



The Consumer Duty

What next for firms?



22 August, 2022



The FCA's long-awaited policy statement on Consumer Duty brings into focus the sizeable task firms have ahead of the implementation deadline to prepare for the new rules.

The recently published [Consumer Duty Policy Statement and Finalised Guidance](#) re-emphasises the FCA's commitment to achieving consistently good consumer outcomes through its conduct regulation. For some firms, this may be only an evolution of where they are now, but for others complying with the new rules will require a significant shift in how they operate.

31 October
2022 –
Finalised
project plan
implemented



30 April 2023 –
Manufacturers
to have
completed work
and shared with
distributors



31 July 2023 –
Consumer
Duty rules live
for
new/existing
products and
services



31 July 2024 –
Consumer
Duty rules live
for closed
book
products/
services



The FCA has confirmed there will be a phased release for the Consumer Duty. For any new and existing products or services that are open to sale or renewal, the FCA's new rules come into force on **31 July 2023**, giving firms one year from publishing their rules to fully implement any changes.

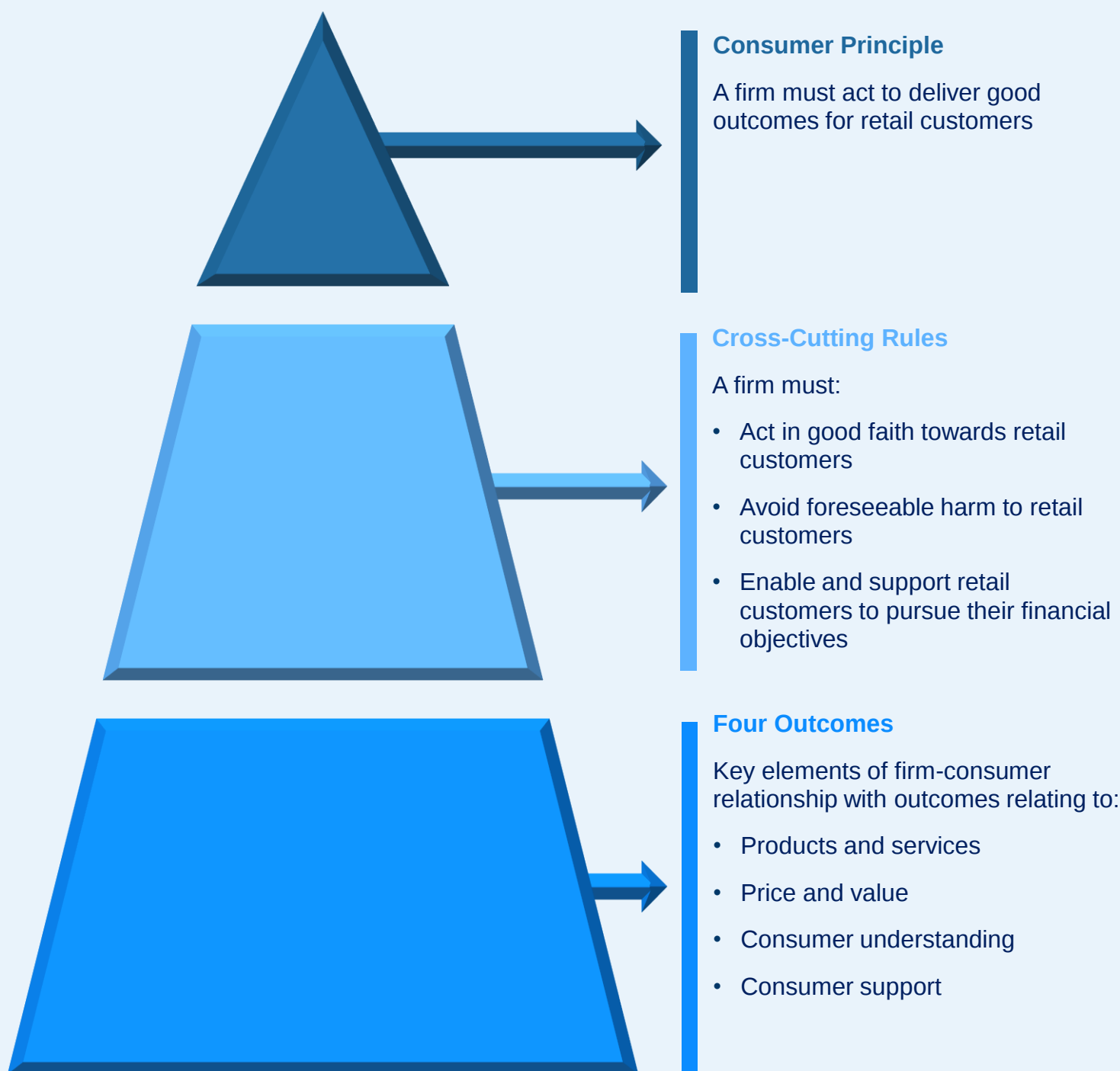
For closed products or services, the rules will come into force on **31 July 2024**, giving firms two years to implement any changes in order to comply with the rules. Despite this, all firms will need to review their current business practices within the next year and make improvements where necessary.

