

A New Consumer Duty – Focus Areas

The New Consumer Duty (Duty) centres on a new FCA Principle (PRIN12) which states:

A firm must act to deliver good outcomes for retail customers

Application

The Duty and PRIN 12 apply to “retail customers” which the FCA defines as **all policyholders**, with the exception of “large risks”, “reinsurance”, and group schemes (in terms of sales).

Therefore, the Duty generally applies to all activities relating to consumers and SMEs. In terms of geographical scope, there is no one definitive statement by the FCA in its Policy Statement. However, the FCA has subsequently confirmed in their webinar that the Duty only applies to UK risks. It should be noted that the requirement to perform a Fair Value (FV) assessment under the General Insurance Pricing Practices rules remains for overseas risks and the FCA has recently provided clarification that managing agents can limit the assessment to using the data they already hold for FV assessments of overseas products.

The FCA makes it clear that, as manufacturers, managing agents’ responsibilities are limited. Distributors (including brokers), are also subject to the Duty and managing agents are not responsible for the Distributor’s actions. However, when a managing agent outsources a function (e.g. claims handling), the managing agent remains responsible for meeting the expectations of the Duty, regardless of whether the third party is regulated.

The rules are set out in FCA Policy Statement [PS22/9](#) and associated FCA guidance is provided in [FG22/5](#). The FCA also published [further information](#) for firms on 05 October. FG22/5 provides some useful suggestions for MI/data collection and questions for Boards which are reproduced at the end of this document in the appendices.

Implementation Timetable

Action	Due date
Board approval of implementation plan	31 October 2022
Application of Duty to new and existing products	31 July 2023
Application of Duty to closed books	31 July 2024

Outcomes and Cross-Cutting Rules

The Duty identifies the following four areas where the FCA wishes to see good outcomes for retail customers:

- Products and services
- Price and value
- Retail customer understanding
- Customer support

The Duty also applies rules which cut across the four outcome areas as follows:

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

Governance Requirements

In addition to Board approval of an implementation plan, the Duty introduces the following additional governance requirements:

- Agreement of a Duty “Champion” on the Board who should ideally be an independent NED. The Champion, together with the Chair and CEO will be responsible for ensuring that the Duty is discussed by the Board on a regular basis and that an annual compliance report is provided to the Board.
- Firms’ strategies, governance, leadership and people policies (including incentives at all levels) should foster good outcomes for retail customers.
- Those subject to SM&CR are expected to be able to explain the role they play in delivering good outcomes for retail customers.

Suggested Focus Areas

Managing agents should consider their own business, products and target markets to develop their implementation plans and work programmes. The below is designed to assist managing agents in identifying areas of focus which could help inform those plans and programmes.

Products and Services/Price and Value

The FCA has stated that compliance with the General Insurance Pricing Practices rules and FV assessments substantially meets the Duty requirements relating to Products and Services, and Price and Value.

Managing agents should consider producing a status report on the FV work.

- Include the percentage of UK and overseas compliance
- Is any data missing?
- How will known deficiencies be tackled?
- What is the estimated date for completion (the formal deadline for the FV work has passed and any outstanding assessments should be completed by 31 July 2023).

The FCA states that when co-manufacturing a product (with a broker or Coverholder), a written agreement as to responsibilities must be in place.

- The LMA5312B was drafted for use with coverholders. Are you using it, or something equivalent?
- Confirm that the POG has a schedule of work to review the in-scope products on an annual basis.

Retail Customer Understanding

The FCA refers to communications with retail customers. This should include all forms of communication throughout the product lifecycle. Particular attention should be paid to policy wordings and claims/complaints handling and managing agents should tailor their approach according to characteristics such as customer type and product complexity.

- Consider a review of policy wordings (perhaps risk-based according to product risk/policyholder count).
- The [Lloyd's Product Simplification Guidance](#) is a very helpful resource and could be referenced in an implementation plan.
- Feedback loops are important to ensure/improve customers' understanding of policy wordings – see section on MI/data collection.

The LMA reviewed its Home Insurance Policy (HIP) model wording in light of the above simplification guidance and that model wording is due for publication soon. .

Customer Support

The main area likely to cause issues is claims/complaints handling and data collection/analysis is crucial to discover and mitigate any issues.

- See section on MI/data collection
- Managing agents should consider seeking customer feedback on the claims process and there are various online tools which could help (e.g. Defaqto, etc.)

Vulnerable consumers

One important aspect of the Duty which the FCA mentions several times is firms' approach to vulnerable consumers. These will likely be individual consumers exposed to high risk products. The FCA published [useful guidance](#) on this and firms should ensure they are familiar with its contents.

- Check that TPAs and coverholders with claims (and complaints) handling are familiar with the FCA guidance
- Have they provided any training on how to identify vulnerable consumers and how they should amend their approach?

MI/Data Collection

As previously stated, MI is crucial in understanding how policies perform. However, it is what you do with the data that counts.

Lloyd's set out minimum MI requirements for high product risk products in [Y4847](#). This is a good starting point, but firms should think about what amendments or additions could be made to this data set and whether it can, or should, be applied to a wider product set.

The LMA understands that data requirements for coverholders should be addressed at a market level and will ensure this is considered as part of Lloyd's work on a DA Data Strategy.

The LMA will also be considering the Duty in its revisions to the model BAA and audit scope.

Foreseeable Harm

Foreseeable harm can be thought of as harm which a firm knew, or **should** have known could happen.

The FV assessments should provide comfort that the products being manufactured offer value and the target market is defined within those assessments.

