on these decisions without facing unreasonable barriers.

The Consumer Duty cross cutting rules defines the standards of outcomes a reasonably prudent firm is expected to deliver by; acting in good faith, avoiding foreseeable harm, and helping consumers achieve their financial objectives. Firms will need to demonstrate they are able to achieve good outcomes and that the needs of vulnerable customers are also met so that they can achieve the same outcomes.

Firms' communications must support consumers and enable them to make informed, effective and timely decisions about financial products and services. To achieve this, communications must be tailored according to the characteristics of the intended audience, the complexity of the product, the communication channel used, and the role of the firm; be communicated to retail customers in a way that is clear, fair and not misleading; and provide information to retail customers that is accurate, relevant; and on a timely basis.

Companies have a duty of care to their customers, with good customer outcomes being placed at the heart of the business. In the context of this document, this doesn't mean fiduciary care but companies will have to ensure they deliver a higher standard of care to the their customer, with good customer outcomes.

It's also accepted that customers have to take some responsibility for the decisions they make when purchasing and using financial products. However, consumers can only be expected to take responsibility for their financial decisions where firms' communications enable them to understand their products and services, the features and risks of those products and the implications of any decisions the consumer makes.

The existing clear, fair and not misleading requirements remain in place with the Consumer Duty rules for retail communications adding an additional layer aimed at ultimately protecting consumers by addressing the asymmetry of information between firms and retail consumers.

The Consumer Duty requirements are more far-reaching meaning firms must identify the communication needs of their intended audience and evidence consumer understanding. Firms must evidence through testing in advance of issuing communications and on an ongoing basis whether customers are being given the right information at the right time in a format that the customer can understand so they can make an informed decision.

The consumer understanding outcome is covered in section 8 of FG22/5 Final non-Handbook Guidance for firms on the Consumer Duty. However, the guidance on consumer understanding should also be considered in the context of section 5 – The cross-cutting rules.

These cross-cutting rules require firms to:

- Act in good faith towards retail customers
- Avoid causing foreseeable harm to retail customers
- Enable and support retail customers to pursue their financial objectives

The FCA is clear in what they expect from firms in respect of the consumer understanding outcome, starting with the following statements:

- “Consumers can only be expected to take responsibility where firms’ communications enable them to understand their products and services, their features and risks, and the implications of any decisions they must make”

- “We want firms to support their customers by helping them make informed decisions about financial products and services”.

- “We want customers to be given the information they need, at the right time, and presented in a way they can understand. This is an integral part of firms creating an environment in which customers can pursue their financial objectives”.

Guidance is also provided on how they expect firms to meet the expectations of the customer understanding outcome, set out in the following sections of the FCA guidance:

- Equipping customers to make effective decisions
- Other disclosure requirements *(legislative & regulatory disclosure requirements)*
- Ensuring information is provided on a timely basis
- The communication channel used
- Tailoring communications
- Testing communications to support understanding
- Data and monitoring
- Key questions for firms

It is critical for firms to map out who is responsible for what within their firms, including who produces the communications, who tests and who is responsible for mandating standards of communication where third parties are engaged to design/distribute. This analysis should be part of the firms mapping of their customer journey. Firms must consider the purpose of the communication and the outcomes they are focussed on.

Firms should also analyse and document what communications will be made by manufacturers, distributors and any administrators or service providers, allocate responsibility and record that allocation.

6.2 The Risk of Harm

Any communication with customers creates a risk.

Risk can be thought of as the probability of something going wrong and the impact should the event occur. The risk of customers receiving a bad outcome as a result of a communication can be affected by a number of factors, including whether the consumer understands the communication. In turn, the risk of a customer not understanding a communication is affected by the way the firm constructs and publishes the communication.

If a customer does not understand the message they are being given, they could make the wrong decision as a result, leading to a bad outcome. Examples include, amongst others:

- Purchasing an unsuitable product, or not understanding product costs, key features and risks
- Not meeting their commitments under a contract
- Failing to take a required action contained in a communication
- Not understanding changes to a product's terms and conditions

Poor methods of communication can increase the probability of a customer not understanding the message in the communication and, therefore the risk of a bad outcome.

The impact of the poor outcome will depend on the message being communicated.

For example, the impact on a customer if they do not understand the risks associated with volatility and the impact it may have on future financial resilience if they need to access their money when the market is low.

6.3 Context and Purpose of Communications

6.3.1 Target Market of Product

Assessing whether consumers are likely to understand a communication requires consideration of:

- The nature of the communication – For example, communications to users of savings accounts should therefore prioritise simplicity of message and more visual information compared to a complex product which may include more complicated messages for a more sophisticated target market
- The likely recipients of that communication
- The potential for risks of harm to the customer if the communication isn't understood.

Firms should identify the target market for any product / service and consider the characteristics of the target market in sufficient detail to be able to assess the capabilities of the likely recipients. It should be noted that the FCA removed reference to serving a hypothetical 'average customer,' in the final rules of the Duty, and instead, firms are required to effectively serve "customers in their target market".

Understanding these characteristics should then be used to inform the level of sophistication within the content, the most suitable medium(s) used and frequency of communications. It is recommended that the following points are considered:

- Firms should consider what they know or could reasonably be expected to know about the sophistication, financial capability and vulnerability of customers. The extent of knowledge firms have about their customers could be impacted by the product and service that they offer, for example, long term investment providers may have limited contacted with their customers to learn about their vulnerability, financial capability.
- Firms should identify the target market for any product / service and consider the characteristics of the 'average' person within this target market. This should then be used to inform the level of sophistication within the content, the most suitable medium(s) used and frequency of communications.
- Within the target market, firms should identify client groups (client segmentation), which is a specific way of dividing the target market into groups based on shared characteristics. (see section 4.5)
- It is prudent to assume a low level of sophistication and capability unless there is documented evidence to the contrary. The FCA mentions in the draft guidance that one-in-seven adults have literacy (not financial literacy) skills at or below those expected of 9-11 year olds, and 17.7 million adults (34%) have poor or low levels of numeracy involving financial concepts.
- Firms are not expected to tailor all communications to meet the needs of each individual consumer, unless it is appropriate in the case of a one-to-one communication, such as advisor to client. However, there could be a risk that mass communications could lead to poor outcomes if the firm knows, or reasonably ought to have known, that there are certain customer groups within the intended target market that do not have an appropriate level capability for the communication, or experience characteristics of vulnerability that make the communication unsuitable.

Different mediums should be considered for the communication based on the target market. For example, financial products aimed at younger adults may be most effective if received through a mobile banking app or other digital medium. However, equity release products aimed at older adults may be best received on physical paper through the post.

While these considerations may be true of the average person, it's important to remember that customers are individuals and some stereotypes associated with a particular demographic will not be applicable to everyone. Therefore, a range of communication methods should be used where possible.

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6.3.2 Best Practice Key Takeaways

- **Identify the target market for any product / service and consider the characteristics of the target market in sufficient detail to be able to assess the capabilities of the likely recipients.**
- **Perform 'client segmentation 'to identify different groups with similar characteristics within the target market**
- **Assess whether consumers in the target market are likely to understand the communication based on what the firm knows or is reasonable expected to know about the likely recipients, the potential for harm and the nature if the communication**
- **Assume a low level of sophistication and capability unless there is documented evidence to the contrary**
- **Consider different mediums based on the target market, and a range of communication methods where possible**

6.4 Interaction with Clear, Fair and Not Misleading

6.4.1 Interaction with Clear, Fair and Not Misleading

The Consumer Duty requirement to communicate clearly goes further than the existing Principle 7 and Conduct of Business Sourcebook (COBS) 4.2 requirement for all communications to be "clear, fair and not misleading". The Duty introduces rules which require firms to conduct consumer testing to evidence that retail[1] customers understand the communications they receive throughout the customer journey. This best practice for larger organisations with many thousands of customers must now be applied proportionally based on the risk of harm to retail customers. Communications is also broader than written letters, disclosure, periodic statements and now includes any form of communication. Firms will therefore need to consider the different channels they communicate through and how these may need to be adapted.

The existing regulatory requirements focus on the content specifics and the inclusion of balanced communication of risks and reward and clarification of the firm approving the communication.

Principle 12 sets a higher standard than the existing Principle 7 "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".

