

Consumer duty – the end of the beginning

What comes next?

September 2023



The end of the beginning...

Now that the FCA's first Consumer Duty key deadline has passed, firms need to reflect on how far they have come and what they need to do next to ensure compliance with the new Consumer Duty. Being able to demonstrate that they are truly acting in the spirit of the new requirements is key.

For most firms, getting to 31 July 2023 was the culmination of months of hard work. However, it is essentially just the end of the first chapter. Far from relaxing into thinking that the job is done, it is vital that firms maintain momentum and continue to build on their work to date.

Now that the Consumer Duty rules are in force (for open products), the financial services industry has seen a considerable shift. Previously, it was arguably enough to demonstrate fair treatment and the avoidance of poor customer outcomes, but now detailed rules require firms to proactively demonstrate good customer outcomes. This is a significant shift in regulatory expectations, requiring firms to do much more than enhance their policies and management information dashboards to truly embed the behaviours and culture sought by the regulator.

Transitioning project work smoothly into 'business as usual' practices is key to demonstrating that good outcomes are now being achieved, consistently, for all retail customer groups and in-scope products and services.

Firms with closed book products will face an additional challenge. The deadline for implementing new processes and procedures for closed book products is already less than a year away. For some firms, particularly those looking to efficiently and profitably run off large books of legacy business, complying with the Consumer Duty rules for closed products may be an even greater challenge than that already negotiated. Balancing the need to meet this deadline of 31 July 2024, while embedding the changes already made will be challenging; there is no time to waste.

So, where should firms focus?

We see four core areas where firms need to focus:

- 1 Governance and self assessment**
Embedding robust governance mechanisms, supported by strong management information (MI), and preparing for the annual board self-assessment.
- 2 Obtaining assurance**
That they comply with the Duty so that boards can be confident, in the knowledge that they are meeting the FCA's expectations by truly delivering good outcomes for their customers.
- 3 Closed book actions**
To ensure they can confidently set about meeting the next key milestone of 31 July 2024.
- 4 Optimisation**
Ensuring the right practices are embedded, and turning some of the tactical fixes of the past few months into something more strategic and robust – Consumer Duty by design.

The FCA's supervisory approach

The FCA has communicated its evolving expectations throughout, including through the Consumer Duty policy statement itself (PS22/9), its Finalised Guidance (FG22/5) and a range of sector focused Dear CEO letters. The Finalised Guidance contains a range of questions for firms to consider as they embed the Duty, and now is a good time to revisit these questions.

The FCA maintains a consolidated suite of information for firms, covering a wide range of topics related to the Duty, including its approach to supervision and enforcement, and its expectations for outcomes monitoring.¹

Just a month before the Duty came into force, the FCA highlighted 10 questions² that firms should ask themselves. These questions cover all key components of the Duty from customer outcomes to personal accountability. Firms would be unwise to ignore them. Not least because they are likely to indicate the regulator's supervisory focus over the next 12 months, and potential enforcement actions for those that fail to comply. These questions will also guide the FCA's regular engagement with firms that fall under its direct supervision.

“Our supervisory and enforcement approach will be proportionate to the harm – or risk of harm – to consumers.

We will prioritise the most serious breaches and act swiftly and assertively where we find evidence of harm or risk of harm to consumers.

In some cases, firms can expect us to take robust action, such as interventions or investigations, along with possible disciplinary sanctions.”

Sheldon Mills, Executive Director, Consumers and Competition, FCA

Speech ‘Less than three months to go until the Consumer Duty Implementation’, 10 May 2023

The FCA is already showing it means business

In the run-up to the July 2023 deadline, and immediately after, the FCA was already facing tests to its authority. But the FCA is showing that it really does mean business regarding good customer outcomes. Some of these challenges played out publicly, often driven by wider social, economic and political factors.

Challenges over de-banking

One of these tests was the much-publicised debate over the banks' right to choose who to accept as a customer. So-called 'de-banking' has obvious consumer outcomes implications. Banks would be wise to follow the fall-out from this, while assessing their own approach to account closures. This will be a careful balancing act with their (potentially conflicting) anti-money laundering obligations, and wider commercial and operational considerations.

Passing on interest rates to savers

Saving rates is another hot topic for the banking sector – specifically, whether customers are getting fair value by benefitting from rises in base rates. This is particularly relevant when some of the biggest high street banks have declared exceptional profits. On the day the Duty came into force, the FCA issued a pre-emptive 14-point action plan, which required immediate attention and contained the threat of 'robust action' by the end of 2023.

Value and price assessments

The FCA is also focusing on value and price assessments, including intermediary remuneration. The regulator's review of fair value assessments, published in May 2023³, raised questions over the effectiveness of some firms' value frameworks. It found that many firms had more work to do to meet the price and value outcome rules. Several insurance market focused events have reinforced those concerns – in theory, this sector should be leading the way, as it has been subject to specific fair value requirements for a couple of years. The lending sector is also under scrutiny, with the regulator starting supervisory action over intermediaries' remuneration.