The MI referenced above should allow managing agents to check that products are being sold to the target market and performing as expected. MI should also highlight any areas where harm is/could be occurring and should act as a trigger to revisit the policy wording or claims process.

Culture and Governance

The FCA confirmed in their statement of 5 October that there is no prescribed responsibility for the Duty. Instead, the FCA expects all those within the SM&CR regime to understand the Duty and be able to explain the role they play in delivering good outcomes for retail customers. Therefore training is almost certainly required.

- Consider a training programme for the Board and others within the SM&CR regime.
- Also consider some form of training for all employees.
- What training are brokers, coverholders and TPAs providing for their staff?
- Do coverholders and TPAs understand your approach to compliance with the Duty?

The FCA states that firms' strategies, governance, leadership and people policies (including incentives at all levels) should foster good outcomes for retail customers.

- Consider amending relevant job descriptions to include the Duty.
- Consider adherence to the Duty in appraisals.
- Ensure that the above consideration also links into bonuses, etc.
- Consider whether checks on Duty compliance should form part of your firm's internal audit planning.

Appendices

FCA suggestions for MI gathering

Information firms may want to collect include:

- Business persistence: analysis of customer retention records – e.g. claims and cancellation rates and details of why customers leave. This may flag where poor treatment is contributing to high customer turnover.
- Distribution of products/pricing and fees and charges: review of whether certain groups of customers are more likely to buy certain products, incur particular fees and charges, or appear to be receiving outcomes that are not as good as other groups of customers.
- Behavioural insights: customer interactions and drop off rates; use of different communications channels including digital; consumer testing of user interfaces and design such as websites and apps, and the results of such testing, e.g. whether consumers changed their behaviour as a result of the design. This would include consumer testing of any gamification elements in the user interface and design of apps. This may flag where firms need to improve policies, processes and systems (e.g. where there are barriers to consumer engagement or understanding).
- Training and competence records: analysis of records of staff training, including remedial actions where staff knowledge or actions were found to be below expectations.
- File reviews: reviewing customer files and monitoring calls to check for errors and assess if customers received good outcomes (this is particularly useful for sales processes).
- Customer feedback: using formal and informal feedback from customers to identify trends and areas for improvement (e.g. complaints and comments made to the firm but also comments and complaints on social media).
- Numbers of complaints: trends in numbers of complaints involving poor customer outcomes throughout the customer-firm relationship
- Complaints root cause analysis: investigating complaints fully to understand the cause of customer complaints, not just dealing with the symptoms.
- Results of the regular testing and monitoring required under the outcome rules: many of the four outcomes rules include requirements for firms to monitor and review over time. The results of these reviews, together with any action taken would be relevant for consideration of whether the outcomes are being followed.
- Feedback from other parties in the distribution chain such as manufacturers and distributors sharing information about the way in which products are sold, and the extent to which actual sales matched the target market.
- Compliance reports: review compliance reports to check if standards are being met in terms of good outcomes for consumers.
- Researching or testing customer experiences through processes such as mystery shopping, auditing customer journeys, focus groups and deep dives, or working with consumer organisations to gain insight into the needs and experiences of consumers.
- Allowing staff to feedback honestly when they think products or services, or the processes used to deliver them, could be improved.
- Reviewing whether processes and policies are effective in delivering good outcomes for customers.
- Drawing on external sources of data about consumer outcomes. The Financial Lives survey, for example, contains granular data about the financial lives of different groups.

Products and Services - Key questions for firms

- Has the firm specified the target market of its products and services to the level of granularity necessary?
- How has the firm satisfied itself that its products and services are well-designed to meet the needs of consumers in the target market, and perform as expected? What testing has been conducted?
- How has the firm identified if the product or service has features that could risk harm for groups of customers with characteristics of vulnerability? What changes to the design of its products and services is it making as a result?
- Is the firm sharing all necessary information with other firms in the distribution chain, and receiving all necessary information itself?
- How is the firm monitoring that distribution strategies are being followed and that products and services are being correctly distributed to the target market?
- What data and management information is the firm using to monitor whether products and services continue to meet the needs of customers and contribute to good consumer outcomes? How regularly is it reviewing this data and what action is being taken as a result?
- Where the firm is planning to withdraw a product or service from the market, has the firm considered whether this could lead to foreseeable harm? What action is it taking to mitigate this risk?

Data - Key questions for firms

- Is the firm satisfied that it is considering all the relevant factors and available data as part of its fair value assessments?
- Has it gathered relevant information from other firms in the distribution chain?
- What insight has the firm gained for its value assessments by benchmarking the price and value of its products and services against similar ones in the market?
- Have the price and value of its older products kept up with market developments?
- Can the firm demonstrate that its products and services are fair value for different groups of consumers, including those in vulnerable circumstances or with protected characteristics?
- If the firm is charging different prices to separate groups of consumers for the same product or service, is the firm satisfied that the pricing is fair for each group?

Customer Support - Key questions for firms

- How has the firm satisfied itself that its customer support is effective at meeting customer needs regardless of the channel used? Does the firm test outcomes across different channels?
- What assessment has the firm made about whether its customer support is meeting the needs of customers with characteristics of vulnerability? What data, MI and customer feedback is being used to support this assessment?
- How has the firm satisfied itself that it is at least as easy to switch or leave its products and services as it is to buy them in the first place?
- How has the firm satisfied itself that the quality of any post-sale support is as good as the pre-sale support?

- What data, MI and feedback is the firm using to monitor the impact its consumer support is having on customer outcomes? How often is this data monitored, and what action is being taken as a result?
- How effective is the firm's monitoring and oversight of outsourced or third-party service providers, and is it confident that these services meet the consumer support standards?