Non-handbook guidance 8.4 states:

"they also build on, and go further than, Principle 7 by requiring firms to:

- 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

[1] Retail customers include all customers that are not categorised as professional clients.

the communication, and equip them to make decisions that are effective, timely and properly informed

- tailor communications taking into account the characteristics of the customers intended to receive the communication – including any characteristics of vulnerability, the complexity of products, the communication channel used, and the role of the firm
- 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
- test, monitor and adapt communications to support understanding and good outcomes for customers"

8.5 goes on to set out how these rules apply:

"These rules apply:

- to all firms involved in the production, approval or distribution of consumer communications, regardless of whether the firm has a direct relationship with a customer, and includes where a firm produces or approves financial promotions or other advertisements, sales-related communications and post-sale communications
- at every stage of the product or service lifecycle, from marketing, to sale, and post-sale service
- to all communications, whether verbal, visual or in writing, from a firm to a customer, including a potential customer, regardless of the channel used or intended to be used for the communication"

8.73 provides an example of actions likely to be consistent with the Duty:

"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".

The Consumer Duty requirements are more far-reaching meaning firms must identify the communication needs of their intended audience and evidence consumer understanding. Firms must evidence through testing in advance of issuing communications and on an ongoing basis whether customers are being given the right information at the right time in a format that the customer can understand so they can make an informed decision.

The expectation is that firms responsible for issuing and approving communications which can materially influence the decision-making process for retail customers should back up their rationale with the output from testing. There is no regulatory expectation that <u>all</u> communication must be tested as a reasonableness and proportionate approach can be taken. The concept of reasonableness and proportionality will also apply to the feedback from testing and direct customer feedback.

The existing COBS requirements remain in place with the Consumer Duty rules for retail communications adding an additional layer aimed at ultimately protecting consumers by addressing the asymmetry of information the firms need to provide to consumers and the way that consumers engage with and understand this information.

As outlined above the existing regulatory requirements focus on the content specifics and the inclusion of balanced communication of risks and reward and clarification of the firm approving the communication.

Principle 12 sets a higher standard than the existing Principle 7 "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".

6.4.2 Best Practice Key Takeaways

- **This outcome requires firms to communicate information in a way which is clear, fair and not misleading**
- **It goes further than existing Principle 7 because it specifically requires communications to be tailored taking into account the characteristics of the customers intended to receive the communication, including any characteristics of vulnerability; the complexity of products; the communication channel used; and the role of the firm**
- **There is a requirement to evidence consumer understanding through testing, monitoring and on-going improvement**
- **When interacting directly with customers on a one-to-one basis, and where appropriate, there is a requirement to ask if the customer has understood and whether they have any questions**

6.5 The range of Consumer Understanding

6.5.1 Consumer Understanding in context

According to the Cambridge dictionary, understanding is defined as "knowledge about a subject, situation, etc. or about how something works". The level and extent that is expected of a consumer's understanding will vary from product to product and industry to industry.

However, it is generally accepted in law that the greater the potential risk or harm that may arise from a decision, the greater the level of understanding that is required in order for the person to make that decision

According to research from the Money & Pensions Service, as of 2018:

- 47% of adults in the UK do not feel confident making decisions about financial products and services

- 55% of working-age adults do not feel that they understand enough about pensions to make decisions about saving for retirement
- Only 53% of 7-17 year olds say they receive a meaningful financial education in school, at home, or in other settings

https://www.fincap.org.uk/en/articles/key-statistics-on-uk-financial-capability

While this is not the sole responsibility of the finance industry to solve all of these problems, firms have a responsibility to provide information that is understandable, timely and relevant to the target market of each product, throughout the product lifecycle.

The Duty enhances the existing requirements to include adequate protections and balanced communication of risks and rewards, with the obligation to evidence that the communication equips customers with the information they need in a way which is effective and timely to properly make an informed decision. Communications need to be comprehensible to the intended audience of the communications and customers in the target market. The rules go beyond simply limiting industry jargon with firms considering the stages of the customer journey and how and when information is communicated. Firms will need to consider the way content can be laid out and navigated and the ability for consumers to be coached through the choices they make. All of these considerations must be inclusive by ensuring customer vulnerabilities are addressed, by making it clear how to get additional support regardless of the channel being used whether this is a telephone line, a written communication or website content.

6.5.2 The difference between understanding and communication explained

Understanding and Communication are two very different functions, and it is important that we don't conflate them or confuse them.

Communication is the means by which we impart or exchange information. There are often several channels to this for example written, spoken and touch. Communication is therefore the means by which we impart the information that we wish the client to understand and then act upon.

Understanding on the other hand is the process by which a client gains and utilises knowledge. It can potentially involve a number of different functions such as comprehension, judgement and flexibility of thought.

An individual's ability to make a decision is deemed to be item specific i.e. they may have the relevant understanding to make one decision (such as investing in an ISA) but lack the understanding to make another decision (such as investing in a complex portfolio).

When determining the appropriate threshold of understanding, it is useful consider broader areas such as relevant concepts (what is the purpose of the product, possible alternatives etc), risks associated with the product and practicalities of actually taking the product (e.g. whether to seek legal advice or the length of any 'cooling-off' periods).

It is important that we do not set the threshold of understanding too high.

http://www.39essex.com/cop_cases/ph-v-a-local-authority-and-z-limited/).

The extent and level that an individual needs to understand the relevant information as determined by the threshold of understanding is generally considered to be at the level of 'the average person on the Clapham omnibus', with the caveat that if additional specialist information has been provided or is necessary, then this must be included.

In the ruling A Local Authority v JB (2021) (https://www.39essex.com/cop_cases/a-local-authority-v-jb-3/) it was reiterated that an individual need only be aware of the reasonably foreseeable consequences of their decision, rather than needing to understanding every possible outcome and nuance.

6.5.3 Understanding and The Mental Capacity Act

About two million people in England and Wales are thought to lack capacity to make decisions for themselves. The Mental Capacity Act (2005) provides a framework in order to assess a person's ability to make a decision. One of the key elements of this is the individual's ability to understand information relevant to the decision in question.

Section 3 (1) of the Act (or functional test) states a person is unable to make a decision if they cannot;

1. understand information about the decision to be made;

2. retain that information in their mind;

3. use or weigh-up the information as part of the decision process; or

4. communicate their decision.

If a person lacks capacity in any one of these areas, this represents a lack of capacity (Mental Capacity Act 2005: Code of Practice).

It is important to note that the Act (and further case law) only expect an individual to understand, retain, weigh up and use and communicate information that is relevant to decision in question.

Presumption of Capacity

The first and most important principle is the presumption of capacity. This means it is assumed that everyone has capacity until proved otherwise. A lack of capacity should not automatically be assumed simply based on a person's age, appearance, condition or behaviour. Similarly, just because a person has lacked capacity to make a previous decision, this does not necessarily mean they cannot make the decision in question.

Supported Decision Making

Principle 2 of the Mental Capacity Act (2005) states that "A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success". In order to comply with principle 2 of the Act, a firm or adviser must take all practicable steps to help their client understand the necessary information.

It is important therefore that firms are clear about

- what they consider to be the salient points that their client needs to understand in relation to each product or series of products and
- provide this information to their client in an accessible format.
- What help the firm or adviser has provided in order to support their client

Unwise decisions

Principle 3 of the Mental Capacity Act (2005) states that "A person is not to be treated as unable to make a decision merely because he makes an unwise decision".

An unwise decision can be defined as a decision that the client wishes to make but which is different from the one that the adviser might make, based on the same evidence.

There are two key things we look for when assessing whether a person's decision is unwise:

• a logical and consistent series of steps in their thought process that takes them, step by step, from the evidence to their outcome; and
• their ability to weigh up the reasonably foreseeable risks involved in the decision that is being made, including the reasonably foreseeable consequences of not making that particular decision.

(Farmer, 'Grandpa on a Skateboard: The practicalities of assessing mental capacity and unwise decisions', 2020).

A firm must therefore allow an individual to make an unwise decision so long as they have the mental capacity and relevant understanding to do so.