In short, the FCA is not just baring its teeth where it feels firms need to do more work to demonstrate good outcomes. It has made it clear that there will be no hiding place for firms that fail to comply. Consumer Duty has significantly increased the FCA's capacity to intervene where it sees practices it does not like – which would have been tricky to tackle before the new rules. If anything, the intensity of regulatory, media and political focus is increasing, rather than subsiding, as the new requirements come into force.

Complacency is not an option.

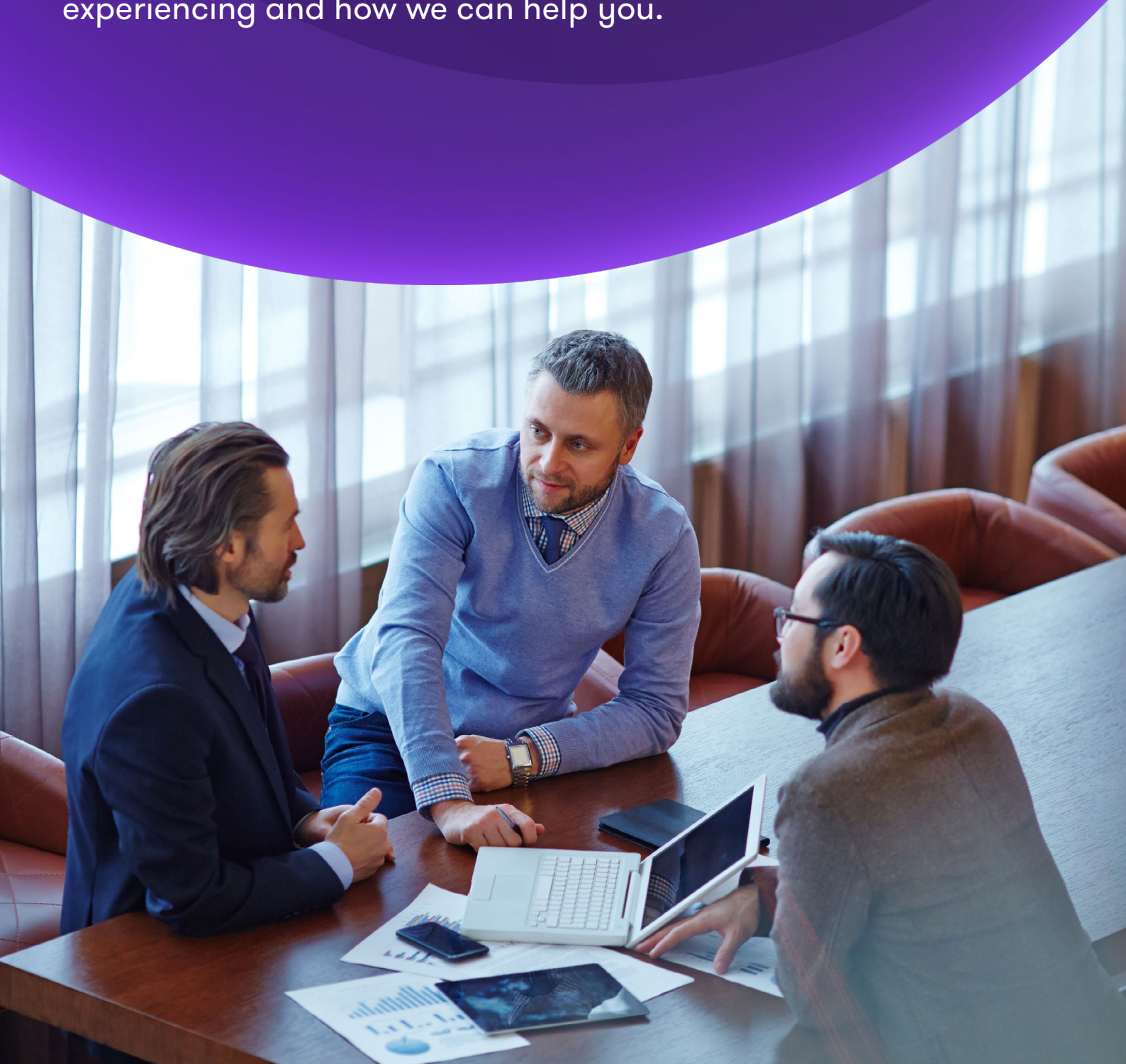
1 <https://www.fca.org.uk/firms/consumer-duty-information-firms>

2 <https://www.fca.org.uk/news/news-stories/one-month-go-consumer-duty>

3 Consumer Duty: Findings from our review of fair value frameworks | FCA

Meeting the challenges

We have helped a wide range of firms, from across all financial services sectors, to prepare for July 2023. As such, we are ideally positioned to provide advice, direction and assurance over your Consumer Duty arrangements. We have set out some of the typical challenges firms are experiencing and how we can help you.





