



## FINANCIAL SERVICES INDUSTRY

# CONSUMER DUTY: WHAT'S REALLY CHANGING FOR CONSUMER PROTECTION?

### Introduction

On the surface, the Consumer Duty doesn't appear to add a great deal to existing guidance around consumer protection. Businesses that fall within the remit of the Duty – those that provide retail financial services – can therefore be forgiven if their approach is to take a “business as usual” approach. However, it marks a paradigm shift in the FCA's approach to regulation.

In our previous paper we talked about the pivotal role data will play – both for businesses and the FCA – in terms of complying with and monitoring compliance of the Duty. In this paper, we address the question that is on the minds of many . What is really changing for consumer protection?

### A case for change: why the Consumer Duty transition matters

The focus on outcomes rather than prescriptive rules marks a departure from more reactive Financial Crisis-era rulemaking by regulators, including the FCA, that sought to address pre-existing issues. As a regulator, it can prove time consuming to track everything that is building as a problem, and then wait for a delayed period to consult on targeted rules to tackle each problem individually.

Rather than this, the Consumer Duty presents a more efficient and smarter approach by setting a benchmark that affects everyone within the regulatory perimeter. Once established, the outcomes are clear and financial

institutions can be quizzed on how they reach compliance with them, repositioning the onus back onto firms rather than the regulator diagnosing the problems and regulating them.

**The Consumer Duty scope spans four separate areas: products and services, price and value, consumer understanding, and consumer support.**

The regulator will hone in on where they think poor outcomes reside already, and where the most vulnerable in society are, while bringing the entire value chain under the microscope – from manufacturing to distribution. The cost-of-living crisis and increased competitiveness among financial institutions in 2022 has made it even more important for customers to be able to switch, cancel or complain about a product, and ensure they are not tied in prohibitively.

As well as applying to products and services that are retail, such as wealth management and authorised funds, the Duty will extend to institutional setups where these have underlying retail investors, such as pension funds.

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## Price and value

A drive to reduce fees and prices across the industry?



**A particularly significant area of change is the Duty's price and value outcome, which features a wider scope than the FCA's existing value assessment rules for authorised fund managers.**

The new regulation requires product manufacturers to ensure that their products provide fair value to retail customers in the target markets for those products, and to use their value assessment when picking distribution channels. Distributors will have the task of assessing their

fees against the quality of the services they provide, and consider whether their fees charged would mean the product represents less fair value.

Fund managers already conducting value assessments will be made to consider value when identifying appropriate distribution channels for the target market of the product. It is likely the new value assessment rules will add to ongoing downward fee pressure, especially in the distribution fee arena.

The increased scrutiny on value will likely contribute to ongoing downward fee pressure, especially for distribution fees, which can form a significant part of the overall price paid by an investor. In certain scenarios, high platform fees can render cheaper trackers more costly, and expensive advice could weaken the overall value that an investor is getting from the products they are being advised to buy.



## Customer support

Will the Duty invite more customer complaints?



**One area of the Duty addresses longer call waiting times when cancelling or making changes to an existing product, confirming that if it takes longer to do so than purchasing a new product, it is likely non-compliant. The guidance also notes that unreasonable delays in making payments to retail customers is non-compliant, likely helping more vulnerable customers to redeem investments.**

Cost optimisation is important, and organisations might be tempted to simply add more bodies in order to meet customer demand, but this becomes a risk as they reduce their operational efficiency and drive down their operating margin. Firms need to analyse their use of existing data – what type of calls they are receiving, and whether they use chat bots and triaging. There is also the opportunity to automate specific tasks and processes, thereby reallocating valuable staff time to supporting the clients most in need of support.

Insurers should look to identify communication and support channels its customers might utilise and ask how each of these channels will meet the new standards. For insurers that sell policies mostly online, it may be proportionate to offer online support to consumers. However, if the sales process does or can take place in person, it may be inappropriate to exclude face-to-face communication as an option for future communications.

In the first half of 2022, financial services firms received over 1.8 million complaints, an increase of 1% on the second half of 2021. The decumulation and pensions product group saw the biggest increase in complaints received by firms, followed by insurance and pure protection<sup>1</sup>.

The payment protection insurance (PPI) scandal – one of the most notable consumer issues in the UK – saw £332.4 million paid out in December 2019 to customers that complained over how they were sold PPI, taking the total amount to £38.3 billion since 2011.

In 2017, the FCA asked for firms to make it ‘quicker and easier’ for customers to identify whether they had PPI and to file a complaint, such that customers were not dissuaded by onerous and complex processes. The FCA said that firms should have online tools for customers to check if they had PPI and simple, straightforward complaints forms. The Consumer Duty will require firms to apply this logic to all customer touchpoints and to reduce sludge practices that prevent consumers from acting in their best interests.

Banks will be expected to pivot to an outcomes-based focus for customers, with the Duty introducing a requirement to evidence they have acted in the customer’s best interest. This may entail firms developing robust monitoring and testing capabilities to oversee customer experience, on top of functions that firms will implement to monitor the customer.

<sup>1</sup> [Complaints data | FCA](#)





## Customer understanding

What does this look like?