6.5.4 Best Practice Key Takeaways

- **The level and extent that is expected of a consumer's understanding will vary from product to product and industry to industry.**
- **The greater the potential risk or harm that may arise from a decision, the greater the level of understanding that is required in order for the person to make that decision.**
- **The Duty enhances the existing requirements to include adequate protections and balanced communication of risks and rewards, with the obligation to evidence that the communication equips customers with the information they need in a way which is effective and timely to properly make an informed decision.**
- **Communications need to be comprehensible to the intended audience of the communications and customers in the target market.**

- **Firms should consider the stages of the customer journey and how and when information is communicated, and the way content can be laid out and navigated and the ability for consumers to be coached through the choices they maket.**
- **All considerations must be inclusive by ensuring customer vulnerabilities are addressed.**
- **The threshold of understanding in the context of the target market and the Mental Capacity Act should be overlaid to all other considerations**

6.6 Communicating to Different Levels of Understanding

6.6.1 Techniques for effective communication

The aim of any communication with customers should be to provide the information they need, in a way they can understand, for them to make reasonable financial decisions. For a customer to read consume the information provided, they need to be engaged with the communication. Their level of engagement will be influenced by the level that the communication is pitched at.

A communication, pitched at a sophisticated level is not going to be engaging to a novice customer who has limited understanding of financial matters.

Likewise, a communication pitched at a low level is not going to tell a sophisticated customer anything they don't already know. It will likely be too basic to be engaging to this customer.

In both situations, the communication could be perfectly written for the relevant level, with accurate information. However, neither situation results in an improvement in customer understanding.

The FCA lists five points to consider when presenting information in a communication.

- **Layered**– layering information is a technique that can be used to support customers in making effective decisions. The key information should be highlighted, and easy to identify. For example, by means of headings and layout, bullet points, display and font attributes of text, with cross-references or links to more detailed information as required. Firms will need to identify the 'key information', taking into account the product or service and the intended audience. The process and decisions to identify this information should be recorded as per the firm's governance process. Layering should be carefully used to enhance the consumers understanding by breaking down the information in more manageable chunks and allowing the reader to digest the information. It should not add complexity or distract from the key messages by main g the communication less engaging (see below).

- **Engaging** – Communications should be designed in a way that encourages consumers to engage with them. This is particularly important where the communication is prompting the consumer to act. Firms should consider how they can encourage consumers to engage with a communication through good design, and other features such as graphs, graphics, audio-visual or interactive media. If a communication is engaging from a sales perspective, it is likely that extra care will be needed to ensure key information is at least as engaging to intended recipients. The use of positive frictions can be considered to keep the attention on the key information.

- **Relevant** – There should be an appropriate level of detail for each communication, considering the type of product or service and the intended recipients. Firms should take into account what customers need to know, the kind of decision to be made by their recipients where applicable, and where confusion could arise. Firms should avoid including any information that's unnecessary, such as unnecessary disclaimers, whist still keeping in mind that the communication needs to be engaging.

- **Simple** – There should be an emphasis on avoiding jargon and technical terms and including plain, intelligible language. Simplicity can help consumers to compare different options available to them where, for example, costs are stated in simple terms. Shorter, concise communications are more likely to be read and understood. Lengthy and technical communications can confuse or overwhelm readers

- **Well-timed** –Communication with customers in both a timely manner and at appropriate touch-points throughout the product or service lifecycle gives them an opportunity to take in information and, where relevant, assess options. The FCA's reference to the product or service lifecycle indicates that this is intended to encourage consumers to review whether it is in their best interests to switch between products and services. Therefore, communication with customers should be in a timely manner and at appropriate touch points throughout the product lifecycle, such as at contractual breakpoints, giving them an appropriate opportunity to take in the information and, where relevant, assess their options. Firms should document the decision and rationale as to when to communicate with customers during the product or service lifecycle.

There are various techniques that can be used to slow down a customer journey within a proposition, known as 'positive frictions'. Some examples might include:

- tick boxes for consumers to confirm they understand key risks
- behaviourally informed reminders and information
- requiring users to manually type in the amount of money they are prepared to lose
- FAQ style questions
- cooling-off periods
- pop-up additional risk warnings with an additional required click

Negative frictions are those that make it more difficult for a customer to take a course of action such as cancelling a contract, whereas positive frictions may be used to give the customer more time to make a decision.

In 2019, the Department for Business, Energy and Industrial Strategy commissioned the Behavioural Insights Team to produce a Best Practice Guide to presenting contractual terms. This guide contains useful techniques for increasing consumer engagement with important information:

https://www.bi.team/wp-content/uploads/2019/07/Final-TCs-Best-Practice-Guide-July-2019-compressed.pdf

6.6.2 Signposting

Firms, and in particular advisers, should consider the use of signposting where appropriate. For example, making a client aware of protection specialist or to provide access to services like will writing or tax advice. It may be appropriate to prominently signpost the availability of support for customers in circumstances that could lead to vulnerability such as those in financial difficulty, or those needing additional health related support (see further details in vulnerability section 6.7)

6.6.3 Different Channels of Communication

Firms will need to generate comparable outcomes, regardless of how a customer interacts with them. As well as understanding who they are communicating with, the 'what' and the 'how' become increasingly important. Firms should consider whether the channels of communications are appropriate depending on the characteristics of the target market and the client groups within the target market. Firms should also consider flexibility in the respect of the circumstances or vulnerabilities of individual consumers, for example by offering and 'exit' from an online journey and enabling the customer to speak to and associate.

Customers may receive communications from companies in a range of formats, such as:

- Financial promotions
- Disclosure documentation and GDPR disclosures
- Letters
- Emails
- Verbally - phone / face to face conversations
- Text messages
- Documents
- Adverts / promotional material
- Online journeys
- Apps
- Social media posts/ blogs
- Information presented within the website
- Suitability reports

Different messages will be best communicated in different mediums. Therefore, firms must consider the objective and characteristics of the communication when deciding the best medium to use. For example, key product information may contain a reasonable amount detail, some of which may be complex, it is unlikely to be appropriate to send important product information in a text message.

There are limitations and issues with some channels, in particular with digital communication channels and how information is presented.

Firstly, the amount of time given to the consumer to consider and respond to information. Firms will need to determine the appropriate amount of time, by the amount of information, how it's given and how important it is to the consumer. Layering of information (see section 6.5.1) can be a helpful way of presenting complex or lengthy information.

Secondly firms should consider the ease of navigation as this has the potential to improve or inhibit understanding. Testing is likely to be needed which should provide an objective assessment and to view the communication from the perspective of the intended audience.

Social media posts/blogs should be generic in nature and not contain any specific advice and website content should again provide generic information setting out clearly and accurately the products and services and costs involved.

6.6.4 Best Practice Key Takeaways

- **The aim of any communication with customers should be to provide the information they need, in a way they can understand, for them to make reasonable financial decisions.**
- **The FCA lists five points to consider when presenting information in a communication. These should be used a techniques aid understanding and engagement.**
- **Positive frictions should be used to slow a customer's journey when it is appropriate and in their best interests by aiding understanding and engagement.**
- **Care should be taken that the frictions are not negative. For example, making it more difficult for a customer to exit a product.**
- **Firms, and in particular advisers, should consider the use of signposting where appropriate.**
- **Different messages will be best communicated in different mediums. Therefore, firms must consider the objective and characteristics of the communication when deciding the best medium to use**

6.7 Vulnerability and Behavioural Bias

6.7.1 Vulnerability Considerations

The FCA defines vulnerable customers as "customers who, due to their personal circumstances, are especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care".

The Consumer Duty builds on existing guidance on fair treatment of vulnerable customers (FG21/1).

https://www.fca.org.uk/publication/finalised-guidance/fg21-1.pdf

This guidance should be considered, with particular attention to the four drivers of vulnerability, as this guidance has now become a duty under the Consumer Duty.

Vulnerability is broad, transient, and situational and anyone can be vulnerable at any time. The Duty expects firms to minimise foreseeable harm to any customers in their target market, and not just the 'average' customer. Firms should take steps to understand what characteristics of vulnerability are likely to be present in their target market and customer base.

When designing and reviewing customer facing communications the firm must consider both the broader characteristics of customers (The Equality Act 2010 EA2010 protected characteristics) and the characteristics of vulnerability.

To meet the FCA's expectations in relation to protecting vulnerable customers, firms will need to understand how they can generate comparable outcomes, regardless of how customers choose to interact. Firms should introduce training and guidance to their employees to help them recognise the drivers of vulnerability, and to make sure these are considered when interacting with customers.

