

# **A new Consumer Duty**

Feedback to CP21/36 and final rules

**Policy Statement**

PS22/9

July 2022

## This relates to

Consultation Paper 21/36  
which is available on our website at  
[www.fca.org.uk/publications](http://www.fca.org.uk/publications)

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# 1 Summary

- 1.1** In this policy statement, we set out the final rules and guidance for a new Consumer Duty ('the Duty') that will set higher expectations for the standard of care firms give consumers.
- 1.2** In our recent [Strategy](#) document, we set out our expectations for financial services over the next three years and how we will measure our performance to improve, adapt and deliver in the interests of consumers, markets and the economy. We want to drive a healthy and successful financial services system in which firms can thrive and consumers can make informed choices about financial products and services.
- 1.3** Setting higher standards and putting consumers' needs first is central to our strategy – and the cornerstone of this is the Duty. We want to see a higher level of consumer protection in retail financial markets, where firms compete vigorously in consumers' interests. Firms need to understand their customers' needs and to have the flexibility to support them with certainty of our expectations, so they get good outcomes.
- 1.4** This is particularly important as consumers face increasing pressures, including those relating to the cost of living. Even before cost of living pressures emerged, consumers were being asked to make an increasing number of complex and important decisions in a faster and increasingly complex environment. This makes it even more important that consumers can make informed, effective decisions, act in their interests and pursue their financial objectives.
- 1.5** At present, this doesn't always happen. Some firms present information in a way that is misleading or difficult to understand, which makes it harder for consumers to make a timely and informed decision. Some firms sell products or services to consumers that are not right for them or which don't offer fair value or provide poor customer service and support.
- 1.6** We have addressed these poor practices over time with our regulatory and supervisory tools. Under the Duty, firms will need to assess and evidence the extent to which and how they are acting to deliver good outcomes. Combined with our more data-led approach, this should enable us to more quickly identify practices that negatively affect those outcomes and to intervene before practices become widespread.
- 1.7** A more outcome-focused approach will also give firms greater flexibility to adapt and innovate. Outcomes-based regulation can be applied more easily to technological change and market developments than detailed and prescriptive rules. This means consumers are better protected from new and emerging harms. Firms can also innovate to find new ways of serving their customers with certainty of our regulatory expectations.
- 1.8** We have engaged extensively with a wide range of stakeholders as we finalise the rules and guidance for the Duty. This includes consumer organisations, firms and their trade bodies, members of the regulatory family and other regulators, law firms and professional bodies, and our statutory panels. We have also discussed our proposals at numerous events, panels, and open discussions.

- 1.9** We are grateful to those who engaged with us, and we have considered the feedback and issues raised. We want to continue this collaborative engagement with all stakeholders in the next and crucial phase of implementation.

## Who this affects

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- regulated firms, including those in the e-money and payments sector
- consumer organisations and individual consumers
- industry groups/trade bodies
- policy makers and regulatory bodies
- industry experts and commentators
- academics and think tanks

## The wider context of this policy statement

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### Our consultation

- 1.10** We first discussed stakeholders' concerns that our regulatory framework may not be adequate to tackle the level of consumer harm in retail markets in our discussion paper 'A duty of care and potential alternative approaches' ([DP18/5](#)). In our subsequent feedback statement ([FS19/2](#)), we set out our intention to take forward specific options for change.
- 1.11** We published a first consultation paper ([CP21/13](#)) in May 2021. In December 2021, we consulted on our detailed and final proposals for the Duty, including draft rules and guidance ([CP21/36](#)). This policy statement sets out the key feedback we received, the changes we have made in response, and the final rules and guidance.
- 1.12** The question of whether and how to raise the standard of protection for consumers was also debated in Parliament during the passage of the Financial Services Act 2021 with Parliamentarians calling strongly for change. The Act set out a requirement that the FCA should consult on:
- whether to make general rules providing that authorised firms owe a duty of care to consumers, including whether to make other provisions about the level of care which firms should provide to consumers
  - whether such a duty or other provisions should apply to all consumers or to particular classes of them
  - the extent to which a duty or other provisions would advance the FCA's statutory consumer protection objective.
- 1.13** Under the Financial Services Act 2021 we are required to make any final rules for the Duty by 31 July 2022. The rules we are making at Appendix 1 fulfil this obligation.

## How it links to our objectives

**1.14** The Duty will advance our consumer protection and competition objectives.

- **Consumer protection:** The Duty sets a higher, clearer standard by requiring firms to ensure their products and services are fit for purpose and offer fair value, and to help consumers make effective choices or act in their interests. By focusing on outcomes, the Duty will help to ensure that the level of consumer protection is both appropriate for the environment in which consumers currently transact and for those in which they will transact in the future. The Duty also supports more agile and assertive supervision which should mean that firms focus on preventing harm before it arises and that, where harm does appear to occur, it is addressed more quickly and so ultimately reduced.
- **Effective competition in the interests of consumers:** The Duty will create a fairer and more consumer-focused playing field on which firms can compete and innovate in pursuit of good consumer outcomes. Competition can more effectively act in the interests of consumers where firms design products and services to meet consumer needs, and consumers are put in a position to make informed decisions and act in their interests. The international standing of the UK financial sector is based on high standards.

## What we are changing

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**1.15** We are introducing rules comprising:

- A new Consumer Principle that requires firms to act to deliver good outcomes for retail customers.
- Cross-cutting rules providing greater clarity on our expectations under the new Principle and helping firms interpret the four outcomes (see below). The cross-cutting rules require firms to:
  - act in good faith
  - avoid causing foreseeable harm
  - enable and support retail customers to pursue their financial objectives
- Rules relating to four outcomes we want to see under the Duty. These represent key elements of the firm-consumer relationship which are instrumental in helping to drive good outcomes for customers. These outcomes relate to:
  - products and services
  - price and value
  - consumer understanding
  - consumer support

**1.16** Our rules require firms to consider the needs, characteristics and objectives of their customers – including those with characteristics of vulnerability – and how they behave, at every stage of the customer journey. As well as acting to deliver good customer outcomes, firms will need to understand and evidence whether those outcomes are being met.

## Outcomes we are seeking

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- 1.17** Our recent three-year Strategy set out that the overarching outcomes we expect to see from retail financial services, which cut across all the markets and sectors we regulate. This is how we will measure progress against our strategic objective: making markets work well.
- 1.18** We are focusing on these cross-sector outcomes, joining up all of our tools so we address concerns and opportunities efficiently, effectively and consistently to create the regulatory conditions firms need to deliver these outcomes.
- 1.19** The Duty supports each of these outcomes:
- **fair value:** consumers receive fair prices and quality
  - **suitability and treatment:** consumers receive suitable products and services and receive good treatment
  - **confidence:** consumers have strong confidence and levels of participation in markets
  - **access:** diverse consumer needs are met
- 1.20** The Duty also aligns with our own transformation and our focus on being more innovative, assertive and adaptive in our regulatory approach. Under the Duty, firms need to assess and evidence the extent to which and how they are acting to deliver good outcomes and address any issues they identify. Combined with our more data-led approach, this will enable us to more quickly identify practices that negatively affect those outcomes and to intervene before practices become entrenched as market norms.

## Measuring success

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- 1.21** We will measure the success of our proposals by monitoring key outcomes for consumers. For example, one of the ways we can monitor whether consumers are getting products and services which meet their needs and provide fair value is through monitoring Financial Ombudsman Service final decisions on complaints about fees or charges or inappropriate product or service sales.
- 1.22** We will also monitor what products and services consumers use, and measure what consumers are seeing and feeling and their levels of trust and confidence, including through our [Financial Lives Survey](#). We will evaluate the success of our proposals by using data from a variety of sources including supervision and authorisation activities, firm management information (MI), and complaints data. As we implement the Duty, we will develop further metrics by which we can assess its impact at the level of particular sectors and portfolios, and will ask stakeholders for views and suggestions on potential metrics.
- 1.23** We want to know whether consumers experience improvements in outcomes.
- **Fair value:** Consumers pay a price for products and services that represents fair value and poor value products and services are removed from markets leading to fewer upheld complaints about poor value and unexpected fees or charges.

- **Suitable products and services:** Consumers are sold and receive products and services that have been designed to meet their needs, characteristics and objectives leading to a reduction in the number of upheld complaints about products and services not working as expected.
- **Suitable treatment:** Consumers receive good customer service leading to a reduction in upheld complaints about switching, cancellation and service levels and customers having higher levels of satisfaction with the service they receive.
- **Confidence:** Consumers increase their confidence in financial services markets and are equipped with the right information to make effective, timely and properly informed decisions about their products and services.

## Summary of feedback and our response

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- 1.24** We received 151 responses to the consultation. Respondents included firms, professional and trade bodies, service providers, law firms, consumer organisations and individuals. We also conducted extensive stakeholder engagement during the consultation period, hosting or attending over 50 events.
- 1.25** In general, the detailed proposals in our December 2021 consultation were received more positively than the first, higher level, consultation in May 2021. This varied amongst and between industry and consumer organisation respondents.
- 1.26** Consumer organisations welcomed the intent of the proposals and most welcomed most of the detailed proposals. Some, including our Financial Services Consumer Panel, were disappointed that we chose not to attach a private right of action (PROA) to the Duty at this time, and at the lack of a headline Principle based on firms acting in the best interests of customers. Several consumer organisations pushed us to be much clearer on how we would supervise the Duty effectively and measure its impact. Several, including our Consumer Panel, also felt that sufficient senior level oversight and accountability was essential to the Duty being successful.
- 1.27** Our Consumer Panel questioned whether the drafting of certain specific elements of the detailed rules and guidance lived up to the ambition of the Duty. We have worked closely with Panel members to try and address these concerns.
- 1.28** Industry respondents welcomed several key policy choices, including regarding our position on a PROA, and the greater detail we provided through the rules and extensive non-Handbook guidance (the Guidance). Several respondents, including our Practitioner and Smaller Business Practitioner Panels, said the proposals addressed many of their and industry's concerns with the earlier consultation, including on the clarity of our expectations under the Duty. However, industry respondents highlighted several concerns, on the policy and the proposed implementation period, which we set out below.
- 1.29** Some firms and trade bodies from the payments sector felt that they should not be in scope of the Duty. Trade bodies from the asset management and funds sector welcomed the proposals but were concerned about the feasibility and proportionality of applying them in their sector given both retail and non-retail customers can invest in certain funds. We discuss this in Chapter 2.

**1.30** We have made a number of changes to update the rules and Guidance in light of the feedback we received. Below we set out some of the key themes in the responses to our consultation, our analysis and response.

### **Implementation timetable**

**1.31** The key issue raised by almost all firms and their trade bodies was the proposed implementation period of nine months (ending on 30 April 2023). Industry respondents felt strongly that this was highly challenging. Some either called for a phased approach or called for longer time for them to review back books.

**1.32** Industry respondents also felt that an overly short implementation period would increase several risks. This included either operational and execution risk or the risk of unintended consequences if firms withdrew certain products or services. They also highlighted that we had previously given longer implementation periods for equivalent policy interventions.

**1.33** Consumer organisations were largely supportive of or silent on the timeline. Our Consumer Panel supported our proposed implementation period.

**1.34** We want the Duty to be in effect as soon as practicable, so that consumers can start to benefit from enhanced protections. At the same time, we recognise the challenges some firms will face. We are therefore proposing a phased approach. Firms will need to apply the Duty to new and existing products and services that are open to sale (or renewal) from 31 July 2023. We have given firms longer, until 31 July 2024, to apply the Duty to products and services held in closed books. This is covered in Chapter 12.

**1.35** We expect firms to make full use of the implementation period, and to plan and prioritise implementation work effectively so they meet the standards required by the Duty. We also set out our expectations and a roadmap for how firms will use this implementation period to effectively embed the Duty in Chapter 12.

### **Risk of retrospection**

**1.36** We were clear in CP21/36 that the Duty would not have a retrospective effect and would not apply to past actions by firms. Actions taken before the Duty comes into force would continue to be subject to the rules that applied at the time. We did however propose that the Duty would apply, on a forward-looking basis, to existing products and services, including closed book products and services.

**1.37** Many respondents agreed with our proposed approach, but others, including our Practitioner and Smaller Business Practitioners Panel, questioned the practicality or raised other concerns, for example that the proposal would amount to retrospection. Some respondents also felt that this increased the risk that the ombudsman service could then apply the new standards to past conduct.

**1.38** We think it is important to provide high standards for existing customers as well as new customers. So, we are taking forward the proposals. We are however giving further guidance on how firms can apply the price and value rules specifically to existing products and services, how they can conduct the review in a proportionate manner, and to address other specific points raised. We set this out in Chapter 3.

- 1.39** We have engaged with the ombudsman service throughout the development of the Duty and in finalising the rules and guidance. We expect to work closely with the ombudsman service throughout implementation, including by ensuring it has the opportunity to participate in our wider work with firms and other stakeholders. Both we and the ombudsman service work on the basis that firms should be held accountable against the standards that prevailed at the time of the problem.

### **Governance and accountability**

- 1.40** The Duty will require a significant shift in both culture and behaviour by many firms. In CP21/36, we made clear that we expect the focus on acting to deliver good outcomes to be at the centre of firms' strategy and business objectives. To support this, we proposed amendments to our Senior Manager and Certification Regime (SM&CR) rules and requirements on the management or board of firms to ensure their customers were getting outcomes consistent with the Duty.
- 1.41** Many respondents welcomed our proposals. But consumer organisations, including our Consumer Panel, were concerned that, without sufficient senior level accountability and oversight, the Duty would not achieve the outcomes we are seeking.
- 1.42** In Chapter 13, we have set out new proposals to ensure firms are clear where responsibility lies and that we expect the Duty to be reflected in firms' strategies, governance, leadership and people policies.

### **Cost and complexity**

- 1.43** 63 respondents commented on our cost benefit analysis (CBA). Most agreed that the Duty will have benefits, including for industry. However, several were concerned that, though we gave indicators of the potential scale of benefits, we were unable to quantify these benefits in monetary terms. Our Practitioner Panel recommended that industry should be encouraged to record the costs of implementation, to ensure the benefits were worthwhile and learn for the future.
- 1.44** Respondents were not able to give examples of quantification, and only one firm provided cost estimates. Without further evidence on either costs or benefits and given that the changes we are making to the rules on which we consulted do not materially affect the overall CBA, we are not proposing to revise the CBA. We discuss this in Chapter 15.
- 1.45** Our Smaller Business Practitioners Panel and various industry trade bodies highlighted the increasing complexity of overlaying cross-cutting rules over the existing Handbook. Some consumer organisations also felt that provisions in our existing Handbook could confuse firms or provide an excuse to not meet the standards required of the Duty. There were calls for different approaches, from removing provisions perceived as confusing or contradictory, to a full Handbook review.
- 1.46** We have considered the evidence provided by these respondents but we did not identify any conflicts that required immediate changes to the Handbook. Therefore, we are not proposing further Handbook changes at this time. We discuss this in Chapter 4. We will consider whether Handbook changes might be needed as part of a post-implementation review, and are open to constructive suggestions on elements of the Handbook that might be revised or removed in light of implementation of the Duty.

## Unintended consequences

- 1.47** In CP21/36, we flagged stakeholders' concerns about the risk of the Duty leading to unintended consequences, such as the withdrawal of products or services for certain customer segments, such as higher risk consumers. We do not want to see firms reducing access to appropriate products and services that offer fair value to their target markets. This would not support our objectives or our wider business priorities.
- 1.48** We also explained the steps that we are taking to mitigate the risk of unintended consequences. This included not attaching a PROA at this time, providing extensive rules and guidance on what the Duty did and did not require, and through working collaboratively with firms during the implementation period to mitigate any residual risk of unintended consequences.
- 1.49** Several stakeholders reiterated their concerns about potential unintended consequences and the risk that uncertainty caused by outcomes-based regulation will lead firms to take a cautious approach and potentially limit access to some groups of consumers.
- 1.50** We will work closely with firms, consumer organisations and other partners during the implementation period to help ensure that firms do not feel they need to withdraw products or services that are suitable and fair value. As well actively monitoring for unintended consequences, we will also consider any evidence that this has happened as part of a post-implementation review.

## Supervision, monitoring and evaluation

- 1.51** Almost all respondents agreed that supervision and enforcement of the Duty will be critical to its success. Several sought greater clarity about how we will supervise the Duty in practice, and which sectors we propose to focus on first. Some respondents argued that we should set out in more detail what success looks like and how we propose to measure successful outcomes. Some asked us to commit to a clear timetable to review the implementation of the Duty, and report on progress.
- 1.52** As we set out in Chapter 14, we are developing a supervisory approach to ensure that firms implement the Duty effectively. During the implementation period, we will monitor firms' readiness and will feed back useful insights we gather to the market. Once the Duty is in force, we will use a range of tools to assess firms' compliance. We will also monitor how the market may change following implementation of our rules.
- 1.53** We are proposing to undertake a post-implementation review to understand how firms have implemented the Duty, whether it is having the intended effect and whether it is leading to any unintended consequences.