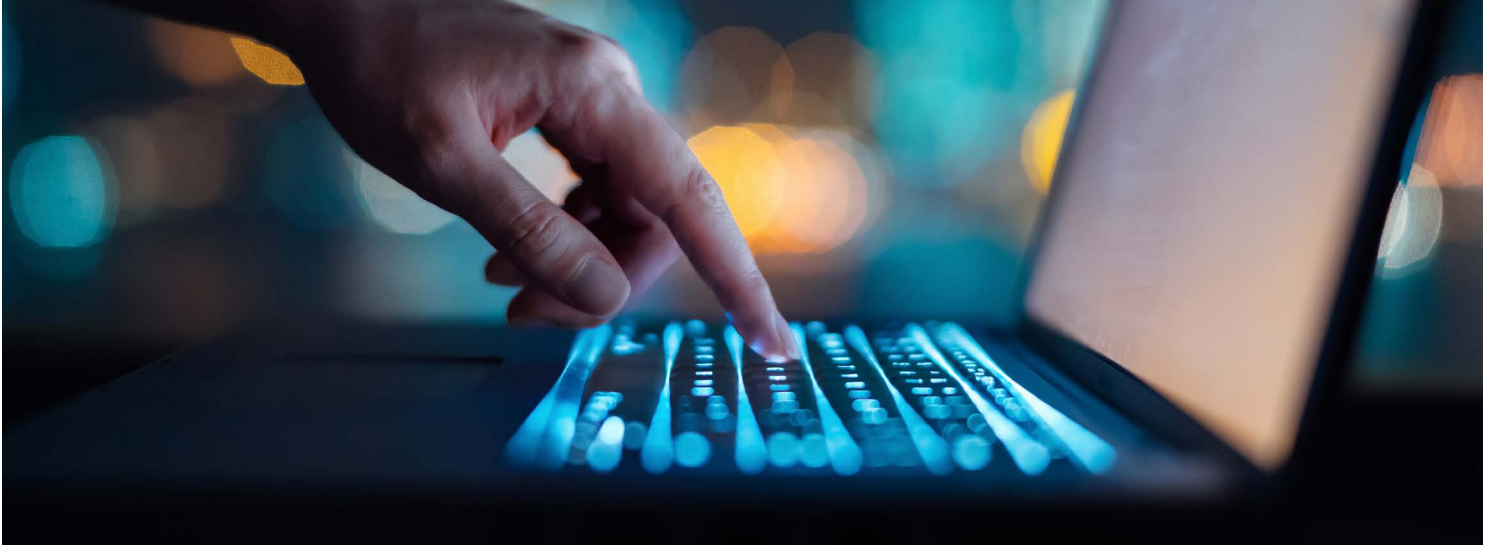
**While customer understanding and communication is covered by existing rules – such as the Insurance Conduct of Business Sourcebook (ICOBS) – the Duty provides greater detail on what the practical application should look like. Among these is the requirement for firms to test communications before sending them out and to frequently monitor their impact, taking into account the scope for harm if retail customers misunderstand or overlook the information.**

Firms should also take the opportunity during one-to-one interactions with retail customers to ensure their customers understand relevant information provided to them, especially if the information provided results in the customer to making a decision.

In the context of asset and wealth management, key communications that require testing and ongoing monitoring might include information on various costs and charges, investment policy, the objective of a fund, risk and reward, performance and redemption terms.

Some customer communications such as the UCITS Key Investor Information Document (KIID) have pre-set format, while others leave it up to the firm communicate large amounts of relatively complex information, such as a UCITS prospectus. While the content of the information is prescribed in prospectuses, firms can use it still explain industry jargon or clarify key information up-front.

The FCA also made tweaks in connection with its findings that marketing documents produced by asset managers have omitted certain charges in the past, such as portfolio transaction costs, or do not match the information in regulatory documents such as the UCITS Key Investor Information Document (KIID). To remedy this, the FCA's guidance tells firms to make key information prominent, which for asset managers advertising funds on their website will likely include information about certain costs and charges.



## Products and services

How will this impact the customer journey?



**The Consumer Duty's rules on products and services reflect existing product governance rules that come under MiFID II and the FCA's own existing guidance on vulnerable customers<sup>2</sup>. Last year, the FCA noted that distributors should share information with asset managers on end client data trends, and for asset managers to make known to distributors when this doesn't happen. As this area of the industry has further room for development to get to the FCA's ideal, it will likely be an ongoing area of supervisory focus.**

In addition to the governance rules that come under MiFID II and the FCA's own existing guidance on vulnerable customers, manufacturers are required to ensure that the design of the product meets the needs, characteristics and objectives of the target market. Part of the FCA's supervisory work has revolved around challenging firms on whether there is a true market need for new products, and not solely commercial gain. To this end, wealth and asset managers should constantly monitor their development and output of new products.

Insurers should ideally map the entire customer journey, starting at the initial underwriting discussions through to the sale of the policy and its lifespan, considering any claims which may arise, along with any mid-term adjustments to the policy itself.

## How do I know if I'm evidencing compliance adequately?

For some businesses, their existing processes, communication, product governance and operating models will all be fit for purpose in terms of meeting the enhanced expectations of the FCA. However, we know through discussions with businesses in insurance, asset and wealth management sector, there are existing gaps. In some cases, the gaps have not yet been identified but there is consensus that they exist.

Once the gaps are identified and addressed, which can be done through a focused diagnostic and structured planning (with an interim phase where

more sustainable solutions might require more time to develop), it's then a case of ensuring that compliance can be demonstrated. As detailed in our previous paper, analytics and MI (management information) will be critical in demonstrating compliance to the FCA.

The final assessment of how effectively the Consumer Duty has been met will ultimately be made by customers, and most business leaders will appreciate that the consequences of non-compliance will be far greater than the effort and investment required to act now.

<sup>2</sup> [Guidance for firms on the fair treatment of vulnerable customers | FCA](#)



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