Firstly, firms should proactively identify the outcomes and establish appropriate styles and channels of communication for different groups of customers, in particular vulnerable customers, as part of target market analysis.

Secondly a firm will need to establish what harms might a customer with certain characteristics be at increased risk of being vulnerable to. Once this is established, the communication strategy can be identified to minimise the risk of the harm as a result of vulnerability.

This could include a different channel of communication or information provided in a different format such as:

- infographics
- large print
- video
- next generation text
- accessible websites
- webchat

Signposting to additional support should also be considered such as:

- support from and external specialist service
- service for or consumers with a hearing or visual impairment to request communications in a format that meets their needs.

Firms should also consider developing guides and online tools to assist customers in vulnerable circumstances.

Customers should also be encouraged to register mandates where appropriate in order a supporting family member or friend can assist them and register lasting powers of attorneys.

The following adaptations could be considered in respect of different types of communications:

- **Literature:** Inclusive design should be considered including the needs of customers who may find themselves in vulnerable circumstances by offering large print, audio versions of documents, summaries of important information and all communications written in plain English.

- **Online journeys and websites:** ensuring that there are points during an online application process where a customer can take a break and come back to the application point, multiple channels of assistance available when required, for example a chat bot or manned chat function, telephone, email.

  Ensuring that all content is accessible for example subtitling on podcast content, considering the level of financial knowledge of your target market and audience, and avoiding unnecessary jargon.
- **In Person Investor events:** Firms should ensure that these are fully accessible for all customers including subtitling or transcriptions. Firms should consider customers that may have hearing or visual impairments and ensure that any slides are presented in a clear font, with descriptive language used where diagrams or graphs are presented.

  Firms also should ensure that if any customers attending have a hearing impairment have access to hearing loop and a sign language interpreter if required.

Firms may wish to refer section 4.4.1 of the TISA Best Practice guide for Vulnerable Customers that makes recommendations to firms planning communications to vulnerable customers.

6.7.2 Behavioural Bias

Although firms might not set out to exploit biases, communicating with consumers without consideration may nudge consumers toward a commercial interest, which may be seen to exploit the bias at the expense of good consumer outcomes, particularly when compounded by susceptibilities such as vulnerability and diversity.

As well as decision-making bias, information asymmetry and consumer inertia can also influence consumer outcomes. For example, asymmetry exists when information is withheld or presented in a way to promote certain actions.

For example, situations where customers have a process to apply online which is frictionless, but the process to leave, make changes or transfers or cancel is much more challenging.

Firms should conduct testing with customers to assess whether communications are empowering them to make an informed decision, or simply re-enforcing behavioural biases that lead to poor customer outcomes.

The Consumer Duty does not seek to remove consumer choice, nor to entirely mitigate that consumers will make irrational decisions. The intention is that firms understand these aspects of behaviour and take reasonable steps to ensure that consumers are enabled to make good decisions.

This occasion paper by the FCA in 2013 is a useful starting point to understand how the FCA applied behavioural economics:

https://www.fca.org.uk/publication/occasional-papers/occasional-paper-1.pdf

6.7.3 Best Practice Key Takeaways

- **The FCA defines vulnerable customers as "customers who, due to their personal circumstances, are especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care".**
- **Guidance on fair treatment of vulnerable customers (FG21/1) should be considered, with particular attention to the four drivers of vulnerability, as this guidance has now become a duty under the Consumer Duty.**
- **The Duty expects firms to minimise foreseeable harm to any customers in their target market, and not just the 'average' customer.**
- **Firms should take steps to understand what characteristics of vulnerability are likely to be present in their target market and customer base.**
- **When designing and reviewing customer facing communications the firm must consider both the broader characteristics of customers (The Equality Act 2010 EA2010 protected characteristics) and the characteristics of vulnerability.**
- **To meet the FCA's expectations in relation to protecting vulnerable customers, firms will need to understand how they can generate comparable outcomes, regardless of how customers choose to interact.**
- **Firms should introduce training and guidance to their employees to help them recognise the drivers of vulnerability, and to make sure these are considered when interacting with customers.**
- **Signposting to additional support should be considered.**
- **Firms should seek to understand and consider behavioural bias in designing the communication strategy.**

6.8 Testing Consumer Communications

6.8.1 Approach to Testing

There is a requirement for firms to monitor whether communications are supporting consumer understanding and helping with making effective, timely and informed decisions. Testing the communications is one way to find out, and evidence this.

The FCA has acknowledged that capacity to test will be commensurate with the resources and capabilities of the firm, and proportionate to the products and services offered. For example, a firm may decide that direct feedback from clients is appropriate, and no further action is required. All rationale and decisions in respect of proportionality of testing should be recorded in line with the firm's governance.

It is not required that that every communication needs to be tested, firms need to prioritise there testing according to greatest harm to customers for example calls to action such as corporate actions where a customer needs to elect for a particular option which could impact their shareholdings needs to be prioritised over marketing communications.

Scope for harm is also a key consideration in prioritising the testing of communications. There is no need for testing where no risk significant harm to consumers is identified. Firms need to demonstrate a proportionate approach that provides assurance that consumers can understand and where necessary act upon their communications.

Examples of how testing might be prioritised might be by assessing the complexity of the communication, does it include a call to action from the customer, the length of the document, for an online journey how quickly is the document accessed and is the document a regulatory requirement.

The testing should identify

- How well the information is understood by the customer
- whether the communication delivers the desired action
- whether it makes it clear to the customer the risk of inaction
- if the customer is given the opportunity to access more information or support at the right time

If the firm uses any communications produced by a manufacturer, and feedback or testing identifies an issue with them, this should be feedback to the provider.

In considering and developing the testing approach it is recommended that firms:

- undertake initial testing of communications in advance of the implementation date and an ongoing testing and monitoring programme
- identify communication channels used to communicate with existing and potential clients, including, e.g. Financial promotions, website, marketing e mails, verbal communications
- articulate of what constitutes a "good customer outcome" so that the aim of the communication is understood before testing
- develop a testing plan for what communications to test and how frequently. Communications, prioritising communications with the most impact to customers and prospective customers. Principles should be in place to state that communications requiring action, or otherwise with a greater risk to outcomes should be reviewed more frequently and at a greater level of scrutiny than generic messages.
- develop a testing programme which may include utilising in-house expertise, seeking feedback from existing customer/prospective customers, appointing a third-party firm or a combined approach.
- map the testing of websites to a particular customer journey or scenario, for example:

- How does a customer advise of a bereavement
- Is that information easily accessible on the website
- Is it empathetic and clear as to what needs to be provided and what next steps are
- Is there a clear contact option if customers want to speak to someone.
- How does a customer raise a complaint
- Is it easy to locate on your website how the customer would do that and
- Is the complaint handling process clearly set out and defined.

- develop a feedback process internally to capture and act upon customer feedback about communications to ensure these are considered and actions progressed to continually make improvements.
- consider A/B testing to get quick feedback, using content management systems to rapidly deploy changes following customer feedback.
- consider the use of a testing focus group with characteristics consistent with target market for initial testing and for ongoing testing

6.8.2 Best Practice Key Takeaways

- **There is a requirement for firms to monitor whether communications are supporting consumer understanding and helping with making effective, timely and informed decisions. Testing the communications is one way to find out, and evidence this.**
- **It is not required that every communication needs to be tested, firms need to prioritise there testing according to greatest harm to customers.**
- **The testing should identify:**
  - **How well the information is understood by the customer**
  - **whether the communication delivers the desired action**
  - **whether it makes it clear to the customer the risk of inaction**
  - **if the customer is given the opportunity to access more information or support at the right time**
- **If the firm uses any communications produced by a manufacturer, and feedback or testing identifies an issue with them, this should be feedback to the provider.**
- **A testing program that is both proportionate and effective should be designed in consideration of the key recommendations outlined in this document.**

6.9 Ongoing Monitoring and Evaluating Outcomes

6.9.1 Monitoring Impact of Communications

The ongoing monitoring of the impact of a firm's communications on customer outcomes is a key activity in evidencing a firm's compliance with the consumer understanding and consumer support outcomes. Firms should monitor whether communications are supporting customer understanding and helping customers make effective, timely and properly-informed decisions throughout the product or service lifecycle.