## Non-Handbook guidance

- 1.54** In CP21/36, we asked for feedback on the draft non-Handbook guidance. We also asked respondents to suggest other examples which they considered useful to include.
- 1.55** We were asked to include more examples of how specific elements of the Duty would work in practice across different retail markets. Some firms wanted the guidance to be kept under regular review and updated when appropriate.

- 1.56** We have updated the guidance and provide more examples, in the finalised guidance, [FG22/5](#), published alongside this paper ('the Guidance'). We expect to build on this Guidance as we embed the Duty through our ongoing interactions with firms and provide more sector specific guidance over time.

## Next steps

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- 1.57** Our expectations for the action firms will take during the implementation period are set out in Chapter 12. The rules we are introducing come into force on a phased basis:
- for new and existing products or services that are open to sale or renewal the rules come into force on 31 July 2023
  - for closed products or services the rules come into force on 31 July 2024

## 2 The scope of the Duty

**2.1** In CP21/36, we proposed to apply the Duty to all firms in the distribution chain for products and services sold to customers, including certain small and medium enterprises (SMEs).

**2.2** In this chapter, we set out the feedback we received in relation to:

- which customers are in scope of the protections of the Duty
- which firms the Duty applies to

### Customers in scope of the Duty

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**2.3** We proposed to align the scope of the Duty with the existing scope of our sectoral sourcebooks, including in relation to SMEs for which we already regulate the provision of financial services. Principles 6 and 7 would continue to apply to conduct outside the scope of the Duty, where they apply at present.

**2.4** We also proposed that firms would need to consider the retail customers who ultimately make use of a product or service, even if those customers are not the direct clients of a firm.

**Q1:** *Do you have any comments on the proposed scope of the Consumer Duty?*

**2.5** While most respondents supported our proposed approach or asked for more clarity, several respondents raised issues with the proposed scope, which are addressed below.

### Small and Medium Enterprises (SMEs)

**2.6** While many respondents agreed with our proposed approach, a few asked for more clarity around the status of SMEs. Some respondents said that our approach of following definitions in different sectoral rules would create complexity for firms that operate across different sectors. For example, a medium-sized business may be considered a 'retail customer' when taking out insurance but not if arranging credit or making a bank deposit.

**2.7** Some respondents also thought it was disproportionate or unnecessary to apply the Duty to larger SMEs at all. These respondents said that many of these SMEs are well placed to protect their own interests and are not exposed to the same potential harms faced by individual consumers or smaller SMEs.

**2.8** As a solution, some respondents suggested the same definition could be used across all business types for SMEs. This could be based on the definition used in our banking conduct rules or for eligible complainants to the Financial Ombudsman Service.

## Our response

We are maintaining the approach of applying the Duty in line with the approach in existing sourcebooks, including where we already regulate and apply protections to the provision of financial services to SMEs. So, where SMEs are already protected by our rules under a sectoral sourcebook, the Duty will also apply.

In our first consultation, we consulted on aligning the Duty with the scope of Principle 6. Respondents challenged this on the basis of proportionality, in response to which we proposed the approach of aligning with our existing sourcebooks. Respondents have not suggested we revert to this position in order to provide a consistent definition, and we do not want to reduce protections for SMEs beyond the position on which we consulted. We do not think it would be appropriate or helpful for the Duty to apply more narrowly than our sectoral rules.

In pursuing our consumer protection and competition objectives, we must have regard to how consumers (including SMEs that use regulated financial services), differ from each other, eg in their experience and expertise, their capabilities, their information needs, their expectations, the products they use and the risks involved, and their ability to access financial services in the first place. We consider that SMEs of varying sizes can experience poor outcomes. They can be exposed to risk at the point of purchase due to product complexity, limited choice or poorly managed expectations. When things go wrong, some struggle to navigate the complaints and claims processes or to obtain redress.

We accept that there may be cases where a firm is dealing with a customer who may be out of scope of the Duty for one service (for example a bank account) and in scope for another (such as an insurance product). These differences already exist in FCA requirements for different sectors. Firms can change certain things (for example communications) to reflect these different standards, if they wish to. Or there may be occasions where it is operationally easier to apply the Duty standard to both.

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## Products and services held by both retail and non-retail customers

2.9

Some respondents said that the same products and services can be bought by both retail and non-retail customers. Examples include investment funds open to all investors and payment services that can be used by both retail and non-retail customers. This means, for the same product or service, firms would be subject to both the Duty for their retail customers, and Principles 6 and 7 for their non-retail customers. They asked if this is right and explained the complexity it would cause.

## Our response

We recognise the complexity that exists where products or services are bought by both retail and non-retail customers, but we do not consider that it would be appropriate to exclude such products or services from the scope of the Duty. This could lead to worse outcomes for retail

customers of excluded products or services. It might also open a route by which firms could avoid applying the new rules if they were able to include non-retail customers in the target market.

Some firms are already subject to rules on product design or the assessment of value, which apply regardless of the type of customer. Where these apply, as discussed in Chapters 6 and 7, complying with these rules will also satisfy these elements of the Duty.

For other requirements, we expect firms to apply the rules in a pragmatic and proportionate manner. For example, where it is possible and appropriate, firms might be able to develop different communications or support services for retail and non-retail customer groups. Equally, they might decide it is appropriate and proportionate to take a consistent approach for all customer groups.

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## Scope of firms covered by the Duty

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- 2.10** We proposed that the Duty would apply to all firms in the distribution chain that can influence material aspects of the design, target market or performance of a retail financial services product or service, even where they did not have a direct relationship with the retail customer.

**Q2:** *Do you have any comments on the proposed application of the Consumer Duty through the distribution chain, and on the related draft rules and non-Handbook guidance?*

- 2.11** While many respondents supported our approach, a number of challenges were raised with it, as discussed below.

### Application to firms in the distribution chain

- 2.12** Many industry respondents questioned how this would work in practice. If all firms in the chain are responsible for the end retail customer in this way, some industry respondents said this implied a general responsibility among all firms for the outcomes experienced by the customer.
- 2.13** We were also asked for clarity on whether the Duty applies to firms providing services to, or creating products used by, occupational pension schemes regulated by The Pensions Regulator (TPR). In these cases, the direct client of the FCA-authorized firm is the pension scheme trustee, but retail customers are members of the pension.
- 2.14** Respondents in the insurance sector asked whether the Duty applies to group general insurance and pure protection products arranged, for example, for an employer to provide benefits to employees.

## Our response

It is important that all firms that can control retail customer outcomes should take responsibility for their actions, regardless of the relationship with the customer. So, we are retaining the proposed scope of the Duty to include customers with whom a firm does not have a direct relationship. We have introduced additional non-Handbook guidance (the Guidance) to clarify and set out our expectations of different parties in the distribution chain.

The Duty applies to firms that can determine or materially influence retail customer outcomes. For example, it applies to firms that can influence material aspects of, or determine:

- 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

We have provided additional guidance setting out in more detail what we mean by material influence, and examples of where this is unlikely to apply, building on the responses we received from consultation and our wider engagement.

The Duty would not apply, for example, to a firm whose role is limited to activities like the following.

- Operating within a mandate determined by another firm in the chain. This could include a portfolio manager whose role is limited to managing assets under a mandate determined by a professional client, where that client is entirely independent of the manager. For instance, this might be the case where a portfolio manager is managing part of the portfolio of a defined benefit pension scheme. It is unlikely to be the case where the portfolio manager is managing the assets of an investment company and, while technically independent of the investment company, has, for example, a material influence on the design, branding and promotion of the product.
- Providing factual information to support the work of another firm in the chain.
- Providing IT systems.

Where it applies, the Duty applies proportionately based on what is reasonable in the circumstances. The extent of a firm's responsibilities will depend on its role and the extent of a firm's influence over retail customer outcomes. The level of responsibility depends on the firm's actual role and influence, rather than just what is set out in contractual terms between firms in the chain.

A firm that is remote from the retail customer, with no direct client relationship, may have more limited obligations. For example, a fund manager working with the board of an investment trust may have a

material influence over product design and other matters, but the ultimate decisions may be taken by the board. The firm should, where reasonably practicable, comply with the Duty within the context of its role. For example, it could discuss any concerns it has with the board.

For occupational pensions, as we explained in CP21/36, the Duty would not apply to pension schemes regulated by TPR. Respondents raised an important issue where FCA authorised firms provide services to, or create products used by, TPR regulated schemes.

FCA authorised firms creating a product and operating pension schemes for occupational pension scheme trustees would need to comply with the Duty if they can determine or materially influence retail customer outcomes. We have amended the 'retail customer' definition to be clear that it includes the beneficiaries of trust-based pension schemes, where an FCA authorised firm provides services to a trustee. While, legally, the trust is the firm's customer, in practice, scheme members would still regard the pension in the same way as an individual pension, and the FCA authorised firm is likely to have a role in ensuring good outcomes for members. The activities of the trustees would continue to be regulated by TPR.

The Duty does not apply to the distribution of group insurance policies or the extension of the policy to new members.

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## Proportionality

**2.15** Many of the issues raised by respondents relate to questions of proportionality in the application of the Duty to different firms in the distribution chain. For example, we were asked about our expectations in relation to:

- the actions expected of different firms in the chain
- requirements for information to be shared by one firm with another, such as to help firms monitor customer outcomes for the products and services outcome or the price and value outcome
- situations where different firms in the chain disagree over a customer outcome or the appropriate action

### Our response

We are addressing these comments and questions by introducing additional guidance to provide further clarity on our expectations.

For example, the Guidance confirms that, unless there are regulatory requirements or contracts require it, firms are responsible only for their own activities and do not need to oversee the actions of other firms in the distribution chain. It sets out a proportionate approach to dealing with complex chains or if there are disagreements among firms in the chain.

We will also continue to engage with firms to answer any questions they have.

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## Liability

- 2.16** We proposed that, while all firms in the distribution chain would have responsibilities under the Duty, they would only have liability for their own activities and would not be responsible for outcomes arising from the actions, or omissions, of other firms in the chain.
- 2.17** Some consumer groups were concerned that, unless firms are jointly and severally liable for any consumer harm, it would reduce recourse to redress, particularly in relation to mis-selling in non-advised sales.
- 2.18** Many industry respondents welcome the proposed approach, but some questioned if the rules delivered it in practice. They said that some of the proposed rules implied shared responsibility.

### Our response

We are taking forward the approach on which we consulted but introducing additional guidance to add further clarity.

We consider that it is fair for firms generally to be responsible only for their own actions and omissions. Requiring them to take additional responsibility for other firms in the distribution chain would not always be possible and, even where it is, would be expensive and disruptive to the market, requiring firms to attempt to oversee and control each other's work. We do not believe this would result in good customer outcomes overall. It may lead to higher charges for customers and reductions in access, choice and innovation. Under our rules, customers will still have recourse in relation to the firm or firms whose actions or omissions led to harm.

There are exceptions to this general approach, for example where a firm acts as a principal firm.

We have introduced a rule requiring firms to notify us if they become aware that another firm in the distribution chain is not complying with the Duty. We have also introduced a rule requiring a firm to notify other firms in the distribution chain if it thinks they have caused, or contributed to, harm to retail customers.

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## Impacts for the wholesale sector

- 2.19** Some wholesale firms, trade bodies and representatives said that the approach to the distribution chain lacked clarity and would bring too many wholesale firms into scope inappropriately.
- 2.20** For example, they said, it appears wholesale firms that provide advisory or delegated investment management services to a retail fund manager which then provides a service to the retail customer might be subject to the Duty. Similarly, the manufacturer of wholesale products or services incorporated by a retail firm into a product or service could be seen to be subject to the Duty.

## Our response

It is important that all firms that can determine or materially influence retail customer outcomes should take responsibility for their actions, regardless where they sit in the distribution chain. However, we understand the concerns raised and are introducing additional guidance to explain our expectations.

Products or services that are not designed for retail customers are not in scope of the Duty, where they:

- are only marketed and approved for distribution to non-retail customers and
- are not provided to another firm under an arrangement between them as part of a distribution chain for a retail product or service

Incorrectly classifying a product or service as non-retail with the aim of avoiding the Duty, and then distributing it to retail customers, would be in breach of the Duty.

The impact of the Duty on wholesale firms to which it applies may be less marked than some respondents suggested. The Duty applies only to the extent that a firm is responsible for determining or materially influencing retail customer outcomes. And, where it applies, we are clarifying that obligations on firms must be interpreted proportionately, in a manner that reflects the firm's role in the distribution chain and its ability to influence retail customer outcomes. In addition, as noted above, where a firm is already subject to rules on product design or the assessment of value, complying with these rules will also satisfy relevant parts of the Duty.

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**2.21** We proposed that the Duty would not apply to financial instruments designed for wholesale investors, including in relation to non-complex financial instruments, real economy securities and non-retail financial instruments. Several respondents commented that the definitions of these concepts were too narrow, risking the Duty applying to wholesale instruments that should be excluded.

**2.22** Various issues were raised with the definition of a 'non-complex financial instrument', including:

- part of this definition requires a bond to be 'regularly traded', in a way which is quite narrowly defined
- aspects of the definition also repeat requirements elsewhere in the Handbook, such as in relation to the public availability of information and speculative illiquid securities
- the term 'non-complex financial instrument' is used in other existing rules, where it has a different meaning

**2.23** Issues were also raised with the proposed 'non-retail financial instrument' definition. For example, part of the definition refers to securities with a denomination of £100,000 or more. Some respondents said there are many products in the market that are designed for professional investors only and which do not have such a high minimum denomination.

## Our response

We have taken account of the feedback and have amended the rules to exclude primarily wholesale instruments, where this will not have a negative impact on retail customers.

The rules we are introducing:

- address the concerns with the basis on which securities are traded, by taking a broader approach
- remove the definition of a 'real economy security', instead specifying the types of securities to which we intend to apply the Duty
- remove requirements in relation to the public availability of information and speculative illiquid securities, as they are addressed elsewhere in the Handbook
- amend the exclusion for offers of these non-complex financial instruments to cover more market activities and avoid the incorrect application of the Duty
- avoid the 'non-complex financial instrument' term as it was not our intention to align this exclusion with products subject to other rules that use the same term
- reduce the £100,000 threshold for non-retail financial instruments to £50,000, in line with the Government's proposed approach in the [UK Prospectus Regime review](#) for the exemption for wholesale non-equity securities

We consider that these changes continue to reflect our intention to protect retail customers, while better excluding from scope products we did not intend to catch.

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## Application to manufacturers and distributors

**2.24** We proposed different responsibilities for firms classed as the manufacturer or distributor of a product or service.

- **Manufacturers:** firms that create, develop, design, issue, operate or underwrite a product or service would be regarded as a product manufacturer. More than one firm may be involved in the manufacture of a single product. It is also possible that intermediaries may be co-manufacturers, for example if they set the parameters of a product and commission other firms to build it.
- **Distributors:** firms that offer, sell, recommend, advise on, propose or provide a product or service would be regarded as distributors.

**2.25** Some respondents felt it would be helpful for us to define the terms used in these definitions, to be precise about their application.

**2.26** Respondents in the payments and e-money sectors said these concepts do not work for them. Existing concepts of distributors and agents already exist in the sectoral rules and the new 'distributor' definition appears to cut across them, introducing complexity and reducing clarity regarding which firms are responsible for meeting the rules.

- 2.27** Firms that purchase and administer books of closed products from the original manufacturer said they are neither manufacturers nor distributors.

### Our response

We considered providing more precise definitions of the 'manufacturer' and 'distributor' terms but, in general, have not done so. Where we consider it relevant, we make use of existing terms in the definitions. Elsewhere, however, we rely on a plain language meaning. We have added some guidance to help explain our expectations. The concepts are deliberately broad to capture all aspects of the manufacture and distribution of products and services.

While firms that purchase books of closed products or services from the original manufacturer do not originate or design a product or service, they would be managing, operating or carrying out activities in relation to the book, which means they would be classed as manufacturers. To ensure consistency and provide appropriate levels of consumer protection, firms that purchase books from the original manufacturers should continue to review customer outcomes. See the next chapter for further discussion on our expectations for these firms.

We are amending the manufacturer definition for 'underwriting' to be clear that this relates to insurance and credit activities. This avoids the implication that the Duty applies to primary market activities involved in underwriting the issuance of securities.

We have added further guidance on the payments and e-money sector. We recognise that distribution chains may look different from other sectors, but the Duty will apply to firms in this sector.

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## Unregulated activities

- 2.28** We proposed that the Duty would only apply to activities within our remit. However, consistent with our approach in our existing Handbook, we also proposed that it would apply to unregulated activities which are ancillary to regulated activity. These are activities carried on in connection with a regulated activity or held out as being for the purposes of a regulated activity.
- 2.29** Several consumer organisations had concerns with our proposed approach to unregulated activities, saying we should go further.
- 2.30** Many industry respondents suggested that application of the Duty to 'ancillary activity' lacked certainty and could extend the scope too broadly.