Firms purchasing closed books from other firms will need to ensure they gather all the information possible from said firm in order to satisfy themselves they will be able to comply with the duty. Firms on the mergers and acquisitions trail will need to ensure the due diligence they complete over any target acquisitions gives full regard to Consumer Duty and any potential liability they may be taking on.

Businesses must ensure that they have implemented the necessary changes ahead of the relevant deadlines and Boards need to have and approve a project plan by the **end of October 2022** at the latest. However, in a recent [Dear Chair Letter to banks](#), the FCA said “we are not waiting for the Consumer Duty to come in before we act to improve consumer outcomes.” This means that, if your initial review reveals any potential issues, you should take swift action well ahead of the 2023 and 2024 deadlines.

The new Consumer Duty released by the FCA is a package of measures comprised of a new Consumer Duty (Principle 12), a set of over-arching cross-cutting rules, which is underpinned by four expected outcomes as shown below.

The Consumer Duty



The new Consumer Principle (Principle 12)



The introduction of higher expectations from Consumer Duty can be used as an opportunity to develop existing processes, policies, systems and controls in order to put customers at the heart of your business and organisational structure. However, interpreting what is expected from the Consumer Duty is not without its challenges. This includes learning a new language of rules, and establishing and embedding a customer outcome focused lens at every stage of the product/service lifecycle which proposes significant challenges for the Financial Services Market serving retail customers.

A new Consumer Principle will be included in the FCA's Handbook; Principles for Businesses Sourcebook (PRIN). It's purpose is for businesses to set a clear tone and use language that reflects the overall standards of behaviour expected from the regulator. The new Consumer Principle is as follows:

- *“A firm must act to deliver good outcomes for retail customers”*. This wording places emphasis on businesses being expected to consider not just the result of their actions, but also the impact of their actions on customers and goes beyond the current principles 6 and 7 of acting in the customers best interests and paying due regard to the information needs of customers.

The FCA has been clear in that the Duty should be applied based on what is **reasonable** and **proportionate** for a prudent firm carrying on activity. This is an objective standard of conduct that firms would need to meet. The FCA recognise that what is reasonable will be assessed on the facts and so will involve judgements from firms at the time. The rules and guidance include factors that influence what is reasonable. These are factors that have a significant impact on what the Duty means in practice for firms' conduct, including:

- The nature of the product or service being offered or provided (for example the risk of harm to customers)
- The characteristics of the retail customer(s) (for example their degree of financial capability), and
- The firm's role in relation to the product or service (including the firm's role in the distribution chain)

Key takeaways (1)



Many firms will have already made efforts to put consumers at the heart of what they do; this new package of regulation widens the pool of firms caught by “retail” focused rules. It also requires focus on defining, monitoring and managing what good and consistent consumer outcomes are for the products and services your firm sells.

Here are 6 key areas to consider:

1. New consumer principle, cross cutting rules and outcomes – breadth and depth

The new Consumer Principle requires firms to ‘*act to deliver good outcomes for retail clients*’. This is underpinned by three cross-cutting rules, and guidance and rules relating to four consumer outcomes. The FCA has clarified its expectations and the scope of the rules in the [guidance document](#), strengthening its proposals in certain areas.