The processes for preparing and approving retail-facing communications requires firms to perform consumer testing, regularly monitor communications and adapt communications. To effectively monitor communications firms should develop management information (MI). Where communications are not supporting customers to achieve the outcomes expected, action should be taken to improve the communication to support good outcomes.

Firms must also be able to identify whether any group of retail customers is experiencing "different outcomes" compared to another group of customers receiving the same product or service.

The expectation is that firms responsible for issuing and approving communications which can materially influence the decision-making process for retail customers should validate their rationale with the output from testing.

Firms should consider both the short-term and longer-term effects of their communications in planning the monitoring work. On-going monitoring should also identify the impact of any changes over time to products and services referred to in the communication, as well as changes or updates to communications.

The frequency of monitoring reviews depends on the nature and complexity of the product or service, any indications of customer harm, the distribution strategy, and other factors. Firms should collect whatever information they consider is required in order to make assessment of the effectiveness of communications, and be clear about how it's to be used in assessing whether communications are doing what firms intend.

6.9.2 Management Information for Monitoring

Management Information (MI) is data used to provide insight into how the firm is performing in delivering good consumer outcomes. Where good outcomes are not being achieved, MI should also be able to identify the reason, or flag an area for further investigation, so that improvements can be made.

The FCA's guidance provides a reasonably comprehensive list of potential data sources which firms could use to evaluate their compliance. It is worth noting that the FCA has not at this stage introduced a regular reporting obligation, and will consult on any future proposals to do so.

The Non handbook guidance includes full details on types of data/monitoring including:

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

Some additional data points that firms may incorporate into their MI are listed below, and it is recommended that firms carry out a gap analysis of their MI used for monitoring of communications:

- Use of leavers surveys to collect feedback on why clients are closing accounts – this could be a valuable indicator of outcomes as clients may not have complained but decided to close due to for example service, charges, product not meeting their needs.
- Holding periods of stock (although this may not be reliable if markets are down).
- The content/type of calls that your client facing teams are receiving to identify trends for example queries on factsheets – is there a point/issue that is confusing your customers and does it need to be made clearer.
- Complaints data, including FCA reportable and non-reportable, root causes, the demographic of clients who are complaining, and whether they are customers who are in vulnerable circumstances
- Monitoring customer behaviour – this could include data on how often the website is accessed, which areas are most frequently accessed, whether clients are accessing emails sent, and whether they are they reading full content include risk warnings.
- Call monitoring – consider use of voice analytics to identify key words that indicate feedback.
- Information on customers in vulnerable customers should be collected to continue to build a picture of the target market.
- To what extent are firms monitoring FCA comms to also identify areas they should be monitoring
- Sentiment analysis on feedback provided over various social media channels, even if not attributable to individual customers (Twitter etc)

However, there is no one-size-fits-all, and firms will need to determine what data points will be required to monitor whether good outcomes are being achieved in relation to communications. MI should be proportionate, ensuring all products, services, points of the customer journey and customer types are covered.

It is recommended firms consider the below points in designing the suite of MI and an effective monitoring:

- Firms should consider data that gives an indication of customer feedback and how the product and services are being received. For example, complaints data, holding period data
- The source of the data should be reliable, scalable, and comparable over given period

- Sourcing MI and providing MI to other parties in the distribution chain should be a key consideration monitoring outcomes
- Data to evidence and monitor the understanding and outcomes for customers in vulnerable circumstances, which should include considering the drivers of vulnerability in the firms target market, plus catering for those who are hearing impaired or visually impaired and those who are becoming vulnerable.
- Firms should consider holistic monitoring by regularly reviewing the full suite of communications that customers receive at different points of their journey to ensure that messages remain effective.
- Devising a matrix or grading system for communications using measures such as volumes of customers it's being sent to, calls to action communications, regulatory communications, the complexity of the documents may be an effective way of deciding how and when to monitor communications.
- Consideration of triggers for when a risk-based review should be performed.
- Enhanced metrics which may be obtained through the implementation of new processes or systems, e.g., web scraping to monitor customer interaction on web journeys.
- Conducting significant customer research to assess high risk areas and current levels of understanding across the product range for example, using consumer focus groups, third party research providers and industry bodies representing core consumer groups e.g., Age UK
- Considering introducing a final step into the complaints process to collect feedback from clients after complaints have been completed.
- Reviewing root cause analysis
- Monitoring Frameworks need to be continually reviewed to ensure they are effective; firms may wish to consider doing this on a set period i.e., 3 or 6 month rolling basis and documenting that review.
- Firms may wish to consider implementing technology as either a control or as a way of obtaining additional insight into customer behaviours and outcomes e.g., through recording and analysing digital journeys

6.9.3 Identifying Reg Flag Behaviours

An integral part of ongoing monitoring is identifying the red flag behaviours. Firms should seek to understand the needs, characteristics, and objectives of their customers and how they behave to inform the monitoring and testing approach and evidence they will seek to provide. All client facing staff should receive training to identify red flag behaviours where the actions of a customer or the firm may cause the customer harm. These behaviours may include;

- clients selling at the bottom of the market and making a loss,
- requesting withdrawal payments to be made to third parties,
- Clients signing up for high-risk products when they've made you aware, they are of limited funds. Customers outside of the target market applying for the product
- Clients at risk of possible frauds/scams
- Clients who show vulnerable characteristics – who may not fully understand what they are investing in. Customers/clients who are not able to service/view/manage the product through the targeted channels

- customers complaints which indicate the product objectives are not understood, such as short-term volatility for a long-term investment.

Firms should have points in the customer journey where positive frictions can be introduced to stop a possible poor customer outcome. Where red flag behaviour trends are identified these should be escalated so appropriate action can be taken to mitigate future harm through making improvements.

6.9.4 Evaluating Good Outcomes

Firms will need to consider what a good outcome is for each stage of the customer journey and specific communications. The FCA expects firms to see the benefit of Consumer Duty as there will be a reduction in complaints about switching, or products not working as expected - this should be evident in the MI being reviewed.

Good outcomes at the 'outcome level' (i.e., understanding / support) should map to the overarching definition of a good outcome at the Board level - what is a good outcome in this organisation for our customers.

As an example, a communication which requires a customer to act will be successful and help deliver a good outcome if the customer engages and responds to that communication. Firms should monitor a range of data, MI, and feedback, such as response rates, opened email rates, website traffic, analysis of queries or complaints relating to the communication to identify whether alternative channels of communication or additional information is needed.

A poor outcome in the scenario would be a high percentage of customers who did not respond and therefore missed out on an opportunity which may result in foreseeable harm.

A further example may be sending a notification to a group of customers advising them of a corporate action. A poor outcome would be feedback or calls from several investors who do not understand the text of the letter and it generates several queries. This highlights the importance of ensuring that communications are tested before sending.

Firms must consider the expected outcome from the communication when deciding the content, along with the most appropriate method of drafting and delivering a message.

In many cases, consumers may need to take an action as a result of a communication. It’s therefore very important for the consumer to be able to understand the meaning of any communication and what actions, if any, they need to take as a result.

For example, the objective of an advert is to create business opportunities and create visibility within the target market. Therefore, the firm would be expected to understand the best way to communicate messages to the target market so that they have the necessary, accurate information they need in order to make a buying decision.

Alternatively, a change in a product's features needs to clearly articulate what the change is, what it means for the likely performance / risk of the product, any changes to the cost and what options are available to the customer if they are not happy with the proposed changes.

Where it is identified through communications MI / reporting that consumers do not understand a product or service, or a communication there should be robust governance in place to take remedial actions. This may include redesign of the communication itself, but the product teams should assess whether this may have roots in the design / manufacture / target market rather than, or as well as the communications outcome.