## Our response

We are taking forward the approach on which we consulted. We have added guidance to clarify the reference to 'ancillary activity'.

Ancillary activities include unregulated activities necessary for the completion of a regulated activity. For example, the design of a product or service, and ongoing customer support services, are not themselves regulated activities. They are, however, necessary activities linked to regulated activities.

So, for example, selling a separate non-financial services product at the same time a regulated activity is performed, where completion of the regulated activity does not depend on sale of the unregulated product, would not amount to an ancillary service.

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## Application outside the UK

- 2.31** We proposed that the Duty would apply to firms conducting regulated activities in the UK.
- 2.32** To ensure consistency, we proposed that it would apply to firms in Gibraltar selling into the UK and firms in the temporary permissions regime and financial services contract scheme following the UK's withdrawal from the European Union (EU). The few respondents commenting on these points agreed with our proposed approach.
- 2.33** We also proposed to apply the Duty to firms conducting business for non-UK customers, where the business is within scope of rules in existing sectoral sourcebooks. We were asked how this would work where part of the distribution chain lies outside the UK.
- 2.34** In particular, UK manufacturers selling to non-UK customers via non-UK distributors would face difficulties if those distributors, not subject to our rules, refuse to share relevant information needed for the manufacturer to comply with Duty. Some firms also noted that this could worsen the competitive position of UK firms in international markets.

## Our response

In general, we are taking forward the rules on which we consulted, but we are adding further clarity on our expectations for application where the distribution chain includes non-UK distribution firms.

The issues raised primarily appear to affect firms in the insurance and asset management sectors. And the issues primarily appear to relate to requirements to monitor products under the products and services outcome and the price and value outcome. As discussed further in relevant chapters of this policy statement, firms in these sectors are subject to existing rules which satisfy these outcomes. In many respects, therefore, for firms in these sectors, we would not be expecting significant additional work when dealing with non-UK distributors or selling to non-UK customers.

Where concerns remain, we note that the Duty as a whole applies based on what is reasonable in the relevant circumstances. We have added additional guidance to explain that, where the chain includes non-UK distributors selling to non-UK customers, we recognise that manufacturers will not be able to gather the same amount of information as when only dealing with UK-based firms. In this case, they should use any available information to support their work under the Duty but would not be expected to obtain information from firms that are not subject to the Duty.

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### Other concerns raised by respondents

- 2.35** Some respondents in the e-money and payment services sector said that applying the Duty to this sector was disproportionate. They said the risks of consumer harm are low in the sector and there is no need to apply the Duty to it. They also said that article 29 of the Financial Services Act 2021 only required the FCA to consult on the level of care provided by authorised persons. As a result, they said that payments and e-money service providers should be outside of scope.
- 2.36** Some industry respondents asked if the Duty would apply to collection activity in relation to loans given to businesses affected by coronavirus (Covid-19) under the Bounce Back Loan Scheme (BBLs). Respondents said bounce back loans should be taken completely out of scope of the Duty as the BBLs is a government initiative. Lenders are required to follow a prescribed set of criteria and the scheme is covered by additional guidance from the FCA and the Treasury.
- 2.37** Some respondents asked for further clarification of the Duty's scope where a sourcebook includes an exemption or opt-out allowing it, or certain aspects of it, to be disapplied to certain customers. As an example, the Mortgage Conduct of Business rules (MCOB) do not apply to regulated mortgage contracts provided to 'large business customers'. We were also asked whether the Duty applied where an exclusion exists outside our Handbook (for example, the consumer buy-to let exemptions under the Mortgage Credit Directive Order 2015).
- 2.38** We were also asked how the Duty would apply in the context of outsourcing arrangements. We were asked how the outsource service provider and outsourcing firm would share responsibility.
- 2.39** Industry respondents also questioned whether the Duty is intended to apply to investment companies, including investment trusts. Respondents explained the difficulties that would arise given the structure of these companies and the existing legislative position for them.

### Our response

#### E-money and payment services

While the Financial Services Act 2021 called on the FCA to consult on the level of care provided by authorised persons, the Duty is not being introduced solely as a result of the legislation. Work on the Duty started in 2018, in DP18/5, a discussion paper on a duty of care and potential alternative approaches. It is designed to address issues across the markets we regulate.

We have identified several harms in the e-money and payment services sectors in which the Duty is expected to play a key part in raising standards.

These include problems with firm communications. For example, in May 2018, the FCA sent a Dear CEO letter to firms in the sector setting out our concerns. We also have concerns with customer support standards. For instance, we have found problems with the availability of customer support in firms where capacity has not kept up with growth in demand, and deficiencies in firms' understanding of their obligations when handling customer complaints.

As noted above, we have added further guidance on the application of the Duty to the payments and e-money sector.

### **BBLs**

The Duty does not apply to entering into bounce back loans, as this is not a regulated activity. However, the perimeter for debt collecting is wider and bounce back loans are subject to existing rules and guidance, including those on:

- default and arrears in the Consumer Credit sourcebook (CONC)
- Senior Management Arrangements, Systems and Controls (in the SYSC sourcebook) where appropriate, and
- Code of Conduct requirements (in the COCON sourcebook)

We do not consider it appropriate to take a different position to the scope of existing rules and guidance. Firms involved in collection activity for bounce back loans should comply with the Duty in their work.

### **Exemptions and opt-outs**

We confirm that the Duty does not apply to activities where an exclusion exists, either in our Handbook or in legislation. We have updated the rule on which we consulted to make this clear.

So, for example, for mortgages, the Duty follows the position in MCOB and does not apply to unregulated buy-to-let contracts or large business customers.

Where only certain aspects of a sourcebook apply, the Duty as a whole (that is, the Principle, cross-cutting rules and the outcome rules, as appropriate) would apply only to the areas covered by those rules. For example, regulated buy-to-let mortgages are subject only to rules on financial promotion in MCOB and only relevant aspects of the Duty – in relation to communications – would apply.

### **Outsourcing**

In relation to outsourcing arrangements, unless an FCA-authorized outsource provider can determine or has a material influence over retail customer outcomes, it would not be subject to the Duty. Instead, in line with our existing approach under the systems and controls rules in SYSC 8, the outsourcing firm will remain responsible for meeting the relevant aspects of the Duty. This firm is likely to be able to determine or materially influence retail customer outcomes.

### **Investment companies**

The Duty will apply to the manufacture and distribution of investment companies, including investment trusts. We have introduced additional guidance to help address the concerns raised by firms.

We would expect FCA authorised firms working with investment companies to take reasonable steps to address issues where they can. However, we recognise that the company structure means FCA-authorized firms cannot always ensure issues are resolved.

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## 3 Application to existing products and services

**3.1** In the consultation, we confirmed that the Duty would not apply retrospectively to past business or apply to firms' past actions.

**3.2** We also proposed:

- that most elements of the Duty would apply, on a forward-looking basis, to existing products or services which are either:
  - still being sold to customers, or
  - closed products or services that are not being sold or renewed
- to disapply aspects of the product and service outcomes rules that could not be easily applied to closed products and services. For example, we said that manufacturers would not need to identify a target market or develop a distribution strategy.

**3.3** In this chapter, we set out the feedback we received to our proposals and explain the approach adopted in the rules we are making.

### Responses to CP21/36

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**Q3:** *Do you have any comments on the proposed application of the Consumer Duty to existing products and services, and on the related draft rules and non-Handbook guidance?*

**3.4** Many respondents agreed with our proposed approach. Many others asked for greater clarity on how it would work in different scenarios, or suggested changes such as giving firms longer to review their existing or closed book products and services.

**3.5** Respondents were generally more comfortable applying the consumer understanding outcome rules and the consumer support outcome rules to existing and closed book products and services. They felt that these rules could apply on a forward-looking basis in a more straightforward manner, even to closed products and services.

**3.6** Some industry respondents raised specific concerns about applying the rules for the price and value outcome on a forward-looking basis. These respondents queried whether the approach would in fact amount to retrospection, and highlighted difficulties firms might experience applying these aspects of the Duty.

**3.7** Having considered the feedback, we are broadly taking forward the approach on which we consulted. However, we are introducing additional guidance to provide more clarity on our expectations. We have set this out in more detail in the sections below.

#### Retrospection

**3.8** Many industry respondents said, contrary to our statement, the proposals did amount to retrospection.

- 3.9** They said anything suggesting firms need to amend existing terms and conditions, agreed before the Duty comes into force, is retrospective. These respondents said that many existing products and services were designed under the rules and market conditions that applied at the time. They said that requiring a firm to change this now would be unfair and unreasonable.
- 3.10** Respondents said, for example, that if interest rates were set on a credit product, and interest rates subsequently fall for new credit, firms should not be required to reduce the interest they charge. The charges were based on the cost to the firm of funding credit at that time and it would not be fair to consider only the current economic climate.
- 3.11** Some respondents raised concerns that, even if the rules themselves were not retrospective, decisions about past conduct by the FCA or the Financial Ombudsman Service could in practice be informed by the new standards introduced by the Duty. These respondents also said that activity by claims management companies (CMCs) could exacerbate the likelihood of this happening.
- 3.12** Some firms were concerned that they would need to make changes to products to prevent harm that was not foreseeable at the point of sale, but which has now become foreseeable. For new products, the product design and underwriting can reflect the new risk. It would not be reasonable to require firms to adjust existing products to address the new concern, particularly without raising the premium.
- 3.13** Some firms noted that assessing fair value on a forward-looking basis for long-dated products launched in a different economic environment or under different assumptions was, even if not retrospective, likely to be much more difficult. They also said it could create unintended consequences if customers lose cover or access to products.
- 3.14** Some firms were confused about our proposal to disapply the detailed rules under the products and services outcome regarding identifying a target market, product testing and selection of distribution channels for closed products and services.

### Our response

We do not consider that the application of the Duty to existing products and services, including those closed to new sales or renewal, amounts to retrospection. We are not requiring firms to consider whether any actions in the past were in breach of the Duty. As set out in Chapter 1, both we and the ombudsman service work on the basis that firms should be held accountable against the standards that prevailed at the time of the problem.

We have heard the concerns regarding the application of the price and value rules to existing and closed book contracts. However, we do not think it would be appropriate to disapply these rules for existing and closed book customers. Our work has shown that it is sometimes the older products in a firm's portfolio which no longer represent fair value for customers compared to newer products or compared to contemporary market rates. We think it is appropriate for firms to be confident there is a reasonable relationship, on an ongoing basis, between the price the customer is paying and the benefits of the product or service.

We are clear in our Guidance on the price and value outcome that firms should consider value in the round and that, where a product or service meets all of the other elements of the Duty (for example, it is designed to meet the needs of its target market, is transparently sold, customers are able to exercise choices to switch or exit, and in respect of which customers are properly supported) it is much more likely to offer fair value.

We have added new guidance addressing the need for firms to consider conditions that applied when products were designed and sold. This makes clear that firms can consider their expected costs over the lifetime of the product as part of assessing fair value. For existing and closed products and services, this includes the costs that were the basis on which they entered the contract. So, for example, lenders can take account of the costs of providing credit when assessing fair value, including the cost of the financing behind the credit.

If a firm identifies a product that is not fair value, the final rules confirm that a firm would never need to amend vested contractual rights to address it. Instead, firms would need to take appropriate action to avoid causing foreseeable harm and provide fair value. For example, they could consider changing non-vested fees or charges, where doing so would not impact on any vested rights, providing additional support or information to customers, or offering forbearance, such as a pause in payments, to help mitigate any harm.

We are introducing additional guidance to provide more clarity on what amounts to a vested contractual right.

We did not consult on applying all the detailed rules under the products and services outcome to closed products and services. There are, however, high-level rules under the products and services outcome requiring firms to review closed products and services against the cross-cutting rules; for example, by considering whether aspects of the design could lead to foreseeable harm.

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## Proportionality

- 3.15** Industry respondents raised concerns over how the proposals would work in practice. Several said, where complex issues are identified, the easiest option for a firm will be to withdraw a product. This would reduce competition, choice, and may increase exclusion. One respondent said embedding a reasonableness or proportionality concept in the rules may help reduce this risk.
- 3.16** Some respondents also noted that some firms have significant numbers of product lines, many of which are now closed to new business, and which were designed and launched sometimes decades in the past. They said that reviewing these products would be a significant undertaking with costs disproportionate to the benefits.
- 3.17** Similarly, some respondents said that some products that are in wind-down may have few remaining customers or have only a short term left to run.

- 3.18** Respondents sought guidance on how they should act in a range of scenarios when reviewing an existing product or service. For example, some asked what a firm should do if it identifies changes that would benefit some customers but worsen outcomes for others. We were also asked if firms need to review product terms for individual borrowers, as pricing will depend on their credit risk.

### Our response

As set out in Chapter 12, we are proposing to give firms additional time to review their closed-book products.

We are also introducing further guidance on the process firms may wish to follow. For example, they could group similar products or services together for the purposes of review, where this does not detrimentally affect the firm's ability to review each product or service appropriately. We also expect firms to focus on those products or services most likely to have a risk of harm. We do not expect firms to review products and services for each individual customer, but to consider the product or service as a whole.

We are also introducing guidance to make it clear that the price and value rules apply at the level of the product or service itself rather than for individual customers. Firms do not need to repeat the underwriting of products or to move customers in superseded products onto the latest product version. The focus should be on ensuring that the product or service offers fair value on its own merits.

We do not generally expect firms to make unilateral changes to product or service terms and conditions. Further, firms would not need to make any changes where these would amend vested contractual rights. We would not expect firms simply to withdraw a product without considering the Duty and the impact this could have on customer outcomes.

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### Application of the Duty to firms that purchase a product or service book

- 3.19** Product manufacturers can sell a product or service book to another firm. This could happen, for example, where a firm leaves the market but where there are existing contracts that need to be managed.
- 3.20** Firms that have already purchased product or service books questioned whether it is proportionate to require them to review those products or services. They did not develop the products or services and do not have relevant information to allow the ongoing reviews we propose. They also lack the resources and expertise to assess whether products or services continue to meet the needs of customers or offer fair value going forward.
- 3.21** The respondents also said the approach might have an adverse effect on the future of such sales. This could lead to negative impacts on consumer outcomes, competition and firm prudential positions.

## Our response

We understand the difficulties firms have raised. However, we do not believe it would be appropriate to allow the customers of these books to be subject to lower protections, simply because the original firm no longer operates the product or service. There is also a potential risk of arbitrage if firms could avoid dealing with customer harm by selling a product book. We are, therefore, applying the Duty in these circumstances.

In recognition of the difficulty, however, we expect third-party firms that operate existing product or service books to use their best endeavours to meet the requirements under the products and services outcome and the price and value outcome.

Where the firm was a co-manufacturer, involved in the original design of the product or service, we expect it to have the relevant information and to be able to comply with the Duty.

We have introduced further guidance on our expectations.

To assist in future sales of product and service books, we are introducing rules to require that, in general, a firm selling a product or service book would need to provide information to the firm buying the book to help them comply with the Duty.

Legislation grants some firms the ability to sell books to entities with either limited regulatory permissions or which are not regulated in respect of their activities. For example, this could apply to mortgage and credit books.

While unregulated firms would not be subject to the Duty, they are bound by general consumer law, including the Consumer Protection from Unfair Trading Regulations 2008. A commercial practice may be unfair under these regulations if, amongst other things, it contravenes the requirements of professional diligence. This is the standard of professional skill and care that a trader is reasonably expected to exercise towards consumers. It is defined as the special standard of skill and care which is commensurate with either honest market practice in the trader's field of activity or the general principle of good faith in the trader's field of activity. The general standards of conduct expected by the Duty rules may be considered relevant to what amounts to honest market practice or the general principle of good faith in the field of activity of mortgage and credit books and the sales of such books.

We have also introduced rules requiring a regulated firm buying the book to gather relevant information from the selling firm to be able to comply with the Duty, for example in relation to product and service design and value.

We do not expect this to have significantly adverse impacts on consumer outcomes, firms and competition. It will still be possible for product and service books to be sold to third parties. We consider it important to offer the same high standards of consumer protection to customers in books sold to new authorised firms.

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## Comments on obstacles to our proposed approach

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**Q4:** *Are there any obstacles that would prevent firms from following our proposed approach to applying the Consumer Duty to existing products and services?*

**3.22** Respondents highlighted the following issues:

- the proposed implementation period gave too little time for the amount of work required, for example as older products and services may rely on legacy technology systems making review more difficult
- review of existing contracts could raise difficult legal challenges in relation to amending contracts and dealing with legislative requirements (including the Equality Act 2010, data protection legislation and taxation legislation)
- the need for additional clarity on our expectations could make it difficult to assess what firms need to do
- the proposals could have an impact on the capital position of firms, for example if they rely on income streams from existing products
- changes to address issues for some customers may have negative consequences for others
- it may be difficult for firms to obtain relevant information for product or service reviews; this could be the case particularly where distribution chains include non-UK distribution firms
- not all firms can provide advice to customers and, where firms need to communicate a course of action to resolve an identified problem, they would not be able to make a recommendation for it

### Our response

We acknowledge these concerns and seek to address them in the approach we are taking forward.