Governance arrangements and self-attestation

FCA requirements and expectations

The FCA holds your board responsible for ensuring that you have properly met and embedded the Duty, and they will hold senior managers accountable through the Senior Managers & Certification Regime (SM&CR).

Your board, or equivalent governing body, should review and approve an assessment of whether your firm is delivering good outcomes for your customers, at least annually. This assessment should include:

- the results of your monitoring to assess whether products and services are delivering the expected outcomes
- any evidence of poor outcomes, including whether any of your customer groups are receiving worse outcomes compared to another group, and an evaluation of the impact and the root cause
- an overview of the actions you have taken to address any risks or issues.

We would expect the FCA to review a sample of these annual assessments across all financial sectors. You must make your self-assessment available to the FCA upon request.

How we can help



Advice

- Defining your approach to the annual self-assessment to ensure that appropriate steps are taken, with clearly established roles and responsibility. These elements are as important as the format of the attestation, and the evidential standards and processes needed to support it.



Assurance

- Carry out the self-assessment of your compliance with the Consumer Duty requirements.
- Opine on your approach to your self-assessment against the FCA's expectations.
- Provide an independent opinion on your report and supportive information.



Coaching your board and senior management

- Expectations of boards and senior managers regarding the Consumer Duty.
- How to set the tone from the top, communicate expectations and demonstrate that you have embedded the Duty into the firm's culture.
- How to provide appropriate challenge and oversight of outcomes so that the self-assessment can be made in confidence.
- How to respond to potential FCA challenges.



Getting your closed books ready

FCA requirements and expectations

The FCA has given firms more time to comply with the new requirements for closed books. Firms have until 31 July 2024 to get ready.

The extra time is due to the sheer volume of closed product lines some market participants have, the complexities associated with those books and the challenges of operating them on legacy systems. It is important not to underestimate these challenges, and time is ticking away.

Firms need to focus on how to demonstrate the provision of good outcomes for products designed and sold years ago, when different rules, expectations and terms and conditions applied. Moreover, many firms may have lost valuable legacy knowledge because many of the people involved in designing and servicing the products have since left the organisation.

How we can help



Advice

- Impact analysis to help you identify which products and services are within scope, and to define good outcomes, foreseeable harm and fair value in a pragmatic and measurable way.
- Advise on your approach to complying with the Consumer Duty for closed book products and services, including how to overcome obstacles and deal with gaps in historic information to achieve good outcomes.



Strategy and coaching

- Helping your board and senior management to plan, run and oversee this second phase of Consumer Duty activity, in parallel with embedding the new arrangements for open books.



Resource augmentation

- Delivering pragmatic advice and hands-on assistance to support the delivery of your Consumer Duty programme, drawing on our highly experienced regulatory and project management experts.
- Advise, challenge, assure or fully conduct all aspects of your closed products Consumer Duty implementation project.



Gaining assurance over your compliance

FCA requirements and expectations

With extensive Consumer Duty requirements, you need to think about where to focus your assurance activity, decide who will carry it out and how. Potential areas of focus include:

- Good outcomes – you must be able to articulate what good customer outcomes mean for your customers at all points in the customer journey. This includes objectively showing how you are measuring and achieving good outcomes.
- Testing consumer communications – you will need to test the effectiveness of communications on an ongoing basis to support your clients' decision-making processes during the product lifecycle.
- MI – you need robust and complete MI to demonstrate how you are providing good outcomes.
- Price and value assessments – you need to demonstrate, on an ongoing basis, that your products offer fair value. This relies on robust ongoing and annual assessments of price and value.
- Vulnerable customers – you must demonstrate that vulnerable customers receive as good outcomes as other customers.
- Governance and culture – firms need to demonstrate that their governance, SM&CR arrangements and culture promote and support the provision of good outcomes.

How we can help



Regulatory assurance and benchmarking

- Provide an opinion on your compliance with the FCA's requirements and expectations on all aspects of the Duty, with insight into how you measure up against good practice, peers and other comparable industry participants.
- Provide an opinion on the robustness of your risk, control and product governance frameworks for identifying and managing customer risks and avoiding foreseeable harm.
- Review your fair value approach and assessments using our expertise in dealing with competition investigation relating to fair pricing.
- Testing where you are in your journey to compliance from implementation to fully embeddedness.



Internal audit assurance

- Formal assurance from our Internal Audit Consumer Duty specialists to assess how robust and embedded your controls are. We can support you on a co-source, outsource or loan-staff basis.