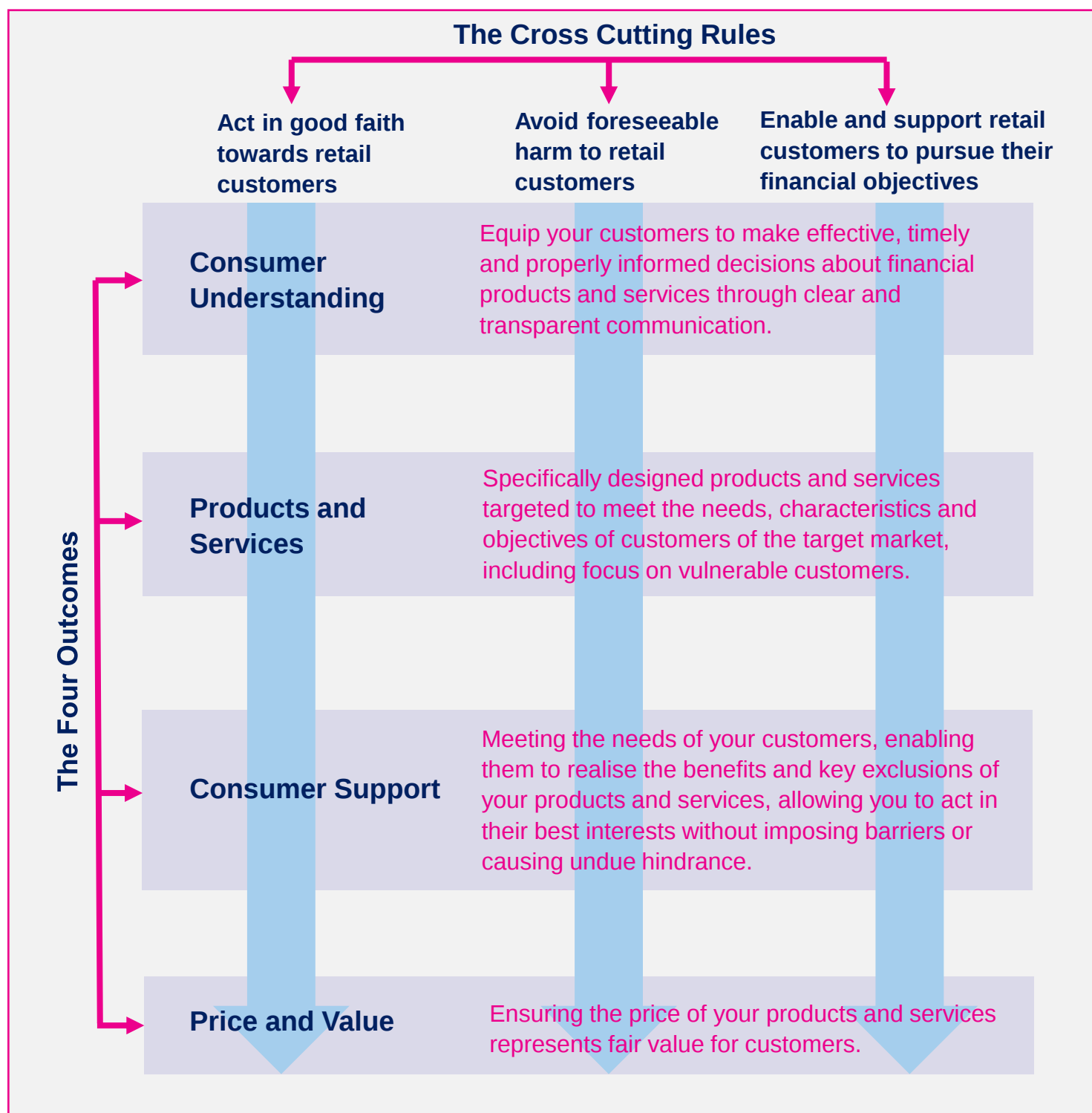
These principles and outcomes will apply to all firms (conducting business in the UK and UK firms conducting business for non-UK customers where the activity is within scope of existing sectoral rules) that have a “material” impact on consumer outcomes, so those in the distribution chain without direct consumer contact (such as underwriters) will need to consider whether they are impacted for the first time, as well as any firms conducting unregulated activities which are ancillary to regulated activity. All companies will need to consider what good consumer outcomes look like for their not only their products and services, but across their supply chains as a whole. Firms who have a material impact on or can influence material aspects of products and services includes but is not limited to:

- The design or operation of retail products or services, including their price and value;
- The distribution of retail products or services;
- Preparing and approving communications that are to be issued to retail customers; or
- Engaging in customer support for retail customers.

The new cross-cutting rules and four outcomes



The FCA has strengthened the Consumer Principle with three new Cross-Cutting Rules and with four new outcomes underpinning these rules as shown in the graphic below.