We are introducing additional guidance setting out our expectations in more depth. This is intended to address many of the issues raised.

Given this additional clarity and our proportionate approach, we do not expect the approach to have significant prudential impacts for firms. We have discussed our approach with the Prudential Regulation Authority.

The revised approach to implementation, as discussed in Chapter 12, grants additional time to firms to review closed products and services.

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## 4 The Consumer Principle and disapplication of Principles 6 and 7

- 4.1** We want firms to act to deliver good outcomes for customers, and in CP21/36 we proposed a new Consumer Principle (Principle 12) requiring firms to do so, to replace existing Principles 6 and 7.
- 4.2** We also proposed to retain existing Handbook material (eg guidance) related to Principles 6 and 7 and consulted on new guidance setting out how firms could interpret that guidance where Principles 6 and 7 no longer applied.
- 4.3** In this chapter, we set out our analysis of the responses we received to these proposals and explain the rules we are introducing.

### Responses to CP21/36

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- 4.4** In CP21/36, we asked the following questions:

- Q5:** *Do you have any comments on the proposed Consumer Principle and the related draft rules and non-Handbook guidance?*
- Q6:** *Do you agree with our proposal to disapply Principles 6 and 7 where the Consumer Duty applies?*
- Q7:** *Do you agree with our proposal that Handbook and non-Handbook material related to Principles 6 and 7 should remain relevant to firms considering their obligations under the Consumer Duty?*

- 4.5** In general, feedback was broadly supportive of our approach, but respondents asked for more clarity in some areas, such as on how the Duty would apply proportionately to smaller firms, or on the status of existing materials on Principles 6 and 7.

### The Consumer Principle

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- 4.6** Many respondents commented on the proposed wording of the Consumer Principle. The views expressed were consistent with the feedback we received to CP21/13:
- Some consumer organisations were supportive of our proposal to proceed with the language of 'good outcomes'. However, others, including our Financial Services Consumer Panel, disagreed with our proposal as they thought that 'best interests' is a higher standard than 'good outcomes' and therefore the better option.
  - There was support from some industry respondents for our proposal to proceed with the language of 'good outcomes' rather than 'best interests'.

- Although some other industry respondents thought that 'fair' outcomes would be a better option than 'good' outcomes.
- Other respondents suggested a different formulation of words to the two options we had proposed in CP21/13, for example some consumer organisations suggested using both 'good outcomes' and 'best interests' terms in the Principle.

**4.7** Some respondents felt that the term 'good outcomes' was too subjective and that, as a result, the Financial Ombudsman Service might take a different view to the FCA on what this means. Others suggested that consumers would interpret 'good' as synonymous with 'favourable', and it will be important for the FCA to manage consumer expectations.

## Our response

### Wording of the Consumer Principle

We are proceeding with our proposal to introduce a new Consumer Principle, based on the wording option 1 in CP21/13: 'a firm must act to deliver good outcomes for retail customers.' We think this form of words best reflects the outcomes focus of the Duty, goes further than Principles 6 and 7 and is a clear break from existing terminology.

We do not agree that 'best interests', or another formulation of words, would be a better or clearer standard. What is required to deliver 'good outcomes' is explained and defined by our cross-cutting and outcome rules, and our Guidance, and the standard achieved by this package as a whole secures an appropriate level of protection for consumers.

We do not think 'fair outcomes' would be a helpful or appropriate headline Principle. The Duty sets a higher standard than Principle 6, which requires firms to treat customers fairly. Therefore, we think it is appropriate to use different language – 'good' rather than 'fair' – to acknowledge that this is a different, higher standard.

We disagree that the term 'good outcomes' is too subjective. It is an objective standard and we think the rules and guidance that make up the Duty are clear about our expectations and what is required of firms acting to deliver good customer outcomes.

### Interpretation of the Consumer Principle

We will continue to work with firms, consumer organisations and the ombudsman service to ensure that there is a consistent interpretation of requirements under the Duty, and that it is properly understood and embedded during the implementation period.

We also recognise that it is important for consumers to understand both their rights and their responsibilities.

Section 3B of the Financial Services and Markets Act (FSMA) 2000 sets eight regulatory principles to which we are required to have regard when discharging our general functions, including when making rules, guidance and general policies. One of these is the general principle that consumers should take responsibility for their decisions.

In introducing the Duty, we have had regard to this general principle. We do not, for example, expect firms to protect their customers from risks they understood and accepted. However, consumers can only take responsibility for their actions if they have the information and support they need to be able to make informed decisions. Our Guidance sets out more detail on this.

We will work closely with consumer organisations and use our wider communications to increase understanding of what the Duty means for consumers' rights and responsibilities.

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### Reasonable and proportionate application of the Duty

- 4.8** In CP21/36, we proposed that the Duty would only require what can be reasonably expected of a prudent firm carrying on the same activity in relation to the same product or service.
- 4.9** Both consumer organisations and industry respondents expressed concern that the reasonableness test is not really an objective standard as individual firms will only be able to judge how a reasonably prudent firm would act from a subjective viewpoint. Some consumer organisations also expressed concern that the reference to a 'prudent firm' would enable firms to benchmark their compliance to existing low standards and poor practices.
- 4.10** Some industry respondents felt that our proposals were disproportionate for certain kinds of firms, such as small firms and firms engaging in low-risk activities where financial services is not their primary activity.
- 4.11** Several respondents queried the interaction between the Duty and existing legislative and regulatory disclosure requirements (for example disclosure requirements). Several consumer organisations also cautioned against our use of the term 'average customer' in several areas of our rules and guidance. We address these points in detail in Chapters 8 and 10 of this policy statement.

#### Our response

We are proceeding with our proposals and have retained the concept of reasonableness connected with what can be expected of a prudent firm. This is an objective standard of conduct that firms would need to meet and not something that they can define for themselves. But we recognise that what is reasonable will also 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)

When considering whether a firm has fallen short of our expectations, we form a judgement on whether the firm has acted reasonably taking into account the rules and guidance applicable, as well as the facts and circumstances of each case. This will not change under the Duty. The only difference is that firms will be judged against the higher standard set out in our new rules and guidance.

We do not see the reference to a 'prudent firm' as enabling firms to benchmark their compliance to existing low standards and poor practices. This is not how we will be assessing whether firms are meeting our expectations under the Duty. A prudent firm will fully embed the Duty, act in good faith to meet its requirements, comply with all other relevant law (for example the Equality Act 2010) and deliver good outcomes for consumers. This is what we will expect to see from all firms across retail markets.

The Duty consists of an outcomes-based set of rules that are designed to be more proportionate, scalable, and understandable for all firms.

All firms have the same responsibility to act to deliver good outcomes for consumers, but clearly there will be significant differences in the capacity and capabilities of a sole trader firm on the one hand and a major bank on the other.

One question that firms can ask themselves is whether they are applying the same standards and capabilities to delivering good consumer outcomes as they are to generating sales and revenue. We have included further guidance on this in the relevant sections of our rules and Guidance.

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## Disapplication of Principles 6 and 7 and retention of Handbook and non-Handbook material

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- 4.12** We proposed to disapply Principles 6 and 7 where the new Consumer Principle (Principle 12) applies. Principles 6 and 7 would continue to apply to conduct outside the scope of the Consumer Duty where they apply at present, for example to certain small and medium enterprises and wholesale business.
- 4.13** Whilst we proposed to disapply Principles 6 and 7 to this extent, we felt there was merit in retaining the Handbook and non-Handbook material linked to them at this time. This is because we believe this material will remain useful to firms as, where they fall short of expectations under Principles 6 and 7, they will similarly be likely to be in breach of the Duty going forward.
- 4.14** The majority of respondents were supportive of our proposal to disapply Principles 6 and 7 where the Duty applies. However, respondents were divided on whether or not we should retain related material, with some respondents asking for a full review of the Handbook to remove duplication and complexity.

**4.15** Some industry respondents raised other points in relation to existing regulation, including:

- There are current Handbook provisions in direct conflict with the Duty requirements.
- Several respondents asked for the status of the treating customers fairly (TCF) outcomes to be confirmed.
- A few respondents asked how our approach fitted in with the Government's Future Regulatory Framework (FRF) review. There was concern that the Duty might not be harmonised with the FRF or implemented in a consistent way, which could lead to a complex and unwieldy regulatory system.

### Our response

#### **Interpretation of current Handbook provisions relating to Principles 6 and 7**

We are proceeding with our proposal to disapply both Principles 6 and 7 where the Duty applies.

We will however be retaining existing Handbook and non-Handbook material linked to Principles 6 and 7. This is primarily because this material will continue to be applicable to firms and business activities outside the scope of the Duty. But we also think this material may be helpful to firms in considering their obligations where the Duty does apply.

Where existing guidance explains how firms can comply with Principles 6 or 7 (for example, where a piece of guidance begins with 'in order to treat customers fairly a firm should...') this remains relevant to firms in considering their obligations under Principle 12 and the Duty as a whole, and firms should follow the guidance we have set out at PRIN 2A.1.16 and 2A.1.17G.

This guidance explains that Principle 12 imposes a higher and more exacting standard of conduct than Principles 6 and 7, and therefore firms should take account of the inherent limits of such guidance as they do not cover our expectations under the Duty in full. However, failure to act in accordance with existing guidance on Principles 6 and 7 which would have amounted to a breach of those Principles, is likely to breach Principle 12.

This is the case for the TCF outcomes, which are also guidance on Principle 6. We recognise there is significant overlap between the TCF outcomes and the areas covered by the Duty – in particular the four outcomes rules and guidance. Therefore, firms should focus on complying with the Duty where it applies, rather than the TCF outcomes.

We have not identified any existing Handbook provisions that directly conflict with the Duty, but longer-term we will consider whether Handbook changes might be needed as part of our post-implementation review of the Duty. We are open to constructive

suggestions on elements of the Handbook that might be revised or removed in light of implementation of the Duty.

### **FRF Review**

We will continue to work closely with Her Majesty's Treasury to ensure alignment between the future regulatory framework and the Consumer Duty. This will include improving the clarity and coherence of our Handbook over the longer-term as the transfer of retained EU law takes place over the coming years.

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## 5 The cross-cutting rules

5.1 In CP21/36, we proposed cross-cutting rules that require firms to:

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

5.2 In this chapter, we summarise the feedback we received to our proposals, our analysis of them and set out the rules we are taking forward.

### Responses to CP21/36

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5.3 We asked respondents for their views on the following question:

**Q8:** *Do you have any comments on our proposed cross-cutting rules and the related draft rules and non-Handbook guidance?*

5.4 While most respondents supported the aims of the cross-cutting rules, several raised challenges which we address below.

#### Good faith

5.5 Our rules describe acting in good faith as a 'standard of conduct characterised by honesty, fair and open dealing and acting consistently with the reasonable expectations of retail customers'.

5.6 Many industry respondents had concerns about the clarity of the concept of good faith. They argued that it would be difficult for firms, the FCA or the Financial Ombudsman Service to assess how and whether a firm has complied with the requirement.

5.7 In particular, some industry respondents felt that the reference to the 'reasonable expectations' of customers would create uncertainty, making it difficult for firms to assess how or whether they were compliant.

5.8 A few consumer organisations, including our Financial Services Consumer Panel, suggested including additional rules and guidance focusing on firms' culture and the need for firms to pay redress where they identify that customers have suffered harm.

#### Our response

We believe that our rules and non-Handbook guidance (the Guidance) set out a clear description of what is meant by good faith. Our draft Guidance included a variety examples of actions that would not meet the good faith rule. We have nevertheless updated our Guidance to provide further clarity on good faith.

Firms should determine whether they are acting consistently with customers' reasonable expectations according to the ordinary meaning. In addition, as we set out in our Guidance, what a customer reasonably expects would depend on, for example, the nature and quality of the product or service and the firm's previous conduct or interaction with consumers.

Both in the Guidance and in our final rules, we give examples to clarify how firms are expected to act in good faith towards customers at each stage of the customer relationship.

We agree that culture is an essential element of the Duty and we have taken on board the suggestion to refer to culture much more directly. As set out in Chapter 13, we have strengthened our rules on governance and accountability to help deliver this.

We have included new rules and guidance that bolster our existing rules and guidance in our Dispute Resolution (DISP) sourcebook by requiring firms to proactively consider whether remedial action, such as redress, is appropriate where they identify that customers have suffered harm because of the firm's conduct either through action or inaction.

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## Foreseeable harm

- 5.9** Although in our first consultation ([CP21/13](#)) we proposed requiring firms to 'avoid causing foreseeable harm to customers', in our second consultation ([CP21/36](#)) we shortened this to just say 'avoid foreseeable harm'. Many industry respondents were concerned that, as the newly proposed rule was no longer prefixed with 'cause', this could potentially make firms liable for harm outside of their responsibility or control.
- 5.10** Some consumer organisations and industry respondents wanted further clarity and asked for more detail on what is meant by foreseeable harm or for examples to illustrate it in different circumstances.
- 5.11** Guidance under the foreseeable harm rule provides that, where a firm reasonably believes a customer understands and accepts inherent risks in a product (such as investment risk), it will not breach the rule if it fails to prevent such a risk from occurring. Some respondents felt that this risked firms using ineffective disclosure to seek to avoid any liability by arguing that customers that experience poor outcomes were aware of the characteristics of a product.

## Our response

We have updated this cross-cutting rule to require firms to avoid causing foreseeable harm. But we have also made it clear that a firm could cause foreseeable harm through its action or by failing to act either in its direct relationship with a customer or through its role in the distribution chain. This does not mean that the Duty makes firms responsible for the activities of other firms or requires them to oversee the actions of others in the distribution chain. But where a firm can reasonably foresee harm to a retail customer, it should act where it can and raise any issues with other relevant parties.

More broadly, we are clear in our rules and Guidance that firms do not have a responsibility to protect customers from all foreseeable harm. Many financial products involve the risk of adverse outcomes for consumers (eg investments may carry a risk of capital loss), and firms are not required to protect consumers from risks that they understood and accepted.

We have updated the Guidance with examples of foreseeable harm and have also made it clear that what is foreseeable is dynamic. Firms therefore need to stay abreast of and respond to new or emerging sources of harm for example through consumer complaints, management information, press reporting, and our own supervisory communications.

We do not agree that rules and guidance on foreseeable harm permit firms to hide behind ineffective disclosure to say that customers had accepted the risks inherent in a product or service. Ensuring customers understand such risks is an important element of the Duty. Our rules and guidance are clear that firms must consider consumers' limited experience and behavioural biases at all stages of the product lifecycle. In particular, our consumer understanding rules require firms to regularly monitor their communications to ensure that customers understand them and that they help customers to make effective decisions. Our rules also require firms to monitor and regularly review the outcomes their customers are experiencing to ensure that the products and services that they provide deliver good outcomes for customers.

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## Enabling customers to pursue their financial objectives

- 5.12** Several respondents asked us to clarify what is meant by 'financial objectives', and how it would apply in different scenarios, for example, to closed products.
- 5.13** A few respondents said the extent of the responsibility on firms versus the responsibility of the consumer was not sufficiently clear. They asked us to recognise that most firms have little influence over consumers pursuing their financial objectives.
- 5.14** A few respondents had concerns about draft guidance stating that, where firms become aware of a customer's specific financial objective in relation to their product or service, then they should consider how to support that customer in progressing it. They thought this could imply a requirement to go beyond the scope of a firm's service and/or permissions.

### Our response

As we explain in the rules and guidance, the conclusions a firm will reach about its customers' financial objectives will depend on the nature of the relevant products or services. The actions a firm might need to take to enable and support customers to pursue their financial objectives would be determined by what is within a firm's control, based on their role and knowledge of the customer. For example, unlike a non-advisory service, a firm providing an advisory service should understand more about the individual objectives of the customer and would need to act on that knowledge.

The requirement for firms to enable and support customers to pursue their financial objectives does not remove customers' responsibility for decision making or, in itself, prevent customers from making decisions that are not in their interests. Customers best understand their own circumstances and financial needs and objectives. But we expect firms to take responsibility for establishing an environment in which consumers can act in their own interests. The Guidance makes it clear that, while firms should empower customers to make choices for themselves, customers remain ultimately responsible for their decisions and actions. Firms must nevertheless understand and take account of behavioural biases and the impact characteristics of vulnerability can have on consumer needs and decisions.

When supporting a customer to pursue a financial objective, firms are not required to go beyond what could reasonably be expected of the firm delivering their products and services. We have added to our Guidance to further clarify that the Duty overall does not require firms to carry out activities or services that they are not authorised to undertake.