Culture survey

- Undertake a culture survey with a Consumer Duty focus to help you demonstrate that you have the right culture to support good outcomes for customers.



Optimising and refining your implementation

FCA requirements and expectations

Consumer Duty requirements are broad and complex, and many firms' responses have so far been tactical, rather than strategic, due to the tight deadline. The FCA expects you to embed the Duty throughout your entire operations, from the board to your front-line customer and third-party interactions. In short, striving for good customer outcomes at all turns needs to become part of the 'corporate DNA'. This means that firms should consider at least the following:

- Refining new and existing processes, drawing on robust root cause analysis and stakeholder feedback and applying this to drive continuous improvement.
- Strengthening third-party stakeholder engagement and driving customer 'empowerment'.
- Enhancing board understanding, engagement and communication - including 'tone from the top'.
- Embedding and reinforcing the right culture through appropriate communications and training.
- Adopting a proactive stance, responding quickly to negative indicators and early warnings.
- Focusing on meeting the needs of vulnerable customers at all stages in the customer journey.
- IT enablement and operational optimisation, to demonstrate the consistent provision of good outcomes, rather than solely focusing on negative assurance.
- Enhancing existing customer tools and implementing new ones to drive customer engagement and ensure good outcomes.

How we can help



Resource augmentation

- Bolster project resources and strategically fill key skills gaps.



Training and communications

- Provide training to your board, senior management and across your organisation.
- Assess your current training and communications approach to Consumer Duty.
- Help you define or enhance your training and communications strategy.



Special actuarial support

- Specialist actuarial support for life and general insurers, drawing on extensive industry experience across the financial sector.
- Help you interpret complex or nuanced Consumer Duty requirements for specific product lines, for example for the long-duration pooled nature of life insurers' with-profits books.
- Support with product structure, charges and pricing.
- Help you determine appropriate quantitative and qualitative fair value measures and metrics for specialist products.
- Assess good financial outcomes, including the underlying data (for instance profit margins).
- Reviewing the accuracy of consumer communications, particularly in relation to complex products including legacy product lines.

Our Consumer Duty experience

We have a broad range of regulatory conduct specialists who have been immersed in Consumer Duty since it was first proposed by the FCA. They have already provided extensive support to a wide selection of clients across the financial services sector. Our work has included all aspects of firms' preparations from impact and gap analyses to project plan reviews, to assurance and internal audit.



We have supported our clients with technical and regulatory advice, readiness assessments, benchmarking, governance and culture reviews. This includes help with MI design, board training, programme management and resource augmentation. Our team offer deep insights into responding to the Consumer Duty challenge in a positive and pragmatic way.

Case studies

We have included some examples below to demonstrate the type of work we've undertaken and how we can help you.



Programme implementation for a private bank and wealth manager

Working with a private bank and wealth manager, we conducted discovery work to understand and articulate how the complex Consumer Duty rules applied to and impacted our client.

We identified and mapped their customer journeys, and articulated materially significant points, to define what 'good outcome' and 'foreseeable harm' mean for their business. This enabled us to undertake a detailed gap analysis against the rules, which supported the development of a detailed implementation plan.

Our client continued the engagement, asking us to lead all aspects of delivering the implementation plan, including developing and enhancing product governance arrangements, fair value assessments and customer communications and service. We worked in close partnership with the first and second line of defence throughout.

This engagement reinvigorated our client's programme, whilst working within the parameters of a detailed plan meeting FCA's expectations. The firm achieved material compliance with the rules by 31 July 2023, amid specific FCA scrutiny of its activities.



Communication advice for a large commercial insurer

A large commercial insurer asked us to review key insurance documentation to make sure their target market could understand them. We took a proportionate approach, acknowledging that their products were commercial and who their target market was.

Our team provided an opinion at product level, and on a thematic basis, to help our client consider potential issues across their products. We also trained their team and transferred our knowledge so they could continue to review the rest of their products, and build key skill sets within the team.



Implementation support to mortgage servicer

We worked closely with the firm's project team to articulate a suite of good customer outcomes and customer journey maps. These maps identified key instances and periods when the firm could influence those customer outcomes.

Our specialist team assessed the firm's existing control framework and MI in relation to those outcomes and the associated risks. We recommended enhancements to help the firm demonstrate that it is adequately monitoring its customer outcomes and to produce meaningful MI for senior management and the board.



Assurance work for large insurance brokers

We reviewed the firms' approach to meeting the new Consumer Duty requirements, including their formal implementation plans. Our review identified weaknesses in the approach and helped them to address potential gaps prior to launching new policies and controls.

This helped our clients strengthen their approach, and gave senior management confidence that new systems and controls would be fit for purpose in time for the July 2023 deadline – subject to some further enhancements. It also gave their boards comfort that their response to the Duty was appropriate and would stand up to regulatory scrutiny if challenged.

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