It is recommended firms consider the following:

- Determine the purpose and intended outcomes of the communications they prepare for end consumers which will include information on websites as well as email, letter, visual, social media, verbally, and other forms of communications.
- How information is presented to meet the needs of customers including alternative formats to meet the needs of customer with characteristics of vulnerability in the target market
- Where a communication requires a customer to take action this is made explicitly clear to the customer and the consequence of inaction is likewise clear.
- Important information is provided at the right time during the customer journey to enable the customer to make an informed decision, including key features, benefits, costs, and risks of the product and/or service
- The level of information required to enable a customer to make an informed decision, including how to find out more, how to request the information in an alternative format to meet their needs or ask for help through a channel which also meets their needs

6.9.5 Best Practice Key Takeaways

- **Firms should monitor whether communications are supporting customer understanding and helping customers make effective, timely and properly-informed decisions throughout the product or service lifecycle.**
- **To effectively monitor communications firms should develop management information (MI).**
- **Where communications are not supporting customers to achieve the outcomes expected, action should be taken to improve the communication to support good outcomes.**
- **Firms must also be able to identify whether any group of retail customers is experiencing "different outcomes" compared to another group of customers receiving the same product or service.**
- **Firms should consider both the short-term and longer-term effects of their communications in planning the monitoring work.**
- **it is recommended that firms carry out a gap analysis of their MI used for monitoring of communications.**
- **MI should be proportionate, ensuring all products, services, points of the customer journey and customer types are covered.**

- **Firms should seek to understand the needs, characteristics, and objectives of their customers and how they behave to inform the monitoring and testing approach and evidence they will seek to provide.**
- **An integral part of ongoing monitoring is identifying the red flag behaviours.**
- **Firms will need to consider what a good outcome is for each stage of the customer journey and specific communications.**
- **Where it is identified through communications MI / reporting that consumers do not understand a product or service, or a communication there should be robust governance in place to take remedial actions.**

6.9.1 Summary of Actions Consistent with Consumer Duty

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 customer's 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 customer 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 customer after the initial point of sale	Firms are proactive in thinking about how best to engage and communication with customers after the point of sale to support good outcomes.
Firms do not adopt a reasonable approach to 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.

7. Consumer Support

7.1 Introduction

7.1.1 Introduction to Consumer Support

The Customer Support outcome seeks to address practices that hinders consumers from taking timely action to manage their financial affairs and making use of products and services, or increases their costs in doing so, other practices which hinder consumers' ability to act, or which exploit, in the Regulator's words, 'information asymmetries, consumer inertia, behavioural biases or vulnerabilities'

The Consumer Support outcome complements the Consumer Understanding outcome. Having communicated with clients in a way that enables them to make effective, timely and informed decisions, the Consumer Support outcome requires forms to enable clients to act upon those decisions without facing unreasonable barriers.

The consumer support outcome requires a firm to give support to clients to be able to act when they need to, without unreasonable barriers. However, this support may include introducing frictions into the customer journey to prevent or deter clients from acting in a way that is detrimental to their best interests.

Firms must design and deliver effective consumer support frameworks that consider these core principles.

- Customers are supported throughout their relationship with the firm
- The quality of post-sales support is at least as good as the quality of pre-sales support
- Customer support must be effective, regardless of the channel. Firms must ensure that support channels meet the needs of their customers, having considered their target market
- The design and delivery of support must ensure that retail customers can use their product as reasonably anticipated
- New or prospective customers must not be prioritised to the detriment of existing customers
- Customer support must not involve presenting unreasonable barriers during the lifecycle of the product
- In the provision of customer support, firms must not unreasonably impact the ease with which a customer could switch or exit a product
- Firms must respond flexibly to the needs of customers with characteristics of vulnerability and consider the needs of protected characteristics under the Equalities Act 2010.
- Customer support must be flexible enough to handle non-standard issues
- An authorised person, such as a customer's appointed Power of Attorney, should receive the same level of support as the customer.

- Firms must include appropriate frictions in the customer journey to mitigate the risk of harms, particularly for complex products
- Firms must deal with reasonable requests from other firms in a timely and effective manner to allow the other firm to support their retail customer
- Firms introducing a digital only journey must take additional care to monitor that customer support is appropriate. They should mitigate harms such as potential support service outages or consider impacts to vulnerable customers (eg if they lose their internet access)
- Firms that outsource the provision of customer support retain the responsibility and accountability for ensuring that the support is effective and meets the needs of customers.

7.1.2 What is does not require

The Consumer Support Outcome does not require firms to:

- Provide support through multiple channels. The support provided should be appropriate for the target market and the support should be able to respond flexibly when considering nonstandard situations of customers in vulnerable circumstances.
- Streamline the customer journey to such an extent that key touchpoints are lost, or positive frictions are not utilised to aid consumer understanding.
- Guarantee that customers will never experience issues or delays.

7.1.3 Best Practice Key Takeaways

- **Ensure all support processes support the customer being able to act when they need to**
- **Avoid friction in the Customer Journey where it is in the customers best interest to act, and that failure to act could lead to harm**
- **Make use of positive frictions to deter a customer from acting when it may not be in their best interests to do so**
- **Ensure that the processes offer support that is aligned to achieving equivalent good outcomes for consumers with characteristic of vulnerability**
- **Monitor the process by ensuring that the MI is designed to identify area where the processes have not delivered a good outcome or there is risk of consumer harm**

7.2 Evaluation of the Consumer Journey

7.2.1 Mapping the Consumer Journey

TISA

Customer journeys are interactions an individual has with a firm in relation to buying and using products and services. Financial services products often having a long lifespan, some customer journeys can last many years.

The total lifecycle of a customer journey starts when a prospective customer first sees or hears about the firm, its products, and services; all the way through to exiting the product.

Firms will use their own preferred language to map and define the different stages of their customer journey, and to explain the outcomes that retail customers can reasonably expect at each of those stages.

Firms should consider the likely needs of their customers at each stage of the product lifecycle and how retail customers can advance their financial objectives without undue barriers. Firms may also wish to consider their consumer understanding responsibilities and record what supporting materials are available at each stage of the customer journey to inform, educate or notify the customer.

It is natural that customers will have questions at different stages of the customer journey in relation to their own individual experience and needs. Firms should consider how to evidence that their customer support framework is appropriate to the characteristics of their target market.

Pre – onboarding	Marketing and pre-sales activity
Onboarding	Successfully opening an account and meeting all the terms of acceptance for new business including KYC requirements
Product cycle	Regular or scheduled fund events such as distributions, direct debit collections, Junior ISA holder turning 18
Product events	Irregular events such as fund mergers and closures, corporate actions, EGMs
Life events	Change of name; change of address; divorce; retirement; appointing a power of attorney
Ad-hoc queries	Standard and non-standard queries on the use of the product or the status of the customer
Legal / Regulatory	Dealing with court orders, police enquiries, fraud, data subject access requests, KYC reviews
Offboarding	Voluntary partial or full closure Death of a customer and dealing with executors

7.2.2 Key Elements of Customer Interaction

Once a firm has mapped the consumer journey, it should consider the services and support already in place through the lens of Consumer Duty and assess each point in the consumer journey against the following criteria:

- The benefits to the end consumer of the support function
- The channel used to access this service and whether it meets the needs of the target market

- Additional/ flexible channels available for client in vulnerable circumstances or with characteristics of vulnerability
- Any barriers that may prevent or make it difficult for the client to act in their own best interests. Or cause delay, distress, or inconvenience
- Any unexpected or unreasonable costs to the client- these costs can be monetary and/or non-monetary cists such as expenditure of significant time/effort.

Firms should consider all elements of the service and support processes at each of the points of the consumer journey. These should include outsourced services such as the contact centre. For each of these elements of the service, the desired outcome should be determined and documented, and then analysis should be completed to understand what is required to achieve these outcomes and identify any gaps in the process.

7.2.3 Unreasonable Additional Costs

Support provided should not result in a product or service costing more than the customer expected. However, unreasonable additional costs include not only unreasonable charges, but also unreasonable expenditure of time, distress, inconvenience and provision of personal data. Therefore, in order to determine whether the firm has acted to deliver a good outcome for the client in respect if Consumer Support, it is recommended that firms:

- Establish how much time is reasonable for consumer to spend on different aspects of support. For example how long is reasonable for a customer to spend in waiting to connect to a contact centre associate for support.
- Establish how much inconvenience it is reasonable to expect consumers to tolerate in relation to the firms' products and services. For example, if poor service results in customer distress, it is expected this would not be reasonable.
- Determine how much personal data consumers can reasonably be expected to provide for each scenario in the customer journey that may arise.

7.2.4 Assessing Different Channels

The regulator does not intend to mandate which communication channels are most appropriate for a firm to deploy. However, it does expect firms to think carefully about their target market and the likely needs of their customers, and for firms to be able to evidence how their framework provides effective support to those who need it.