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### Application at an individual or target market level

**5.15** Some respondents felt that it was not always clear whether the cross-cutting rules apply on a target market or individual customer level.

#### Our response

The Duty overall (including the cross-cutting rules) would apply both at a target market and individual customer level, depending on the situation. We have updated our rules and included additional Guidance to clarify this. For example, a firm can act to avoid causing foreseeable harm:

- in their interactions with and support of individual customers, where they are providing a bespoke service, or advice, or issuing a tailored communication
  - to customers in their target market as part of product design and through the design of their customer communications and support
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## 6 The products and services outcome

- 6.1** We want all products and services for consumers to be fit for purpose. We want them to be designed to meet the needs, characteristics and objectives of a target group of customers and distributed appropriately. These are essential steps if firms are to act to deliver good outcomes to consumers.
- 6.2** This chapter summarises the responses we received to our proposals under this outcome, our analysis of them and the rules we are introducing.

### Responses to CP21/36

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- 6.3** In line with existing product governance requirements in our Handbook, we proposed to introduce rules for the manufacture and distribution of products and services. These rules would relate to the governance arrangements firms must have in place for the design, approval, marketing and ongoing management of products and services throughout their lifecycle.

**Q9:** *Do you have any comments on our proposed requirements under the products and services outcome and the related draft rules and non-Handbook guidance?*

- 6.4** Many respondents agreed with the proposals or asked us to be clearer how the proposed rules under this outcome would apply in different scenarios. Some respondents asked how the proposed rules would interact with existing product governance requirements in certain market sectors.

### Interaction with existing product governance rules

- 6.5** We consulted on the basis that firms complying with existing product governance rules in the Product Intervention and Product Governance sourcebook (PROD) would satisfy this outcome. The PROD rules apply to investments, insurance and (from 29 July 2022) funeral plans. Our proposals aimed to provide a level playing field in all sectors, raising standards in those sectors to which the current rules do not apply.
- 6.6** Respondents agreed with this position, but many said the draft rules did not provide sufficient certainty and this might lead to firms trying to apply both sets of rules. The two sets of rules are broadly the same but there are differences. Firms said it would be disproportionate to review and amend their processes to be sure they meet the new requirements, adding costs with minimal benefits.
- 6.7** The existing product governance provisions in Chapter 3 of PROD apply as guidance to asset managers. Some firms in this sector said they already follow the guidance as if it were rules. They asked if they could elect to follow PROD rather than the proposed new rules.

### Our response

We are amending the Duty rules on which we consulted to address these concerns. We agree it would be proportionate for firms to comply with the existing rules to satisfy this outcome, as we consider the existing rules meet our expectations.

We are introducing new application provisions in PRIN 2A.3 to provide clarity that firms are not subject to both sets of rules.

Under these rules, firms that currently follow PROD 3 as guidance may choose whether to follow the rules in PROD or those under the products and services outcome. Failing to comply with PROD would be taken as failing to comply with the products and services outcome.

We have also added further discussion in Chapter 6 of the Guidance to explain the position.

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### Financial exclusion

- 6.8** Some consumer and industry respondents said the proposed requirements for firms to develop products and services to meet the needs of a particular target market may lead to unintended consequences and potentially exacerbate financial exclusion. For example, some said there may be an unintended consequence if firms increasingly focus on designing mass market products to be profitable. This may reduce the range of products in the market or reduced access to specialist products.
- 6.9** Some consumer organisations said there should be a requirement for firms to embed inclusive design principles in the design of products and services. An alternative suggestion was for firms to provide financial inclusion audits and the FCA to produce regular reports on progress.

### Our response

We take these concerns seriously. We do not want to see a reduction in the range of products or services that are in the interests of customers, or reduced access to them.

It has always been our intention for the rules to set a reasonable and attainable standard, and we will apply them in a proportionate way, to support consumer protection without causing firms to withdraw products or services that are in the interests of customers. Chapter 1 sets out our overall view on and approach to mitigating unintended consequences.

Firms will need to consider the needs, characteristics and objectives of customers in their target market. They must take account of any particular additional or different needs, characteristics and objectives that might be relevant for retail customers in the target market with characteristics of vulnerability. For example, some customers will have visual impairment, others will be suffering bereavement, or some may have low financial capability. We are not requiring firms to follow an inclusive-design approach but, in the Guidance, we suggest firms may wish to consider it.

## Other concerns raised by respondents

**6.10** We also received suggestions for some changes to the rules.

- Some of the draft rules referred to the need to avoid detriment to customers. To align with the cross-cutting rules, a respondent suggested that we refer instead to 'foreseeable harm'.
- Where a manufacturer firm identifies a problem with an existing product, the draft rules required it to cease marketing or distributing the product immediately, including by renewal. Some respondents suggested stopping a product from renewing at short notice might itself cause harm to customers. They said the rule should allow greater flexibility to consider customer outcomes.
- We proposed a rule that would require distributor firms to share relevant sales information with manufacturers to support reviews of the product or service. We were asked to broaden this to include other relevant information, such as cancellation rates. This type of information would help manufacturers better undertake their reviews to check if products and services deliver good customer outcomes.

**6.11** We were also asked a number of questions on our expectations, including the following.

- The rules apply to both products and services. We were asked which services are within scope.
- We were asked for more detail on our expectations for the rules to apply in a proportionate manner, particularly where a product or service carries low risk of consumer harm.
- Firms may be subject to legislative or other regulatory requirements on the products or services they offer. We were asked how the new rules interact with these other requirements.
- Many financial services products or services include complexity in their design to deliver product features. We were asked if firms have to change this approach.
- We were asked about the extent to which additional disclosure could serve to address harms identified by firms.
- We were also asked why distributors need to follow the target market developed by manufacturer firms.

### Our response

We are making changes to the rules on which we consulted to reflect some of these suggestions. We agree that they are helpful and reflect our aims under this outcome.

In relation to the questions posed:

- The rules apply to services including those involved in carrying on a regulated activity or activities connected to providing a payment service or issuing electronic money. This covers all services including, for example, a distributor's sales processes, operating an investment platform, operating a model portfolio service, debt counselling services and arranging transactions. In general, the rules apply at the level of the target market, rather than a firm's services for an individual customer. These rules would only apply at an individual customer level where a bespoke service is developed for a particular customer.

- The Duty applies in a proportionate way based on the standard that could reasonably be expected of a prudent firm. Firms must consider what is reasonable in the relevant circumstances in relation to the nature of the product, the characteristics of the customers in the target market and the firm's role in relation to the product. The Duty is outcomes focused and does not impose a one-size-fits-all approach. Where risks are low, there is less need for firms to take additional actions.
  - We recognise that some products and services are based on, or deliver, legislative requirements or are partly designed by regulatory bodies. We also recognise that, from time to time, there will be new legislative or regulatory initiatives that firms need to follow. Firms should comply with these other requirements.
  - Products and services often include complicated financial engineering. This is not inherently problematic, even for target markets that lack the ability to understand the detail; this complexity is often necessary to deliver good customer outcomes. Firms should, however, ensure that features that are visible to consumers are likely to be understood by the target market.
  - When a firm identifies an issue with a product or service, increased disclosure may be one of the solutions to mitigate any potential harm. However, we know from previous experience that increased disclosure does not always mitigate harm satisfactorily. For example, there are risks of information overload or complexity that can undermine the potential benefits of disclosure. It may be that, depending on the context and the scale of the harm, firms looking to address an identified issue could start by amending their communications, testing consumer understanding and monitoring outcomes before trying other actions. However, if there are other reasonable steps a firm could take to deal with a harm, these may be preferable to providing more information.
  - Manufacturers design products and services to meet the needs, characteristics and objectives of an identified target market. Therefore, it is generally the manufacturer's responsibility to identify the target market and distributors' responsibility to follow it. Distributors may have a specific distribution strategy to supplement the manufacturer's strategy, but it must be consistent with the manufacturer's intended distribution strategy and the identified target market.
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## 7 The price and value outcome

- 7.1** We want all consumers to receive fair value. Value is about more than just price, and we want firms to assess their products and services in the round to ensure there is a reasonable relationship between the price paid for a product or service and the overall benefit a consumer receives from it.
- 7.2** This chapter summarises the responses we received to our proposals under this outcome, our analysis of them and the rules we are introducing. We have addressed the specific question of the application of our price and value rules to existing and closed book products in Chapter 3.

### Responses to CP21/36

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- 7.3** In CP21/36, we asked respondents the following question:

**Q10:** *Do you have any comments on our proposed requirements under the price and value outcome and the related draft rules and non-Handbook guidance?*

- 7.4** Most respondents agreed with the underlying intention of the price and value outcome, but some raised concerns over how it would apply in practice.

### Fair value requirements

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- 7.5** Many firms asked if we could be clearer on how we expect them to carry out value assessments. They also asked if we could provide more detail on how we intend to supervise against this outcome, and further examples of good and poor practice in different sectors.
- 7.6** A few firms asked for further guidance on how they should consider a product's non-monetary costs and benefits. Firms providing free products or services, such as free-if-in-credit current accounts or free debt advice services, asked whether they are required to carry out value assessments.
- 7.7** Some consumer organisations were disappointed that we did not explicitly ban price walking (ie the practice of offering a price to new customers which is increased each year at renewal). Some respondents mentioned that this is contrary to the standards that we had recently set in the general insurance market, and so our approach could increase the risk of harm to consumers from price walking in future.
- 7.8** Firms asked for further clarity about how this outcome would affect differential pricing practices or cross-subsidies between products. Some asked if the price and value outcome banned differential pricing, and/or necessarily requires firms to move to cost-plus pricing models (ie where a fixed mark-up is added to per-unit costs).

Others asked how our rules applied to similar products under the same consolidated group but sold under different brands and with different prices.

### Our response

The focus of the price and value rules is to ensure there is a reasonable relationship between the price a consumer pays for a product or service and the benefits they receive from it. We are clear in our Guidance that a product or service that meets all of the other elements of the Duty (for example, which is designed to meet the needs of its target market, is transparently sold, and for which consumers are properly supported) is generally much more likely to offer fair value. This is both because of the benefits customers get and because they have the information they need about the benefits and limitations of the product or service they are buying, and the ability to pick something else if they prefer.

We have added further examples in our Guidance of good outcomes and the behaviours we expect from firms under the Duty. This includes areas where we have seen instances of poor value and specifies how we expect firms to rectify these harms.

We do not necessarily expect firms to quantify non-monetary cost and benefits. But we do expect firms to at least provide qualitative consideration of these factors, especially if these are a significant part of their business models.

Where the product or service does not have any financial or non-financial cost to the consumer (eg debt advice funded through other sources), we would not expect firms to do a value assessment.

Manufacturers providing free products or services should still consider if their customers are paying in non-monetary terms, and whether those costs are reasonable in relation to the product's benefits. For example, customers may pay for their current accounts in the form of foregone interest, associated fees and charges or through the use of their data.

We do not believe that our approach to differential pricing increases the risk of consumer harm. Our work on [general insurance pricing practices](#) found that price walking can lead to some consumers making significant overpayments which do not provide fair value. Such practices, in any retail sector, would not meet the requirements of the Duty. However, we do not believe that all differential pricing between new and existing customers necessarily causes harm. Where upfront discounts are clear and transparent, and the firm can demonstrate that both groups are receiving fair value, then there may be no consumer harm and this could meet the standards of the Duty.

We can confirm that our rules are not intended to prevent cross-subsidies between products or require firms to move onto cost-plus pricing. In addition, the Duty does not prevent firms from selling similar products with different prices across various brands, as long as both are fair value.

## Responsibilities of manufacturers and distributors

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**7.9** In CP21/36, we proposed rules that distributors would need to have distribution arrangements in place that allowed them to understand the value assessment carried out by manufacturers. The rules would also require firms to make sure that fees added along the distribution chain did not result in the product or service ceasing to be fair value. Some firms raised concerns over how this would work in practice, including that:

- a distributor might not be able to affect the fair value of a product as they sometimes cannot control the cost and benefits of a product or service
- a manufacturer and a distributor conducting similar assessments on the product might duplicate work and be inefficient
- manufacturers are often unwilling or unable to share sensitive information necessary for distributors to conduct value assessments
- some firms distribute thousands of products and conducting holistic value assessments on all of these would not be proportionate

### Our response

Firms are not required to duplicate value assessments. Firms are responsible only for the prices that they control and are not required to re-do or challenge other firm's value assessments.

But distributors do have an important role in products getting to market and so must ensure that their or other charges across the chain do not cumulatively result in the product ceasing to provide fair value. This is most relevant where distribution chains are complex and where there may be multiple charges added across the chain, for example with certain investment platforms. It is less relevant in simple, flat distribution chains, such as mortgages. We have given examples of both in our Guidance.

Our rules do not require firms to provide sensitive or confidential information. Manufacturers should provide distributors with the results of their value assessment, but they do not have to include sensitive information such as breakdown of firms' margins or risk-based pricing. Information shared can be a high-level summary of the benefits to the target market, information on overall prices or fees and confirmation that the manufacturer considers that total benefits are proportionate to the total costs.

The fair value rules require distributors to understand at least the benefits of the product to the target market, the price and associated fees and whether any of their or other charges cause the product to become poor value. We do not believe that these requirements are disproportionate.

We recognise that firms, and particularly distributors, want more clarity on these requirements, and have provided further detail on how we expect fair value rules to apply across the distribution chain in our Guidance.

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## Interaction with existing rules and guidance

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- 7.10** Many firms asked for clarity on how existing fair value rules, such as in the Collective Investment Schemes sourcebook (COLL) or in the Product Intervention and Product Governance sourcebook (PROD) interact with the Duty. In particular, firms asked if COLL 6 for asset management, PROD 4 for non-investment insurance or (from 29 July 2022) PROD 7 for funeral plans are sufficient to meet the price and value outcome of the Duty.
- 7.11** Some firms were disappointed that following the rules on value for money in pensions in the Conduct of Business Sourcebook (ie COBS 19) is not considered to be sufficient to comply with the Duty. They pointed out that, while COBS 19 focuses on the role of Independent Governance Committees (IGCs) or Governance Advisory Arrangements (GAAs) rather than firms, group personal pensions and investment pathways fall within the scope of the new Duty and it might be unhelpful if firms and IGCs/GAAs assess value for money in a different way.
- 7.12** E-money and payments firms argued that they are already subject to detailed pre-contractual and pre-transaction disclosure requirements under the Payment Services Regulations 2017 (PSR 2017) and Electronic Money Regulations 2011 (EMR 2011), including detailed breakdown of a service's costs and limitations. They mentioned that this should enable customers to determine if a particular service is suitable for them. They commented that they are not clear what additional benefits would be achieved from carrying out value assessments.

### Our response

Firms already subject to fair value rules will meet the price and value outcome of the Duty.

- Firms that meet the value rules in PROD 4 for non-investment insurance or COLL 6.6, COLL 8.5 or COLL 15.7 for asset management will meet the price and value outcome.
- Firms complying with the value rules in PROD 7 for funeral plans will meet the price and value outcome. The Duty, however, also requires such firms to ensure that existing products and services provide fair value for their customers.

We agree that it would be unhelpful if firms took a different approach to assessing value under the Duty as IGCs and GAAs do under the COBS 19 rules. So, while firms complying with COBS 19 are still required to meet our expectations under the price and value outcome, we have changed our rules so that they must use assessments carried out by their IGCs/GAAs to see if their products provide fair value. Our Guidance gives more detail.

We recognise that payment and e-money firms have existing disclosure rules and requirements under the EMR 2011 and PSR 2017. However, our price and value rules are intended to ensure that retail customers receive fair value for their payments and e-money products. We believe that there are clear benefits in having such rules for the sector.

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## Unintended consequences

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**7.13** Some firms highlighted unintended consequences from applying this outcome.

- Price and value requirements might affect competition for example, through increased barriers to entry or higher costs of innovation. Some argued that this might lead to increased financial exclusion as some firms exit the market.
- Risk that our requirements could be burdensome, especially for smaller firms.
- Risk of misalignment between us and the Financial Ombudsman Service on how fair value rules might apply.

### Our response

We do not believe that our price and value requirements will increase barriers to entry or increase the cost of innovation. Firms selling innovative products at a higher price may still be providing fair value if they offer increased benefits to consumers. In our view, increased consumer trust and healthier competition would support innovation and encourage new entrants to the market, with firms competing to drive up quality for consumers.

As with the entire Duty, our price and value rules apply based on what is reasonable. For example, a firm may be able to group similar products together when making value assessments, where this does not reduce its ability to review each product appropriately. The data and insight which firms use to inform their assessment will depend on the type of product or service, and the size and complexity of the firm's business.

We are working closely with the ombudsman service to ensure that there is a consistent interpretation of the requirements under the Duty, and to manage the risk of misalignment. Through the [Wider Implications Framework](#), we will continue to work closely with the ombudsman service during the implementation period and beyond, for instance, by looking at issues identified through their casework.

We have set out in Chapter 1 more detail on our view on unintended consequences.