Key takeaways (2)



2. Outcomes monitoring – focus on good outcomes for consumers

Additional information on the data firms can use to monitor consumer outcomes sets out when to use data on an individual or cohort basis, and the frequency that firms should be looking at those.

You will need to produce and regularly review management information (MI), specifically on customer outcomes. This MI should be appropriate to the nature, scale and complexity of your business, its position in the distribution chain, the products and services you offer and the customer base you serve. For firms outsourcing activity, you must be mindful to ensure firms you are partnering with will comply with the Duty and should satisfy yourselves that you will be able to effectively oversee such firms, for example through receiving detailed MI.

Firms should also use the Consumer Duty as an opportune time to review all customer-centric MI which they produce, ensuring the right balance between quantitative information and management commentary. You must ensure the MI equips senior management teams to review their compliance both with the Consumer Duty and wider conduct risk issues.

To measure the success of its proposals, the FCA will monitor key outcomes for consumers, including the Financial Ombudsman Service's final decisions on complaints about fees or charges, or inappropriate product or service sales.

3. Link to Vulnerable Customers

Additionally, with guidance released by the FCA in February 2021 on the fair treatment of vulnerable customers, which can be found here [Guidance for firms on the fair treatment of vulnerable customers](#). Consumer Duty further emphasises that firms need to deliver good outcomes for vulnerable customers that are as good as those for all other customers. The FCA have previously provided 4 defined characteristics of vulnerability being: **Health**, **Life events**, **Resilience** and **Capability**. Specifically taking into account customers who could be placed into one of these categories, firms are expected to ensure that vulnerable customers benefit from the overall improvements in outcomes delivered as a result of Consumer Duty proposals, making explicit reference to the need for firms to provide an additional level of care to ensure they meet the needs of customers who are vulnerable.

Key takeaways (3)



4. Remediation – proactive consumer redress

The rules and guidance in the FCA's Dispute Resolution sourcebook now require firms to proactively consider whether good outcomes have been achieved, not only in response to complaints. Where these outcomes haven't been achieved, remedial action will urgently need to be taken, including paying compensation if customers have suffered harm because of the firm's conduct.

5. Authorisations moving forward

The Consumer Duty's implementation period ends on 31 July 2023 for new and existing products or services that are open to sale or renewal and 31 July 2024 for closed products or services. However, Authorisations' assessments of firms and individuals is forward looking (for example, firms and individuals must demonstrate they can comply with FCA rules and guidance on an ongoing basis). So, any firm or individual applying for authorisation (and those applying to vary their permissions will have to demonstrate that they can meet the requirements of the Consumer Duty, as they relate to them, from now on. You can find out more about this on the FCA's website [How to apply for authorisations](#) page.

6. Governance – Board level accountability

The Consumer Duty must be reflected in strategies, governance, leadership and people policies, including performance management and pay at all levels. It introduces a requirement to appoint a champion at Board level who, alongside the Chair and the CEO, will ensure the Consumer Duty is discussed regularly and raised in all relevant discussions.

The FCA has set out fundamental questions you can expect to be asked in relation to your governance arrangements, and that your Consumer Duty champion and Chair should use to guide discussions.

How is this different from existing TCF rules and principles?



TCF and Principles

6&7



Consumer Duty and Principle 12

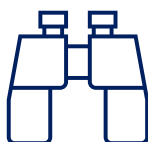


Essentially, it goes beyond the current constructs of TCF and places more responsibility on firms to not only deliver good outcomes for customers, but be able to evidence good outcomes are being achieved at every stage of the product/service lifecycle. The difference between TCF and Consumer Duty can be compared to the analogy of moving to a bigger house. Your existing house (existing regulatory requirements) requires oversight and maintenance, but the new house (Consumer Duty) requires larger foundations, and more work and oversight is needed to keep it in working order.

The FCA previously offered guidance on the outcomes that should result from 'Treating Customers Fairly' under Principle 6 but framing the Consumer Duty Principle as 'outcomes based' would take this a step further. It emphasises that firms should not just focus on processes, but also the impact of their actions on customers. The Consumer Duty is intended to and will set a higher standard of care and expectation beyond their current set of Principles and rules.

This set of measures have been specifically designed to more effectively tackle customer harm in the Financial Services sector. The Consumer Duty will be designed to enhance the focus on good outcomes for customers, and will enhance existing Handbook requirements, for example Principles and the Conduct of Business rules.

