



The FCA's Consumer Duty

Delivered by:

Peter Haines

7th April 2022

Disclaimer

This presentation, supporting materials and the contents of this session is provided for information purposes only and does not purport to constitute legal or consulting advice. Professional legal or consulting advice should be obtained before taking or refraining from any action as a result of the contents of this document.

Contents

- What is Consumer Duty?
- TCF v Consumer Duty
- Implications for Firms
- What should Compliance Officers be doing?

A Quick Poll (Or Two)

- Do you believe that regulated financial services firms have historically acted to produce good outcomes for retail clients?
 - A) Yes
 - B) No

- If no, what have been the worst acts that we have witnessed in the past few years?

- Poll 2:
 - Do you think that a new Consumer Duty is required or are the existing principles and rules sufficient?
 - A) Consumer Duty is required
 - B) Existing provisions are sufficient

A Short History

➤ TCF

➤ Conduct Risk

➤ Consumer Duty

The Consumer Duty Structure

Consumer Principle

“A firm must act to deliver good outcomes for retail clients”

Overarching Cross-cutting Rules

Firms must take all reasonable steps to:

- avoid causing foreseeable harm
- enable customers to pursue their financial objectives

Firms must act in good faith toward customers

Now modified. Firms must:

- act in good faith towards retail customers
- avoid causing foreseeable harm to retail customers
- enable and support retail customers to pursue their financial objectives

Four Outcomes for the key elements of the firm-consumer relationship:

1. Communications
2. Products and Services
3. Customer Service
4. Price and Value

“You must act to deliver good outcomes for retail customers” - a sixth conduct rule

The Perceived Need for a Consumer Duty

Currently financial services do not always work well for consumers

FCA has seen practices by some firms that cause harm. These include firms presenting information in a way that exploits consumers' behavioural biases, selling products or services that are not fit for purpose, or providing poor customer support.

The new rules will raise industry standards by putting the emphasis on firms to get products and services right in the first place

The new rules will require firms to focus on supporting and empowering their customers to make good financial decisions and avoiding foreseeable harm at every stage of the customer relationship.

Firms will have to provide consumers with information they can understand, offer products and service that are fit for purpose and provide helpful customer service.

The Six TCF Outcomes

Customers deal with firms where TCF is central to the firm's culture

Products and services sold are designed and targeted to meet consumer needs

Consumers receive clear information pre-, during and post-sale

Advice is suitable and takes account of customer circumstances

Products and services perform as firms have led customers to expect

Consumers do not face unreasonable post-sale barriers to change product, switch provider, submit a claim or make a complaint

Conduct Risk



The Perceived Need for a Consumer Duty

“Our proposals relate to products and services sold to ‘retail clients’. This is a wide term that includes all clients other than professional clients (such as large corporate entities and government bodies) and eligible counterparties. So in most cases, where we regulate the provision of financial services to SMEs, these proposals would apply.”

“Our proposals extend to firms that are involved in the manufacture or supply of products and services to retail clients, even if they do not have a direct relationship with the end customer. We refer to the markets covered as ‘retail markets’.”

The Perceived Need for a Consumer Duty

Maybe this is what it's all about.....

“The FCA will use assertive supervision and its new data led approach to intervene quickly when it identifies practices which do not deliver for consumers.”

“The new duty will drive a change in culture at firms. We expect firms to step up and put consumers at the heart of what they do and we'll be holding senior managers accountable if they do not. The duty will also help create an environment for healthy competition between firms, encouraging them to be innovative in developing products and services that meet consumer's needs.”

So It DOES Go Further

We set out our view that there is a need for a clear statement of expectations that goes beyond our existing Principles and rules, and provides a framework for the ongoing development of retail markets.

The Consumer Duty would require firms to:

- ask themselves what outcomes consumers should be able to expect from their products and services
- act to enable rather than hinder these outcomes
- assess the effectiveness of their actions

In essence, we want to see firms putting themselves in their customers' shoes, asking themselves questions such as 'would I be happy to be treated in the way my firm treats its customers?', or 'would I recommend my firm's products and services to my friends and family?'