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## 8 The consumer understanding outcome

- 8.1** We want firms' communications to support and enable consumers to make informed decisions about financial products and services. We want consumers to be given the information they need, at the right time, and presented in a way they can understand.
- 8.2** This chapter summarises the responses we received to our proposals under this outcome, our analysis of them and the rules we are introducing.

### Responses to CP21/36

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- 8.3** In CP21/36, we asked the following question.

**Q11:** *Do you have any comments on our proposed requirements under the consumer understanding outcome and the related draft rules and non-Handbook guidance?*

- 8.4** There was broad support for the aims of this outcome across both consumer organisations and industry respondents, consistent with the feedback we received to our first consultation. Many agreed with its renaming to focus on the intended outcome – consumer understanding – rather than the input – communications. Respondents also welcomed the additional clarity and detail provided in our proposed rules and guidance.
- 8.5** However, many respondents queried the practical application of certain aspects of our proposals in this area. In particular, they asked about the relationship between this outcome and existing legislative and regulatory disclosure requirements; what we mean by 'average customer' and how this interacts with considerations relating to potential vulnerabilities; and the proposed approach to testing communications.

### Existing disclosure requirements

- 8.6** Some industry respondents felt the existing disclosure requirements that apply in their sector are sufficient and it is unclear what this outcome adds or what more they need to do in this area.
- 8.7** Others said that some existing disclosure requirements do not support consumer understanding. Disclosures prescribed under the Consumer Credit Act 1974 (CCA) were regularly cited as being problematic due to their technical and inflexible nature.

#### Our response

There are a range of legislative and regulatory disclosure requirements that apply to providers of retail financial products and services. These were introduced to ensure that consumers are provided with certain information to help them make effective decisions at key points in the customer journey. Firms should continue to comply with these requirements.

But firms will need to think more widely about the purpose of their communications, and the outcomes they are focused on, to meet our expectations under the Duty.

Where firms must communicate complex information to comply with other disclosure requirements, they should consider what additional steps they can take to support consumer understanding. For example, a layered approach can be helpful in providing context or explaining key information upfront in a simple way – such as in a cover letter, signposting more detailed information that consumers may want to consider or may be helpful for reference at a later date.

Some disclosure requirements provide a framework or template for firms to present key information about their products and services, but there are areas where firms have discretion to decide what this key information is or how to explain it. Where firms have this discretion, they should follow the high-level rules and guidance under this outcome. So, for example, firms must ensure that these explanations are likely to be understood by customers and equip them to make effective, timely and properly informed decisions.

This outcome is also broader than other specific disclosure requirements and applies to all communications provided to consumers. This includes verbally, such as during conversations with advisers, online, in letters or product terms and conditions. Firms should consider their communications as a whole and ensure they meet expectations under this outcome.

We recognise that some disclosure requirements, including those that stem from European Union (EU) regulations, can be prescriptive about what, when and how firms should communicate information to consumers. So, in some instances, firms may have less flexibility over what they communicate to consumers.

Now that we have left the EU and as firms embed the Duty, there may be opportunity to simplify some of our existing disclosure requirements. If firms have evidence that prescribed disclosures are not effective in supporting consumer understanding, for example through their testing activity, they can share this with us, and we will consider if it is appropriate to make changes.

In CP21/36, we cited [our review of the retained provisions of the CCA](#). In our review we stated that there may be merit in modernising the tone and language used and adopting a less prescriptive and more outcomes-focused approach to information requirements in some areas. But new legislation is needed to move these provisions across into our rules and allow us to make changes. In June 2022, the [Government committed to reform of the CCA](#), with a consultation on the direction of reform expected to be published by the end of the year.

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- 8.8** Some industry respondents also said that their lack of permission to offer regulated advice, or the Information Commissioner's Office (ICO)'s guidance on direct marketing, prevents them from doing more to support consumer understanding.

### Our response

Our expectations under this outcome will be informed by a firm's role and the Duty will not alter the advice/guidance boundary. So, if a firm is not authorised to provide advice, it should equip its customers with information to make effective decisions in a way that does not amount to advice. Firms will not be in breach of the Duty where they act appropriately within the remit of their role.

While we are wary of reducing the consumer protections that apply for advice, we acknowledge that some consumers might benefit from communications that give a stronger steer on appropriate action to take even where the relationship is on a non-advised basis. We will continue our work in this area and support initiatives we believe will lead to good consumer outcomes. For example, our work helping firms with innovative advice and guidance models.

Firms must continue to follow data protection law and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR) when sending messages to consumers. We believe that firms can still support consumer understanding while continuing to comply with these laws and ICO guidance in this area.

Data protection laws and PECR do not stop firms providing consumers with information that they need to know as part of their relationship with that firm. Administrative or customer service messages are not considered to be direct marketing, so there are no restrictions on communicating this type of information. This includes correspondence with customers to provide information they need about a current contract or past purchase (eg information about service interruptions, delivery arrangements, product safety, changes to terms and conditions, or tariffs).

We recognise that, in some cases, firms may not be able to directly communicate the availability of new product offerings to customers, for example – because the customer has opted out or not consented to receiving this type of communication. But it is the customer's prerogative to decide whether they would like to receive marketing communications.

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### Average customer

- 8.9** Several respondents queried the concept of 'average customer'. Consumer organisations, including our Financial Services Consumer Panel, expressed concerns that developing communications with reference to the average customer would mean that they do not meet the needs of many customers, particularly those with characteristics of vulnerability.

- 8.10** Similarly, some industry respondents requested more detail on what we mean by the average customer, asking, for example, if communications should be aimed at those with the lowest or typical cognitive skills. Related to this, some respondents asked about our expectations on tailoring communications and to what extent they need to take into account the needs of particular groups of customers or individuals.

### Our response

We agree that using language that refers to the 'average' customer does not accurately reflect what we are trying to achieve by introducing the Duty. So, we have amended the rules to clarify that we want firms to ensure their communications are likely to be understood by the customers intended to receive the communication. Further discussion on the changes we are making in relation to references to the 'average customer' can be found in Chapter 10.

As explained in our Guidance, we do not expect firms to tailor all communications to meet the individual needs of each customer. Instead, they should take into account the characteristics of customers more broadly, including characteristics of vulnerability. This means that firms should consider what they know about their customer base and the target market for their products and services.

For example, research has found that one in seven adults have literacy skills at or below those expected of a nine- to 11-year-old and our Financial Lives Survey found 17.7 million adults (34%) have poor or low levels of numeracy involving financial concepts. So, for example, if a firm is developing communications for a simple mass-market product, we expect them to take these characteristics into account and communicate information in as simple a way as possible to support understanding for these customers. Alternatively, if a firm is communicating about a complex product with a more sophisticated target market, it may be reasonable to do so in a different way.

Firms should consider characteristics associated with the drivers of vulnerability that may be present in their customer base or target market. For example, the target market for a sub-prime credit product is more likely to include consumers with characteristics such as inadequate or erratic income, over-indebtedness or low savings. So, it might be appropriate to prominently signpost the availability of support for customers in financial difficulty in a broader range of communications after the sale of the product to meet the information needs of these customers.

Firms should also have processes in place to support those with other characteristics of vulnerability who may be present in the target market. For example, by having a clear way for consumers with a hearing or visual impairment to request communications in a format that meets their needs.

Our rules under this outcome also require firms to tailor communications when dealing with customers on a one-to-one basis where it is appropriate to do so. For example, it may become apparent to a firm in conversation with an individual customer that they require particular information or have a specific characteristic of vulnerability that the firm needs to respond to.

## Approach to testing

**8.11** Some respondents requested further guidance on good practice for the testing of communications. Others queried the approach they should take for mandated documents or disclosures, with some industry respondents contesting that these should be exempt from testing.

### Our response

Testing is an important part of the consumer understanding outcome. It builds on, and goes further, than the clear, fair and not misleading standard under Principle 7. It embodies the Duty's outcomes-focused approach by placing emphasis on what works in practice. We want firms to be able to demonstrate consumer understanding – because they have tested it and made improvements to their communications, where appropriate, to support good outcomes.

A good outcome in the context of communications is where consumers are given the information they need, at the right time, and presented in a way that they are likely to understand. This should be the focus of firms' testing activity. When these conditions are met, consumers will be equipped to make effective decisions.

Firms should develop an approach to testing that provides assurance that consumers can identify and understand the information needed to make effective decisions. This information is likely to include:

- any actions required by customers and any consequences of inaction.
- the key features, benefits, costs and risks of a product or service where customers need to evaluate or make a choice about the product or service.
- how customers can access any additional information or support they might need.

But this information can be provided in different ways. It can be located in different places. It may, or may not, be contained within mandatory disclosures and firms' discretion over what and how it is communicated may vary.

So, firms should develop an approach to testing that is effective in the context of how they are communicating with their customers and what those customers need to understand.

Whether firms need to test mandatory disclosures will depend on the role the mandatory disclosure plays in the firm's overall approach to

ensuring consumers understand key information or risks, including whether the firm is providing additional layered material.

As explained in our response on existing disclosure requirements, there may be opportunity to simplify some of our mandatory disclosures over time. If firms have evidence through their testing activity that certain mandatory disclosures are not effective in supporting consumer understanding, they can share this with us, and we will consider if it is appropriate to make changes.

In our Guidance, we explain that testing could take different forms and set out various approaches that firms could take. We recognise that firms' approach to testing will reflect their capabilities and resources, but we expect all firms to be able to demonstrate they have an approach that delivers good outcomes.

When considering their approach, one question firms can ask themselves is whether they are applying the same standards to ensure their communications are delivering good consumer outcomes as they do to ensure their communications help to generate sales and revenue. So, where firms conduct consumer testing of communications to determine an effective approach to maximise sales, they should use testing capabilities of an equivalent standard to test other aspects of consumer understanding to ensure good consumer outcomes.

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**8.12** Several respondents also queried the drafting of certain proposed rules for testing.

- PRIN 2A.5.7R(2) requiring firms to 'check' individual understanding of information when dealing with customers on a one-to-one basis.
- PRIN 2A.5.8R(1)(a) which could be read to mean that firms 'must' test all communications before communicating them to customers.

### Our response

The intention of draft PRIN 2A.5.7R(2) was not to require further testing of individual customers' understanding of information. Some respondents appeared to interpret 'check' as an expectation to quiz and validate the understanding of each customer before sale; others noted this would not be possible for non-advised relationships. Our point is that, when providing information to a customer on a one-to-one basis, it is reasonable that firms ask the customer if they understand what they have been told and if they have any further questions. We have amended this provision to clarify this.

We accept that draft PRIN 2A.5.8R(1)(a) could have been read to mean that firms must test all communications before communicating them to customers. This was not our intention. We have amended this rule, by adding 'where appropriate', to acknowledge the discretion firms have to decide which communications should be tested in advance of sending them.

## 9 The consumer support outcome

- 9.1** We want firms to provide a level of support that meets consumers' needs throughout their relationship with the firm. This means firms' customer service should enable consumers to realise the benefits of the products and services they buy and ensure they are supported when they want to pursue their financial objectives.
- 9.2** This chapter summarises the responses we received to our proposals under this outcome, our analysis of them and the rules we are introducing.

### Responses to CP21/36

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- 9.3** In CP21/36, we asked the following question.

**Q12:** *Do you have any comments on our proposed requirements under the consumer support outcome and the related draft rules and non-Handbook guidance?*

- 9.4** There was broad support from all respondents for the aims of this outcome. As with the consumer understanding outcome, respondents welcomed its renaming to focus on the intended outcome – consumer support. Many respondents also noted agreement with the change of language from 'undue hindrance' to 'unreasonable barriers.'
- 9.5** However, some respondents queried the practical implementation of aspects of our proposals in this area. In particular, they asked about our expectations on providing different channels of support; and responsibilities and protections across distribution chains.

### Channels of support

- 9.6** Industry respondents queried whether firms need to provide multiple channels of support to customers. They felt that our position was unclear as, although our draft Guidance stated that multiple channels are not required, it also stated that firms should offer multiple channels where possible.
- 9.7** Respondents also queried whether support always needs to be provided via the customer's preferred channel where firms operate multiple channels. Consumer organisations felt that this should be the case, but industry respondents noted that this would be disproportionately costly and inefficient.

#### Our response

There are many different channels firms use to provide support to their customers, including telephone, email, in branch, text, written, webchat and video calls. We do not prescribe which channels firms must offer, but firms must ensure the channels of support they do offer meet the needs of their customers, including customers dealing with non-standard issues, and customers with characteristics of vulnerability.

Firms should monitor the support they provide, take relevant feedback into account, and look for signs that may indicate their channel offering is not sufficient to meet the needs of their customers. Where this is the case, firms should take reasonable steps to address any shortfall in the support they provide.

*Meeting the needs of customers with characteristics of vulnerability*

Our [guidance on the fair treatment of vulnerable customers](#) provides examples of how different vulnerabilities can make certain channels of support unsuitable. For example, some customers may find it difficult to take in information provided over the phone and have a need for written communications. Other customers may find written communications difficult to deal with and have a need for additional support.

We expect firms to respond flexibly to the needs of customers with characteristics of vulnerability. So, firms will usually need to be able to provide support to their customers through different channels or by adapting their usual approach.

We have included a poor practice example within the consumer understanding section of our Guidance which sets out a scenario where a consumer, unable to read large print or braille, asked his bank to send communications by email as they could turn emails into speech, but the bank continued to send the consumer communications on paper. This is the type of scenario where we would expect firms to respond to the customer's needs and find a solution that offers effective support, rather than persist with an inadequate approach.

This does not mean that we expect firms to always communicate and provide support through each individual customer's preferred channel, but we do expect firms to provide effective support to their customers in a way that meets their needs.

*Products where support is provided through limited channel(s)*

We recognise that a firm could design a product with a digital-only support offering that, for example, meets the needs of a specific tech-savvy target market. Where this is the case, we would not expect the firm to offer an additional non-digital full-service channel to meet the needs of customers outside of this target market.

However, where a firm does provide support mainly or only through one channel, such as digital-only, there are various factors for it to consider to ensure it delivers good customer outcomes. In particular:

**Communicating the support available.** Firms must ensure these products are targeted appropriately and the limited channel(s) of support they offer is clearly communicated to consumers – in line with expectations under the consumer understanding outcome – before the sale of the product, so that consumers can assess whether it meets their needs. So, for example, it should be clear to customers that they are signing up for digital-only support if that is the case.

**Ensuring support works effectively.** Firms must ensure the limited channel(s) of support they offer are effective and enable customers to realise the benefits of their product and act in their interests without unreasonable barriers. Unclear or confusing digital (or other) customer journeys will not meet this standard.

**Dealing with non-standard issues.** Firms should also have exceptions processes in place to deal effectively with non-standard issues that could arise in the context of their business. This could include security or fraud concerns, technical issues, or other more complex or sensitive customer journeys. It is likely that firms will need a real-time human interface, such as a phone service, to deal with some of these issues and provide effective support to customers.

**Operational resilience.** Firms should be able to continue providing a reasonable level of support to their customers in the event of an issue arising with their services, which might include temporary works, an IT outage, or cyber-attack.

**Consumers with protected characteristics.** Certain characteristics are protected by law. For example, firms have a duty to make reasonable adjustments for disabled customers under the Equality Act 2010. Firms must therefore ensure that the support they offer allows for reasonable adjustments to be made in these circumstances so they can act lawfully.

**Consumers with changing needs.** Firms should also be mindful that anyone, including those who are tech-savvy, can become vulnerable either temporarily or permanently. If a customer's circumstances change it could mean that limited channel(s) of support no longer meet their needs. For example, a customer in financial difficulties could lose internet or mobile access meaning that a digital-only support offering exposes them to the risk of harm. We expect firms to support customers in these circumstances, including in exiting their product where appropriate. This does not mean that firms must provide additional full-service channels, but rather that they have processes in place to prevent harm to these customers and deliver good outcomes.

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## Distribution chain responsibilities and protections

**9.8** Some industry respondents asked who is primarily responsible for the consumer support outcome across the distribution chain, for example in cases where elements of consumer support are outsourced to third parties.

**9.9** Some respondents asked whether the consumer support outcome would apply in cases where:

- a customer is being represented by another person (for example where Power of Attorney applies)
- a customer is being represented by a firm (for example a mortgage intermediary dealing with a lender on behalf of the customer)

## Our response

As is the case with the Duty more broadly, firms are responsible for their own activities and they must meet expectations under the consumer support outcome as far as they are relevant to their role and remit.

Where firms are outsourcing or using a third-party provider, the usual regulatory principle applies in that firms are responsible and accountable for all the regulatory responsibilities applying to outsourcing and third-party arrangements. Firms cannot delegate any part of this responsibility to a third party.

This means that, if a firm chooses to outsource elements of its consumer support to a third party, it is responsible for ensuring the support provided meets the Duty standard. The firm should have systems and controls in place to monitor this and provide assurance that it is meeting its regulatory obligations.