FCA Supervision



Under the Consumer Duty, the FCA's Supervisors will increasingly focus on the outcomes being experienced by customers. Supported by the Duty's rules-based clarity of expectations, Supervisors would be able to challenge firms and intervene robustly. Their interventions will be informed by the use of data from firms' own monitoring and testing activities as evidence of real customer outcomes, so it's vital firms can evidence effective management and monitoring of customer outcomes at every stage of the product/service lifecycle. Because of the additional clarity introduced by the Consumer Duty and its rules-based approach, the FCA would be able to use this to readily and effectively hold firms to account. Additionally, the Consumer Duty's enhanced expectations for firm monitoring of consumer outcomes would support a more data-led FCA, thus allowing rapid identification of practices that adversely impact those outcomes.

Conclusion



Firms will need to consider the Consumer Duty at every stage of its processes and at every level of its organisational structure. Firms should implement systems and processes to 'get it right in the first place', particularly when designing products and services, which implies complaints volumes could be more closely scrutinised. Firms will need to exercise more judgement in determining how their behaviours, policies and processes act in achieving good customer outcomes. Firms will need to monitor, test and (where necessary) adapt their practices and processes on an ongoing basis, to satisfy themselves that they are delivering the expected outcomes. Firms need to be in a position to provide information and data to the FCA, to evidence the outcomes of their monitoring and testing activity.

The implementation of the Consumer Duty will create a sizeable shift in the FCA's expectations of firms in retail markets.

Key considerations for firms (1)



Culture and governance

- Is the organisation prioritising acting to deliver good outcomes for customers? Are there any areas of concern?
- How is the external environment changing, and how will that impact on the organisation's ability to deliver good outcomes for customers?
- Has the firm identified the key risks to its ability to deliver good outcomes to customers and put appropriate mitigants in place?
- How does the firm define good outcomes (over the short, medium and long term) for customers using its products and services?
- What data does the firm have about its customers and how they use its products? Are there any gaps in the data? What steps is the firm taking to address them?
- What outcomes are customers getting? Are they getting good outcomes which align with their reasonable expectations?
- Are certain groups of consumers getting different outcomes, and if so why? What's driving any adverse outcomes?
- What actions is the firm taking to improve outcomes? Who's accountable for this work, what will improvement look like and when will it happen?

Key considerations for firms (2)



Customer outcomes

- Is the organisation prioritising acting to deliver good outcomes for customers? Are there any areas of concern?
- How is the external environment changing, and how will that impact on the organisation's ability to deliver good outcomes for customers?
- Has the firm identified the key risks to its ability to deliver good outcomes to customers and put appropriate mitigants in place?
- How does the firm define good outcomes (over the short, medium and long term) for customers using its products and services?
- What data does the firm have about its customers and how they use its products? Are there any gaps in the data? What steps is the firm taking to address them?
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8 steps you should start taking now



1. Understand how Consumer Duty impacts you.
2. Get senior stakeholders on-board and aligned.
3. Identify a Consumer Duty lead to spearhead the project.
4. Develop a project plan (by the end of October 2022 at the latest).
5. Undertake a gap-analysis or maturity assessment.
6. Develop an improvement plan to strengthen areas of identified weakness.
7. Implement and embed (through culture, policies and procedures and training) the necessary changes by the 2023/2024 deadlines.
8. Continue to review and improve through management information and governance.

How we can help



Applying Consumer Duty to your particular business model

The approach to Consumer Duty is not a one size fits all approach. You will need to assess the size of your firm, and the nature and complexity of the products and services you provide. There are a wide range of potential responses your firm can have depending on your place in the distribution chain and your impact on consumer outcomes.

For example, a firm of limited size with little material impact on a small number of consumers may want to achieve basic application, whereas firms serving millions of consumers with complex products and services will need to be at the leading edge of thinking and implementation.

Bovill has developed a Consumer Duty Maturity Toolkit which can detect any hotspots where you may not be meeting regulatory expectations. It also identifies the maturity of your consumer-focused practices and adjusts your stance accordingly.

Get in touch to discuss how we can help you navigate this new regulatory package. You can also [join us at our upcoming webinar](#), where we will consider how you can effectively prepare for the implications of Consumer Duty.

Bovill

82 Blackfriars Road
London SE1 8HA
T. + 44 (0) 207 620 8440
E. enquiries@bovill.com

www.bovill.com

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