The Consumer Duty Structure

Consumer Principle

“A firm must act to deliver good outcomes for retail clients”

Overarching Cross-cutting Rules

Firms must take all reasonable steps to:

- avoid causing foreseeable harm
- enable customers to pursue their financial objectives

Firms must act in good faith toward customers

Now modified. Firms must:

- act in good faith towards retail customers
- avoid causing foreseeable harm to retail customers
- enable and support retail customers to pursue their financial objectives

Four Outcomes for the key elements of the firm-consumer relationship:

1. Communications
2. Products and Services
3. Customer Service
4. Price and Value

“You must act to deliver good outcomes for retail customers” - a sixth conduct rule

Conduct Rules

Conduct Rules – All Employees

Rule 1 You must act with **integrity**.

Rule 2 You must act with **due skill, care and diligence**.

Rule 3 You must be **open and cooperative** with the FCA, the PRA and other regulators.

Rule 4 You must pay due regard to the **interests of customers** and treat them fairly.

Rule 5 You must observe proper standards of **market conduct**.

Plus: “You must act to deliver good outcomes for retail customers”

The Outcomes

- Communication:
- Communications must support consumers by enabling them to make informed decisions and they can assess:
 - the options available to them
 - the costs, risks and benefits attached to those options
 - which options offer fair value and would meet their needs
- Behavioural economics and consumer comprehension make existing rules and principles insufficient?

The Outcomes

- Products and Services:
- FCA has seen products designed without considering customer outcomes:
- Behavioural biases – the CCMS showed a tendency to overborrow and underpay
- Charging structures - opacity leads to difficulty for customer to assess the charges
- Barriers to exit – lead to the inability for customers to make the right choices

The Outcomes

- Customer Service:
- FCA wants customer service to apply throughout the customer relationship
- It should enable consumers to realise the benefits of the products and services they buy, and ensure they are not hindered from acting in their own interests
- FCA has seen customer service processes that are deliberately designed to create barriers to consumers taking action or which cause customer detriment through unnecessary cost, delay or stress
- Customer service should be of a standard that meets consumers' reasonable needs and expectations
- FCA gives the example that it should be at least as easy to exit a product or service as it is to purchase it in the first place

The Outcomes

- Price and Value:
- Products and services should be fit for purpose and represent fair value
- Well-functioning markets provide:
 - good information
 - good product governance
 - good customer service
 - fair pricing
- Firms should be able to demonstrate that the benefits of their products and services are reasonable relative to their price
- The price of products and services should be assessed at design stage and also through ongoing monitoring

Which Questions Should Compliance Be Asking?

- Is your conduct risk framework fit for purpose?
- Are you comfortable with the higher standards of the Consumer Duty?
- Is your product governance framework fit for purpose and does it consider behavioural biases, charging structures and exit barriers to conform to the Consumer Duty?
- Does your firm speak to customers as part of the NPAP?
- Do you consider underlying retail customers as a product manufacturer?
- Do customer complaints inform your product/service reviews?
- When communicating with customers, is the information understandable, informative and does it address behavioural bias?

Which Questions Should Compliance Be Asking?

- Does it facilitate informed customer decisions?
- Do compliance officers consider this when approving financial promotions?
- What information does the Board and senior management receive about conduct risk and customer outcomes?
- Is it fit for purpose?
- Does your compliance monitoring reflect the enhanced requirements of the Consumer Duty?

Conclusion

- The FCA is clearly committed to enhancing consumer protection and competition through the Consumer Duty
- History tells the FCA that this is necessary
- It will be accompanied by an assertive, proactive approach, accompanied by improved data analytics
- Be prepared to work with (not without) senior management to embed the requirements

Thank you for attending

Any Questions:

Peter.haines@peterhaines.co.uk