More information on our expectations in relation to outsourcing can be found on our website [here](#).

We want protections under the consumer support outcome to extend to scenarios where a person is authorised by a customer, or by law, to assist in the conduct of the customer's affairs. Where a person is representing a customer, such as where a power of attorney applies, we want firms to provide the same level of support to that person. But this does not extend to regulated firms. A scenario such as where a mortgage intermediary is dealing with a lender would constitute a normal business relationship between a manufacturer and distributor, and the mortgage intermediary would not be protected by the Duty. We have amended our Principles for Businesses (ie PRIN 2A.6.5R) to clarify these points.

Firms should also be mindful of the impact their dealings with other firms can have on the end customer. Firms will fall short of our expectations if the way they interact with other firms has a detrimental impact on the support and outcomes received by customers.

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## 10 Consumers in vulnerable circumstances

- 10.1 In CP21/36, we explained how the Duty would build on our work to improve outcomes for consumers in vulnerable circumstances and align with our work on diversity and inclusion.
- 10.2 This chapter summarises the responses we received, our analysis of them and sets out the approach we are taking forward.

### Responses to CP21/36

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- 10.3 In CP21/36, we asked the following questions.

**Q13:** *Do you think the draft rules and related non-Handbook guidance do enough to ensure firms consider the diverse needs of consumers?*

- 10.4 Many respondents felt that our draft rules and related non-Handbook guidance would ensure that firms considered the diverse needs of consumers at every stage of the customer journey. Most welcomed that our proposals were consistent with, and built on, our Guidance for firms on the fair treatment of vulnerable customers.
- 10.5 However, several consumer organisations, including our Financial Services Consumer Panel, cautioned that references to the 'average customer' in several areas of our draft rules and guidance would make our expectations unclear. They were concerned that a focus on the needs of the average customer could undermine our requirements for firms to consider the diverse needs of their customers and mean that the needs of customers with characteristics of vulnerability are not met.
- 10.6 Consumer organisations also generally said we should strengthen our requirements towards customers in vulnerable circumstances. Several suggested that firms should be required to take an inclusive design approach to meet the needs of customers with characteristics of vulnerability or that we should introduce an additional cross-cutting rule on vulnerability.
- 10.7 A small number of industry respondents warned that our draft rules and guidance introduced an excessive degree of consumer protection, that many consumers are able to make informed decisions and that not all of them should be treated as if they have characteristics of vulnerability.
- 10.8 Some respondents asked us to clarify the ongoing relevance of our Guidance for firms on the fair treatment of vulnerable consumers. They raised this because the scope of the guidance is different to the Duty, it is guidance under Principle 6, which will be disapplied, and it focuses on 'fair treatment' rather than 'good outcomes'.
- 10.9 A number of consumer organisations and industry respondents highlighted the risk that the Duty could increase financial exclusion, which may disproportionately affect consumers with characteristics of vulnerability. By setting higher standards for firms,

some argued that we would increase regulatory risk, which could drive firms to exit the market or withdraw products.

- 10.10** Several respondents urged us to expand the signposting requirement we introduced for travel insurance firms in our Policy Statement on signposting to travel insurance for consumers with medical conditions (PS20/3). They argued that we should require other types of insurance firms to provide signposting when they decline a customer cover. They felt that simply declining a customer is a bad outcome and that customers with characteristics of vulnerability, particularly those with pre-existing health problems, are disproportionately affected. Customers who are declined cover can often assume that they are uninsurable, when in fact there are alternative options that may suit their needs.

### Our response

We recognise that use of the term 'average customer' in our rules and guidance could be confusing. We accept it could have led to firms focusing on the needs of the average customer at the expense of customers in vulnerable circumstances or with diverse needs. To address this, we have amended these references to ask firms, more straightforwardly, to consider the needs of customers in their target market. We want firms to focus on the customers they actually serve, not a hypothetical average.

This does not mean that firms need to identify the individual needs of each customer. It means that they need to consider the range of needs in their target market, including characteristics of vulnerability, and factor this in to how they design and sell products and services and support their customers. We have given more detail on this under specific outcomes, for example under consumer support and consumer understanding.

Our guidance for firms on the fair treatment of vulnerable consumers remains relevant to firms, despite the disapplication of Principle 6 and the differences in scope. As we set out in Chapter 1 of our Guidance, guidance on Principle 6 remains relevant for firms in meeting our new, higher standards under the Duty. We have added references to our guidance on the fair treatment of vulnerable consumers in the Guidance, to emphasise this.

We recognise that an inclusive design methodology can be an effective way for firms to meet diverse consumers' needs. We have added references to inclusive design to the Guidance, to highlight that this is an option firms may want to consider. However, we do not require firms to follow this approach. We want to give firms flexibility in how they deliver good outcomes for customers.

As set out in Chapters 1 and 6, we have taken respondents' concern about the risk of financial exclusion seriously and are taking a range of actions in response. We want firms to withdraw only harmful products or services as a result of the Duty.

We will work with firms during our implementation period to monitor and mitigate the risk that appropriate products are withdrawn from the market as a result of the Duty. We will also consider any risk of or actual unintended consequences as part of a post-implementation review of the Duty.

We have also clarified our expectations about product and service withdrawal. If firms are considering withdrawing a product or service, we would expect them to consider the impact that withdrawal would have on the customers affected, in particular those with characteristics of vulnerability. If a firm is considering withdrawing a product or service because they think it does not comply with the Duty, we would expect them where appropriate to engage with FCA supervision.

We also recognise that the FCA cannot address financial exclusion alone and we continue to work closely with partners where issues arise that we cannot address with our regulatory tools, for example as part of the Treasury's Financial Inclusion Policy Forum.

We recognise the calls for additional signposting requirements and have introduced new Handbook guidance designed to improve outcomes for customers who are declined access to a product or service. When a firm declines a customer access, we expect them to consider that customer's financial objectives and, where appropriate, provide them with information to help them achieve those objectives. We expect firms to use their judgement, so we have not prescribed what information firms should share in different circumstances, but we have included guidance to help firms understand our expectations. For example, in certain situations it may be appropriate to signpost customers to [MoneyHelper](#) guidance or to provide information about specialist insurance firms.

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**Q14:** *Do you have views on the desirability of the further potential changes outlined in paragraph 11.19?*

- 10.11** Paragraph 11.19 of CP21/36 asked respondents to consider the value of adding explicit references to diversity and inclusion within each of the main elements of the Duty. We also asked if respondents would value additional rules and guidance on the interaction between diversity characteristics and our existing definition of vulnerability.
- 10.12** Many respondents, both consumer organisations and industry, welcomed our focus on diversity and inclusion as part of the Duty.
- 10.13** However, a number of consumer organisations and industry respondents felt that our proposals conflated diversity characteristics with vulnerability, or that we were imprecise about how these concepts are related.
- 10.14** Some respondents questioned whether diversity characteristics are in fact related to vulnerability and called for further research to establish a link. Several warned that requiring firms to focus on customer diversity and inclusion could distract from the vulnerability agenda. Many respondents called for guidance on the interaction between vulnerability and diversity characteristics.

- 10.15** Industry respondents raised a number of concerns around our proposed monitoring requirements and called for clarity about how they would be expected to monitor the outcomes they deliver for diverse groups of consumers. Firms told us that they currently hold limited data about customers' protected characteristics and would struggle to access complete data about these characteristics. Some questioned whether collecting this data would be compatible with data protection law and some raised ethical concerns about collecting it.
- 10.16** However, some consumer organisations called for wider collection and monitoring of data about outcomes for diverse groups of consumers.
- 10.17** Respondents were divided on whether we should make more explicit reference to diversity and inclusion within each of the main elements of the Duty.
- 10.18** Consumer organisations, and some others, argued that additional references could usefully highlight the importance of diversity and inclusion to firms.
- 10.19** Industry respondents generally opposed additional references to diversity and inclusion, arguing that our draft rules and guidance are sufficient. Some warned that additional references to diversity and inclusion in the Duty would pre-empt our work on diversity following discussion paper on diversity and inclusion in the financial sector ([DP 21/2](#)).

### Our response

We recognise the calls for clarity about which characteristics we would like firms to focus on, and why. We have amended our rules and Guidance to clarify our expectations. The Duty requires firms to focus on the needs of customers in vulnerable circumstances and customers with protected characteristics under the Equality Act 2010. Other concepts such as neurodiversity and socio-economic background may be useful for firms as they consider how to meet customers' needs, and they may overlap with our concept of vulnerability, but we have not introduced new requirements relating to these groups of consumers.

Protected characteristics and characteristics of vulnerability are distinct categories, but in some cases may overlap. For example, our [Financial Lives](#) survey indicates evidence that minority ethnic adults are disproportionately likely to be in vulnerable circumstances and therefore at greater risk of harm.

We want firms to consider characteristics of vulnerability because these are key drivers of harm in financial service markets. We want customers in vulnerable circumstances to receive outcomes as good as those that other customers receive, and we have set out detailed [Guidance](#) on how to achieve this.

We want firms to consider the needs of customers with protected characteristics for two reasons. Firstly, firms have existing legal obligations under the Equality Act 2010 and equivalent legislation, for example in Northern Ireland. We also have a Public Sector Equality Duty to eliminate discrimination, advance equality of opportunity and foster good relations between different people in all of our work. Secondly,

diversity is a lens that can help firms to better understand and meet the needs of their customers, including those in vulnerable circumstances. We see significant practical benefits in firms exploring customers' needs from different perspectives.

We recognise the concerns around our monitoring requirements and have clarified the expectations in our rules and Guidance. The Duty does not require firms to collect new data about their customers' protected characteristics – which we know some customers might not welcome. There are a range of other ways that firms can monitor the outcomes they deliver for their customers, and we have expanded on this in the Guidance.

However, where firms hold data about customers' protected characteristics, we expect them to use this as part of outcomes monitoring, where possible, in accordance with data protection law. We also remind firms of their pre-existing legal obligations under the Equality Act 2010 and data protection law. We expect firms to assure themselves that they are not breaking the law and we work closely with the Equality and Human Rights Commission and the Information Commissioner's Office, the regulators responsible for Equality Act 2010 and data protection enforcement.

The Duty is underpinned by the concept of reasonableness, so the frequency and nature of monitoring that we require will depend on circumstances such as the size of the firm and its relationship with the customer. We have added guidance to clarify these expectations.

We have decided not to add significant new references to diversity and inclusion to the main elements of the Duty. However, we have added additional references to the Equality Act 2010 to relevant areas of the Guidance. We think this strikes the right balance, giving firms useful information and highlighting the importance of diversity and inclusion, without imposing new burdens on firms. We are comfortable that this does not pre-empt our follow-up work to DP 21/2 as this has a different scope. The consultation paper we are developing is expected to focus on diversity and inclusion among firms' workforces, while the Duty focuses on firms' relationship with their customers. We see the two pieces as complementary; both are designed to drive better outcomes for consumers.

We have added some information about the interaction between diversity characteristics and vulnerability to the Guidance. Given the evidence on this continues to evolve, however, we have also added new guidance to clarify that we expect firms to be proactive when evidence emerges that consumers who share protected characteristics are disproportionately experiencing, or vulnerable to, harm. We expect firms to consider this evidence and to assure themselves that their relevant conduct complies with FCA regulation and the Equality Act 2010.

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# 11 A private right of action

- 11.1** In CP21/36, we proposed not to provide a private right of action (PROA) for breaches of any part of the Duty at this time. We said that allowing industry time to embed the Duty without the prospect of private action being brought would help to realise the consumer benefits we want to see from the Duty. However, we proposed keeping the possibility of a PROA under review.
- 11.2** This chapter summarises the responses we received, our analysis of them and sets out the approach we are taking forward.

## Responses to CP21/36

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- 11.3** In CP21/36, we asked the following question.

**Q15:** *Do you agree with our proposal not to attach a private right of action to any aspects of the Consumer Duty at this time?*

- 11.4** This issue remains a polarising one. Industry respondents generally welcomed our proposal while consumer organisations generally opposed it.
- 11.5** Many industry respondents said that a PROA was not necessary, as the Financial Ombudsman Service provides a more appropriate route to consumer redress. Some respondents called for us to give firms certainty by permanently withdrawing the option of attaching a PROA to the Duty. Some argued that any future decision to attach a PROA should be subject to consultation and would require a new cost benefit analysis.
- 11.6** Some consumer organisations warned that our proposal not to attach a PROA would undermine the impact of the Duty. They felt that the threat of private action would provide a strong incentive for firms to comply, which may otherwise be lacking.
- 11.7** Some consumer organisations, including our Financial Services Consumer Panel, therefore urged us to consider alternative ways to replicate the benefits of a PROA if we did not proceed with one. In particular, the Consumer Panel urged us to strengthen requirements on governance, accountability and redress.
- 11.8** Several consumer organisations felt that the lack of a PROA would practically reduce consumers' access to redress for breaches of the Duty. This was because, without it, as we noted in our consultation, we would not be able to introduce an industry-wide consumer redress scheme under section 404 of the Financial Services and Markets Act 2000 (FSMA) and the Financial Services Compensation Scheme would not be able to provide compensation for breaches of the Duty.
- 11.9** Some respondents also noted that not attaching a PROA to any element of the Duty would create asymmetry in our rules. For example, while existing rules in the Product Intervention and Product Governance sourcebook (PROD) are subject to a PROA, equivalent rules under the Duty would not be.

- 11.10** A number of consumer organisation and industry respondents asked for more detail about when, or in what circumstances, we would reconsider attaching a PROA in the future.

### Our response

We will continue with our proposed approach and are not attaching a PROA to any aspect of the Duty at this time. As set out in CP21/36, we see benefit in giving firms time to implement the significant changes that the Duty entails without the threat of private action being taken.

We have made several changes to the Duty that consumer organisations noted would help to replicate the benefits of a PROA. As set out in Chapter 13, we have strengthened our governance and accountability requirements. As set out in Chapter 5, we have also strengthened our redress requirements under the Duty. When firms cause customers harm, we require them to be proactive and take action to rectify the situation, including providing redress where appropriate. We see this as a crucial element of firms delivering good outcomes for their customers.

We recognise respondents' views about the potential value of attaching a PROA, and we acknowledge calls for clarity about when, or in what circumstances, we would reconsider doing so.

We also recognise the concern that a lack of a PROA will create asymmetry in our rules and reduce consumers' access to redress for breaches of the Duty. Any future review of the case for a PROA could consider, for example, whether there was a stronger case for attaching it to the rules under our four outcomes, but not to Principle 12 or the cross-cutting rules. Any decision to attach a PROA to the Duty would be subject to further consultation.

We will still have the power to require restitution from firms in breach of the Duty under Section 384 of FSMA.

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## 12 Implementation timetable

- 12.1** In our consultation, we proposed that firms would have until 30 April 2023 to fully implement the Duty. We also set out how we would support firms' implementation through regular communication, including working closely with industry and consumer organisations to identify and share good and poor practice.
- 12.2** This chapter summarises the responses we received, our analysis of them and sets out the approach we are taking forward.

### Responses to CP21/36

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- 12.3** In CP21/36, we asked the following question.

**Q16:** *Do you have any comments on our proposed implementation timetable?*

- 12.4** Consumer organisations broadly supported the proposal, as they wanted the Duty to be delivered quickly. However, a few highlighted that it was in consumers' interests for the Duty to be implemented properly rather than rushed. Some asked us to consider whether any of the benefits of the Duty could be delivered earlier, for instance for certain products or sectors.
- 12.5** Almost all industry respondents disagreed with the proposed implementation period, many of them very strongly. They argued that an implementation period of nine months was not long enough for the industry to properly embed a change of this breadth and complexity, and highlighted issues such as:
- the scale of implementation work, due to the number of business areas impacted and the numbers of products, services and communications that need to be reviewed and potentially amended
  - the complexity of the implementation work, with significant systems changes needed (eg to collect data and management information to track outcomes) and the need to negotiate with third parties across the distribution chain
  - the specific challenges for distributors who are unable to start aspects of their implementation until after manufacturers have completed their product reviews, and particularly where they sell a large range of products
  - the challenges for firms with large back books of products that are no longer on sale, and particularly given the potential complexity of dealing with legacy systems and revisiting old terms and conditions.
  - the amount of other regulatory reform, and the challenging economic situation and labour market, making it difficult to apply additional resources to implementation of the Duty
  - the risks of unintended consequences, for instance:
    - superficial implementation to meet the deadline
    - product and service withdrawal, with potential impacts on access or competition
    - increased operational risk if firms rush system changes

**12.6** Most industry respondents therefore argued that a much longer implementation period was required, with two years the most common proposal. Some argued that it would be better to phase implementation (rather than require industry to deliver all the change to a single deadline). Respondents highlighted the longer implementation periods for other reforms (such as Treating Customers Fairly (TCF), Senior Managers & Certification Regime (SM&CR) and the new operational resilience requirements) and that these reforms were often phased or had interim deadlines. Some firms with large back books argued for a later deadline for these closed products.