Firms should also consider how customers may require different communication channels depending on their circumstances, or if they have characteristics of vulnerability. A retail customer setting up a new account online may need access to personalised support to complete the journey.

Consideration should be given to whether particular groups of clients may be at a disadvantage, including those with characteristics that could lead to vulnerability. This does not necessarily mean that a firm should provide support to clients via a multitude of different channels, but it does mean that the primary channel of support should meet the needs of the target market and be able to respond flexibly to the needs of customer in vulnerable circumstances.

Customer support channels should be easy to find, and where appropriate, alternatives should be signposted to assist the customer in finding the right channel for them.

Website content	Social Media	Telephone lines
Traditional mail	Email / Web message	Livechat / Instant messaging
Face to face	Automated information delivery / SMS	Specialist (eg Textphone)

The firm should identify and document the channels it uses to provide support for the products and/or services it provides. The firms should consider where the support may not be meeting customer needs, by not only considering the characteristics of the target market, but by considering data such as customer feedback and customer complaints. Where this is the case, you need to take reasonable steps to address any shortfall in the support provided.

7.2.5 Best Practice Key Takeaways

- **Firms should map the customer journeys in relation to buying and using products and services, from when a prospective customer first sees or hears about the firm, its products, and services; all the way through to exiting the product**
- **Once a firm has mapped the consumer journey, it should consider the services and support already in place through the lens of Consumer Duty and assess each point in the consumer journey**
- **Firms should consider the likely needs of their customers at each stage of the product lifecycle and how retail customers can advance their financial objectives without undue barriers**
- **Firms should consider their consumer understanding responsibilities and record what supporting materials are available at each stage of the customer journey to inform, educate or notify the customer.**
- **Firms should consider how to evidence that their customer support framework is appropriate to the characteristics of their target market**
- **Support provided should not result in a product or service costing more than the customer expected including not only unreasonable charges, but also unreasonable expenditure of time, distress, inconvenience and provision of personal data**
- **Firms should establish how much time, inconvenience and personal data is reasonable for consumer to spend on different aspects of support**
- **Firms should consider how customers may require different communication channels depending on their circumstances, or if they have characteristics of vulnerability**

- **Firms should identify and document the channels it uses to provide support for the products and/or services it provides, consider where the support may not be meeting customer needs and take reasonable steps to address any shortfalls**

7.3 Support Across the Product Lifecycle

7.3.1 Positive and Negative Frictions

The consumer support outcome requires a firm to give support to clients to be able to act when they need to, without unreasonable barriers. However, this support may include introducing frictions into the customer journey to prevent or deter clients from acting in a way that is detrimental to their best interests.

The regulator requires firms to design a customer journey that is neither oversimplified nor overcomplicated.

A firm should not remove steps from its customer journey where those prove to be positive frictions which may protect the interests of the customer. For example, a caller seeking account information may be asked additional security questions if the voice profile does not match the customer's profile. This is a legitimate addition of a friction to protect the account information.

Some frictions are regulatory in nature, and these should not be ignored. Requirements to provide a KIID challenge at the point of investment are a mandatory element of telephone dealing, and the friction is designed to ensure that the customer is sufficiently protected.

Frictions should be in place for the customer benefit, and where frictions are identified that exist solely for the benefit of the firm, these should be carefully reviewed as they are unlikely to meet the requirements of the three cross cutting rules and are possibly overcomplicating the journey.

7.3.2 Access to Knowledge Building Material

To provide additional support for customers, it is recommended that firms consider whether it is appropriate to provide materials that a customer can access to build their knowledge around:

- how to act (e.g. transaction execution, updating personal records, bereavement processes)
- product information (e.g.risks and benefits, how to understand risk appetite, consideration of life stages, market information, topical issues, thought leadership pieces)
- Potential vulnerabilities (e.g. supporting a relative, bereavement process, accessing information in an alternative format, cost of living crisis, signposting)

A firm should consider what generic support they offer that can be accessed by consumers and consider if that can be enhanced to support good outcomes and reduce the risk of harm.

7.3.3 Identifying Changing Needs of Customers

The needs of both the target market and the different groups of customers within the target market are likely to change over time, as well as the changing needs of individuals where one to one support is part of the service offering.

Customer within the target market should grouped together according to common characteristics, which is process known as 'client segmentation'. There are several ways to perform this process, and the 'life stage' approach is a common one, however firms should approach this process according to the most appropriate method for the product and services on offer.

Firms can use a variety of tools to identify the changes needs of these groups at different points of the customer journey. These might include:

- Information on investor profile
- Behavioural economics
- Research tools
- Cash flow modelling
- Scenario planning
- Fact finding

Consideration for customer needs will depend on the relationship of the firm with the customer- whether they have a direct or indirect relationship, whether they are self-directed investor or whether they are an advised client. Regardless, firms should consider these needs in the context of the outcomes for the client and identify any foreseeable harm in each stage of the customer journey.

7.3.4 Best Practice Key Takeaways

- **Firms should consider introducing frictions into the customer journey to prevent or deter clients from acting in a way that is detrimental to their best interests.**
- **A firm should not remove steps from its customer journey where those prove to be positive frictions which may protect the interests of the customer.**
- **Frictions should be in place for the customer benefit, and where frictions are identified that exist solely for the benefit of the firm, these should be carefully reviewed as they are unlikely to meet the requirements of the three cross cutting rules**
- **Firms should consider whether it is appropriate to provide materials that a customer can access to build their knowledge**

- **Firms should consider the changing needs of both the target market and the different groups of customers over time**

7.4 Vulnerability Considerations

7.4.1 Supporting Customers with Characteristics of Vulnerability

A vulnerable client is someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care.

It is critical when offering client support that the firm is alive to the possible indicators of vulnerability. Firms should have appropriate policies in place to deal with customers where these indicators suggest they could be at great risk of harm than the general population of the target market. Staff training is a key component of being able to identify these indicators and offer appropriate support for additional or different needs.

Firms needs to be able to respond flexibly to the needs of customers with characteristics of vulnerability, but identifying and assessing any individual needs is not always straightforward. Firms should look out for the four key driver of vulnerability:

- **Health** - health conditions or illnesses that affect ability to carry out day-to-day tasks.
- **Life events** – life events such as bereavement, job loss or relationship breakdown.
- **Resilience** – low ability to withstand financial or emotional shocks.
- Capability – low knowledge of financial matters or low confidence in managing money (financial capability) or low capability in other relevant areas such as literacy, or digital skills

The presence of some characteristics if vulnerability may make certain channels of support unsuitable as thee customers are more likely to have different support needs. The Consumer Support Outcome requires firms to be flexible in their approach to responding to these needs for support. In practice, this may mean:

- providing alternative channels of support, and/or the ability to exit the current channel being used and switch to another more suitable e.g. a telephone number provided as an alternative to an online journey
- adapting the standard approach for support e.g. if the usual approach is to request information over the telephone, a customer might be more comfortable receiving a questionnaire in written format
- Giving the customer more time to respond or consider information. This might mean arranging a follow up communication to give them time to prepare
- Signposting to additional support, such as specialist organisations

7.4.2 Professional Empathy

Customer support can't always deliver solutions, but it can always deliver empathy. Sympathy and empathy are often used interchangeably but have quite different meanings. Sympathy is when you share the feelings of another; empathy is when you understand the feelings of another but do not necessarily share them. It is therefore possible to deliver empathy in a professional setting and can be a powerful tool in supporting customers wit7h characteristics if vulnerability.

In customer support, empathy is the capacity to affirm a customer's feelings and understanding of their situation and indicate that you can understand their difficulties even if the problem is out of your control.

We often think of empathy as a personality trait, however, it is also a skill that can be learned and, firms should take steps to encourage and train their staff to develop this skill. Firms should use customer data and insights, to develop situational empathy which considers these points:

- Focus on listening- avoid interrupting customers when they're speaking and instead take notes so that they can refer back to them later on if needed. They should also reflect back on what the customer has said in order to check that they understood correctly.
- Clarify the customer's meaning- repeat back the information using phrases such as "If I am understanding correctly…". Summarise the information at the end if the contact.
- Acknowledge the customers difficulty using phrases such as "I can only imagine how you feel"
- Set expectations for the call- If you are already aware that the customer is vulnerable or likely to be distressed, it can help for them to know what to expect on the call. Tell them how long the call will take, what information you need from the person and why.
- Ask about communication preferences- An excellent way to put vulnerable customers at ease is to ask whether they require assistance on the call from an interpreter, carer or relative. Furthermore, inquire whether the conversation would work better for them via email, webchat or text.
- Speak clearly without being patronising- don't oversimplify or speak louder or slower than you would normally. Being mindful that you enunciate each word and avoiding acronyms or jargon is sufficient.
- Ensure the person isn't emotional when answering questions of consent- For queries where consent is required for using personal information or when a customer is required to act, they must understand their decision. If the person is distressed or flustered, ask if there is a suitable time to continue the call when they feel better.

7.4.3 Supporting and Training Staff

Providing your staff with adequate training and support, will give them the confidence to support customers in vulnerable circumstances or nonstandard situations. It is recommended firms should:

- Provide training for staff on what may constitute a vulnerable customer and the challenges they face, how to identify them and, how to support them effectively
- Develop and distribute written protocols and policies about vulnerable customers
- Consider appointing 'champions' in your team who have experience in this area and are comfortable guiding others.

- Provide ongoing focus on staff wellbeing- Ensure staff know how to get support if required. Best practice is to provide a support framework for specialist staff, from allowing the flexibility for individuals to take a 'time out' after a difficult discussion, to offering support and counselling where required
- Create a culture of sensitivity and empathy when speaking with potentially vulnerable customers- consideration like not having target in place related to call handling time.

Firms should refer to the FCA Guidance on the Fair Treatment of Vulnerable Customers and may wish to refer to the TISA Best Practice guide for Vulnerable Customers.

https://www.fca.org.uk/publications/finalised-guidance/guidance-firms-fair-treatment-vulnerable-customers

7.4.4 Best Practice Key Takeaways

- **A vulnerable client is someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care**
- **Firm should be alive to the possible indicators of vulnerability**
- **Firms should have appropriate policies in place to deal with customers where these indicators suggest they could be at great risk of harm**
- **Staff training is a key component of being able to identify these indicators and offer appropriate support for additional or different needs.**
- **Firms needs to be able to respond flexibly to the needs of customers with characteristics of vulnerability. Firms should consider processes that:**
    - **provide alternative channels of support, and/or the ability to exit the current channel being used and switch to another more suitable**
    - **adapt the standard approach for support**
    - **give the customer more time to respond or consider information**
    - **Signpost to additional support**
- **Firms should use customer data and insights, to develop professional and situational empathy**

7.5 Ongoing Monitoring and Evaluating Outcomes

7.5.1 Monitoring Customer Support

Firms should put into place regular monitoring processes to check whether all clients are receiving a level of support, delivered through an appropriate channel, that meets their needs . This monitoring should be able to identify and mitigate the risk of consumer harm. Firms needs to be able to demonstrate they have considered the design and delivery of the consumer support model that meets the needs of clients in their target market and that this model meet the needs of the groups of clients within this market on an ongoing basis.

Firms should identify key data points on client behaviour and satisfaction to monitor on an ongoing basis whether good outcomes are being delivered in relation to the Consumer Support Outcome, or whether clients are facing unreasonable barriers including unreasonable additional costs. Firms should also consider as part of the monitoring, whether any positive frictions are having the desired impact in contributing to good outcomes.

Firms must also be able to identify whether any group of retail customers is experiencing "different outcomes" compared to another group of customers receiving the same product or service.

Where a firm's consumer support is provided by an outsourced third party, either in whole or in part, the firm should have systems and processes in place to monitor that the support meets the standards set out under its policies and procedures designed to deliver a good outcome.

The process of monitoring should be documented, and firms should ensure that the appropriate governance processes are in place to oversee this monitoring and that appropriate actions are taken to remediate any issues identified.

7.5.2 Management Information for Monitoring

Management Information (MI) is data used to provide insight into how the firm is performing in delivering good consumer outcomes. Where good outcomes are not being achieved, MI should also be able to identify the reason, or flag an area for further investigation, so that improvements can be made.

The FCA's guidance provides a reasonably comprehensive list of potential data sources which firms could use to evaluate their compliance. It is worth noting that the FCA has not at this stage introduced a regular reporting obligation, and will consult on any future proposals to do so.

The Non handbook guidance includes full details on types of data/monitoring including:

- analysis of customers' use of products and services
- root-cause analysis of complaints
- customer persistency or retention information
- first contact resolution rates and average time to resolution
- speed to answer the telephone and average wait times, call abandon rates
- email and digital channel speed to answer
- internal quality assurance

- customer call listening exercises
- satisfaction surveys
- net promoter scores

Some additional data points that firms may incorporate into their MI are listed below, and it is recommended that firms carry out a gap analysis of their MI used for monitoring:

- number of repeat contact over a short period
- actions taken to reverse client actions
- voice analytics to identify satisfaction
- website analytics to identify where customers have accessed information
- volume of exits of the online journey and subsequent actions (e.g. accessing telephone support)

However, there is no one-size-fits-all, and firms will need to determine what data points will be required to monitor whether good outcomes are being achieved in relation to support. MI should be proportionate, ensuring all products, services, points of the customer journey and customer types are covered.

7.5.3 Evaluating Good Outcomes

As with the Consumer Communications Outcomes, in order to identify whether an outcome is good or bad, it is important to have defined what the outcome should be in the first place. The desired outcomes, as well as foreseeable risks of harm, should be identified and documented at each touchpoint of the customer journey where the customer is likely to require or receive support.

A key section in the FCA's FG22/5 Consumer Duty Guidance paper relates to the regulators expectation that firms should monitor and regularly review the outcomes that their customers are experiencing in practice and yae action to address any risks to customer good outcomes. This means firms need to track the impact of their products and services on their customer experiences and produce on-going evidence they are happy and gaining good outcomes against their financial goals and objectives.

With a data led regulator firms should now ensure they have the right tools to gain and validate data and management information (MI) from their clients. This can be achieved by ensuring they have the right technology in place across;

• Cash flow modelling: Ensuring data across scenario planning is available and reflects the client's changing needs and requirements in their financial journey

• Attitude to risk assessment and client's capacity for loss: This data should reflect a client's psychological relationship with risk and provide evidence for any product suitability

• Research tools: Product data should identify and ensure the suitability of funds and products meeting client ongoing needs and assess where products may not actually be suitable to provide good outcomes based on client change in circumstances such as vulnerability

- Client surveys: Surveys should be used to assess client views on services and products meeting on-going needs and good outcomes

- Open banking apps:

Whether open banking tools are in sourced or outsourced, the firm should conduct regular and robust reviews of internal and third-party operations, resourcing and culture to make sure that they deliver the quality data and MI required to assess and identify foreseeable harm to client good outcomes. Open finance apps can offer data to manage foreseeable harm, for example:

- insight into client buyer behaviours, interrogate income and expenditures, identify unnecessary spending
- Evaluate holistic transactions, budgets and build cashflows
- Provide oversight for early warnings such as unusual transactions, income changes and underinsurance or under investment against stated fact find goals
- Point to actions required overcoming biases such as inertia or favouring the status quo, and promote good intentions to become good outcomes such as sweeping money to pay debt, ensuring charges are appropriate and products offer value for money

7.5.4 Best Practice Key Takeaways

- **Firms should put into place regular monitoring processes to check whether all clients are receiving a level of support, delivered through an appropriate channel, that meets their needs**
- **This monitoring should be able to identify and mitigate the risk of consumer harm.**
- **Firms should identify key data points on client behaviour and satisfaction to monitor on an ongoing basis whether good outcomes are being delivered and whether clients are facing unreasonable barriers**
- **Firms should also consider as part of the monitoring, whether any positive frictions are having the desired impact in contributing to good outcomes.**
- **Firms must also be able to identify whether any group of retail customers is experiencing "different outcomes" compared to another group of customers receiving the same product or service**
- **Where a firm's consumer support is provided by an outsourced third party, the firm should have systems and processes in place to monitor that the support meets the required standards**
- **Firms will need to determine what data points will be required to monitor whether good outcomes are being achieved in relation to support**
- **The desired outcomes, as well as foreseeable risks of harm, should be identified and documented at each touchpoint of the customer journey where the customer is likely to require or receive support**