### Our response

We agree with consumer organisations on the need to implement the Duty quickly. We want the Duty to be in effect as soon as practicable, so that consumers can start to benefit from enhanced protections, and to unlock the wider benefits to competition and innovation. The current cost of living pressures facing consumers clearly demonstrate the need to maintain pace.

We also agree that it is essential to give industry enough time to implement the Duty fully and effectively, and that the implementation work will be extensive and complex for many firms, because of the higher standards we are setting. We want the industry to properly embed the Duty, so it makes a real difference to consumers. We have scrutinised the evidence provided by firms, some of whom have provided details of their implementation plans, and we agree that nine months is not adequate for all firms to fully implement the Duty.

In addition, we recognise there would be benefits to phasing implementation, to enable firms to spread the workload, whilst delivering many of the benefits of the Duty before full implementation is complete. However, the Duty works as a package, and we do not want to introduce too much complexity to the implementation period (for example by setting different deadlines for different sectors or aspects of the Duty).

Therefore, we propose a simple two-phase implementation period:

- From the end of **July 2023** the Duty will apply to all new products and services, and all existing products and services that remain on sale or open for renewal. This gives firms 12 months to implement the new requirements on the bulk of retail financial products and services, benefitting the majority of consumers.
- From the end of **July 2024** the Duty will come fully into force, and apply to all closed products and services. This extra 12 months will help those firms with large numbers of closed products and will also help mitigate some of the wider concerns firms raised about the difficulty of applying the Duty to these products (see Chapter 3).

Although longer than what we consulted on, we recognise that these deadlines will still be challenging for many firms, particularly for those manufacturing and/or distributing large numbers of open products. However, we believe that 12 months is a reasonable implementation period for products and services that are on sale, and the challenging

pace of implementation is justified by the significant benefits for consumers (and for firms). We know many firms have already started planning their implementation and we are concerned that setting a longer initial deadline could cause some firms to think they can delay starting work.

Maintaining momentum is important, as the embedding of regulatory change of this scale is inevitably iterative. We will learn from what we see of firms' implementation and firms will learn from our feedback and supervisory work.

We have carefully considered the risks of unintended consequences raised by respondents, such as product withdrawal or superficial implementation. We believe these risks can be successfully managed and mitigated by this longer and phased implementation plan, and also by setting out and monitoring clear expectations for how firms use the implementation period (see section below).

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## Our expectations of firms during the implementation period

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- 12.7** In CP21/36, we set out our expectation that firms should use the whole implementation period and be able to demonstrate progress when asked, and highlighted the work we would do to monitor and assist them.
- 12.8** Our revised implementation deadlines will help firms to embed the Duty, but it remains just as important that firms make full and effective use of the longer implementation period, with the necessary changes to policies, process, governance and culture put in place. Therefore, we are now setting out (below) clearer expectations for actions firms should take during the implementation period. This includes milestones for when we expect firms to have finished planning their implementation work, reviewing their existing open products and services, and remedying issues identified to ensure they are fully compliant.
- 12.9** This assertive approach to the implementation period should help reduce the risks and challenges set out earlier in this chapter. For instance, we are setting out a clear expectation that:
- by the end of **October 2022**, firms' boards (or equivalent management body) should agree implementation plans and maintain oversight of their delivery, to ensure the implementation work is sufficient to meet the Duty standards
  - manufacturers share key information with distributors three months ahead of the implementation deadline to enable all firms to comply in time
  - firms engage with us if they are considering withdrawing any products or services due to the Duty, so that we can identify if there are any potentially significant impacts on consumers

- 12.10** Our expectations for boards (or equivalent management bodies) to oversee implementation and ensure compliance with Consumer Duty align with requirements under the SM&CR senior manager conduct rules in our Code of Conduct sourcebook (COCON), and the requirements within the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) on senior management arrangements.
- 12.11** The work we will do to support firms during the implementation period, and to monitor whether firms are meeting the expectations set out below, is set out as part of our wider approach to embedding the Duty in Chapter 14.

### Our key expectations of firms during the implementation period

1. By the end of **October 2022**, firms' boards (or equivalent management body) should have agreed their implementation plans and be able to evidence they have scrutinised and challenged the plans to ensure they are deliverable and robust to meet the new standards. Firms should expect to be asked to share implementation plans, board papers and minutes with supervisors and be challenged on their contents.
2. Manufacturers should aim to complete all the reviews necessary to meet the four outcome rules for their existing open products and services by the end of **April 2023**, so that they can:
  - share with distributors by the end of **April 2023** the information necessary for them to meet their obligations under the Duty (eg in relation to the price and value, and products and service outcomes)
  - identify where changes need to be made to their existing open products and services to meet the Duty and implement these remedies by the end of **July 2023**
3. Where firms identify serious issues causing immediate consumer harm, they should prioritise action to remedy this. This is particularly important where the harm is likely to be a breach of existing requirements (eg TCF). Significant breaches of existing rules (including the Principles for Businesses) should be reported to us, as required by SUP 15.3.11R in our Supervision sourcebook.
4. Where actions to bring products and services up to Consumer Duty standards can be completed more quickly than the implementation deadlines, firms should consider doing so, to improve outcomes for consumers more quickly.
5. In line with Principle 11 (Relations with Regulators), firms should engage with us if, as part of implementation of the Duty, they are considering withdrawing or restricting access to products or services in a way that will have a significant impact on vulnerable consumers or on overall market supply.
6. Boards (or equivalent management bodies) should maintain oversight of firm's implementation plans to ensure they remain on track, and that the work to review and improve the firm's products and services is sufficient to meet the Duty standards.

- 7.** Firms must alert us (as required by SUP 15.3.11R) if they believe that they will not be able to complete all work necessary to be compliant with the Duty before the implementation deadlines. We expect firms to be compliant, but firms should also take a risk-based approach and prioritise the implementation work that is likely to have the biggest impact on consumer outcomes (for instance, by reviewing first the most complex or risky products and the most significant communications).
- 8.** At the end of implementation period, boards (or equivalent management bodies) should assure themselves that their firm is complying with their obligations under the Duty, and ensure the firm has identified any potential gaps or weaknesses in their compliance and any action needed to remedy this.

## 13 Monitoring and governance

**13.1** The higher standard of the Duty and the shift to focusing on customer outcomes will require a significant change in many firms' culture. In CP21/36, we set out proposals for firms to monitor and regularly review the outcomes for their customers to ensure that they are consistent with the Duty, including whether any specific groups were getting worse outcomes.

**13.2** We also set out:

- our expectation that a firm's board or equivalent management body sign-off an assessment of the firms' monitoring and actions at least annually
- proposed changes to our Senior Managers and Certification Regime (SM&CR) rules to ensure clear accountability within firms.

**13.3** This chapter summarises the responses we received, our analysis of those responses and the changes that we have made.

### Responses to CP21/36

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**13.4** In CP21/36 we asked the following question.

**Q17:** *Do you have any comments on our proposed approach to monitoring and the related draft rules and non-Handbook guidance?*

**13.5** Most respondents were broadly supportive of the proposal to require firms to monitor outcomes, though firms and other industry respondents also asked for more clarity about how firms should monitor outcomes and the sorts of data they should use.

**13.6** Several consumer organisations, including our Financial Services Consumer Panel, argued strongly that the board report and proposed SM&CR changes alone would not ensure sufficient senior level oversight of the Duty, and questioned our decision not to introduce a regular reporting requirement. They argued that this will affect our ability to supervise the Duty and measure its success.

### Approach to monitoring

**13.7** Overall, responses broadly supported our proposed approach to monitoring although some responses questioned exactly what we mean by monitoring outcomes. Several respondents asked for further clarity on what information they should gather. Some others suggested additional sources of data that firms could use to monitor outcomes for customers or argued that certain types of data such as staff and customer feedback, should be central to firms approaches.

**13.8** Some respondents asked us to further clarify our expectations on monitoring in particular scenarios. For example, they asked about cases where an authorised firm has outsourced services to a third party, or for clarification on the interaction with existing reporting and management information (MI) requirements on product governance in certain sectors.

- 13.9** Some respondents argued that monitoring outcomes is complex, and it will take time to develop the necessary capability and get the systems in place, so they will need sufficient time and clarity.

### Our response

Our rules and Guidance provide an overview of what firms should monitor and the types of data that they could use. In response to feedback, we have amended the Guidance to give more information about the types of data firms could use to monitor outcomes, and other factors which may impact on firms' monitoring. This includes examples of when to use data on an individual or a cohort basis and when we might expect to see more frequent monitoring.

We do not intend to exhaustively prescribe the information that firms should use to monitor the outcomes customers are getting as this will vary depending on the type of firm, its role in the distribution chain, the nature of the product and the target market. As we set out in the Guidance, one question that firms can ask themselves is whether they are using the same MI capabilities that they use to inform other elements of their business, such as product development and sales, to also monitor outcomes.

Where firms are outsourcing or using a third-party provider, the usual regulatory principle applies. Authorised firms are responsible and accountable for meeting all their regulatory responsibilities even when they outsource or use third-party arrangements. This means that firms will need to have arrangements in place with their outsourcers to capture any data necessary to enable them to monitor whether they are delivering good outcomes.

We have clarified in the rules and guidance that, where relevant existing requirements for investment funds, insurance and funeral plans meet our outcome rules, then the associated monitoring requirements will be sufficient to meet the monitoring requirements of the Duty for that outcome. We expect the monitoring that firms already carry out to feed into their overall assessment of whether the firm is acting to deliver good outcomes.

During the implementation period, firms should expect us to ask them to share their approach to monitoring the Duty with us. This is so that we can understand what information, data, and insights they are planning to gather and what change programmes they have in place to deliver these insights. We will feedback any useful insights to the industry as a whole, to enable them to learn from others, improve their own approach and build best practice.

## Worse outcomes, vulnerability and protected characteristics

- 13.10** There were mixed views on the proposed approach to monitoring whether any distinct groups of customers receive worse outcomes. Some consumer organisations argued that it is a good opportunity to require specific types of monitoring to address unequal outcomes for customers with characteristics of vulnerability and those customers with protected characteristics under the Equality Act 2010. Some firms asked for clarification about what we mean by monitoring to see whether any group of customers receive worse outcomes compared to another group of customers. They also asked to what extent we expect firms to proactively monitor customers' protected characteristics, and whether the proposed approach is compatible with data protection legislation.
- 13.11** Several respondents were concerned about the proportionality of the proposals for smaller firms, and a few asked how the proposals apply to firms who do not have a direct relationship with the end customer.

### Our response

As set out in Chapter 10, we have clarified in our rules and guidance that we expect firms' monitoring to identify whether distinct groups of customers, such as those with characteristics of vulnerability or those who share protected characteristics, are receiving worse outcomes.

This does not mean we expect firms to systematically gather sensitive data from all their customers on protected characteristics. We have clarified in the Guidance that firms can use other methods to gather insights into whether distinct groups of customers are getting worse outcomes. We recognise that firms are required to comply with data protection legislation and our expectations are consistent with that.

Although, as we set out above, we expect firms to have regard to characteristics of vulnerability and protected characteristics in their monitoring, the monitoring requirements are not limited this. We expect firms to use their judgement and monitor to see whether any distinct groups of customers (for example longstanding customers, customers from a particular geographical region or those who purchase a product through a specific distribution channel) are getting worse outcomes or experiencing foreseeable harm.

Our expectations apply based on what is reasonable. We do not expect firms to exhaustively segment their customer base to identify differences in outcomes between all possible groups of customers. In line with the wider approach, the monitoring requirements apply proportionately to firms. The nature of the information that firms gather to monitor the outcomes for their customers and the types of analysis they undertake will vary depending on the type of firm and its size, its role in the distribution chain as well as the product and the target market. This is reflected in our rules, but we have updated the Guidance to make this clear.

Firms will also need to comply with their obligations under the Equality Act 2010 and equivalent legislation.

## Governance

- 13.12** Most respondents welcomed our proposals to require board (or equivalent management bodies) oversight of the Duty through an annual report. But most consumer organisations argued strongly that they needed to be strengthened to ensure that it is meaningful and not just a tick-box exercise. Those respondents made several suggestions for how we should do this. These included requiring firms to pass the report and underlying data to us or requiring the Duty to be the responsibility of a named individual at board level with clear consequences for a breach.
- 13.13** Several firms sought further detail about what the board report would look like in practice, arguing that it should be proportionate. A small number asked us to clarify when the first board report should be produced.

### Our response

We recognise that the benefits we expect will only be delivered by firms making lasting changes to their culture, behaviour and processes, which needs to be driven from the top with strong senior championing and oversight.

The annual board report was not intended to be the only mechanism for governance, accountability and oversight. To make this clearer we have introduced new requirements that the Duty should be reflected in firms' strategies, governance, leadership and people policies, including incentives at all levels.

Firms' boards and senior management should ensure that they are embedding a culture in which good outcomes for consumers is central. People management policies and practices, including performance management, pay and bonuses will be critical to doing so. Firms should have appropriate oversight of customer outcomes through their systems and controls. Risk functions should pay attention to consumer risks and they should also be a key lens for internal audit.

Senior managers will be accountable for delivering good consumer outcomes within their areas of responsibility, in line with the SM&CR Duty of Responsibility and the Conduct Rules. We will also consider evidence of individuals' understanding of and actions taken to comply with the Duty, when considering individuals for approval.

We have also amended our Guidance to make clear that firms should have a champion at board level (or equivalent governing body) who, along with the Chair and the CEO, ensures that the Duty is discussed regularly and raised in all relevant discussions. We have also set out a number of questions we expect the board (or equivalent management bodies) to be asking on a regular basis, and which firms can expect us to ask of them.

Firms can expect at every stage of the regulatory lifecycle to be asked to demonstrate how their business model, the actions they have taken, and their culture are focused on delivering good customer outcomes. Firms can expect us to request their annual report, and other MI, and to publish an overview of our findings. As set out in our supervisory strategy, we may also use other tools, such as requiring a skilled person review, where we have concerns.

We will also assess the embedding we see as part of the post-implementation review and consider whether we need to add additional requirements depending on what we find.

We do not think that it is necessary to prescribe the format of the report to the board or equivalent management body. We think that firms are best placed to decide how to communicate the necessary information to their board or equivalent management body, and this requirement is intended to apply proportionately as we recognise the level and complexity of the report may vary between firms. In terms of timing, we expect the first report to be considered by the board or equivalent management body within 12 months of the rules coming into force.

As we set out in more detail in Chapter 12, we also expect boards (or equivalent management bodies) to closely oversee firm's implementation of the Duty. By the end of October 2022 firms' boards (or equivalent management body) should have scrutinised and signed off firms' implementation plans, and they should maintain oversight of the implementation work to ensure it remains on track and meets the standards of the Duty.

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## Regulatory reporting

- 13.14** Several consumer organisations disagreed with our proposal not to place a regular reporting requirement on firms. They argued that we need to gather extra data to effectively supervise the Duty and measure its success. A few firms shared this concern arguing that data provision is needed to identify bad actors and focus FCA resources on areas of harm.
- 13.15** Some respondents argued that we should set out what success looks like and how we propose to measure successful outcomes. A few respondents asked us to commit to a clear timetable to review the implementation of the Duty, and report on progress.

### Our response

The Duty will be an integral part of our regulatory toolkit reflected throughout our authorisation, supervision, policy and enforcement activities. We set out our approach in more detail in Chapter 14.

Although we have not introduced any new regulatory reporting requirements at this stage, this does not mean that we will not be collecting data from firms to assess their compliance with the Duty and identify practices that cause poor customer outcomes. Firms should expect us to ask for the results of their monitoring, and their Board

reports. We will use this information as well as the information that we already gather from firms and other sources of data to assess them against the Duty and identify and tackle harmful practices. We will also use one-off requests for data where necessary, and this may evolve into a regulatory reporting requirement in future. We will consult on any future proposals to introduce a regular reporting requirement.

As we set out in Chapter 1, we have provided more detail about the outcomes we are seeking to achieve through the Duty in our [Strategy](#), including the high-level metrics we will use to measure our progress over time. We will evaluate the success of our proposals by using data from a variety of sources including supervision and authorisation activities, firm MI, and complaints data. As we implement the Duty, we will also develop further metrics by which we can assess its impact at the level of particular sectors and portfolios, and will ask stakeholders for views and suggestions on potential metrics. We will also set out the changes that we are seeing and report back on progress as part of a post-implementation review.

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## The Senior Managers and Certification Regime

**13.16** We want firms' staff to act to deliver good outcomes for retail customers where their firms' activities fall within the scope of the Duty.

**13.17** In CP21/13, we set out our proposals to amend our SM&CR individual conduct rules in our Code of Conduct sourcebook (COCON) to reflect the higher standards of the Duty.

**Q18:** *Do you have any comments on our proposal to amend the individual conduct rules in COCON and the related draft rules and non-Handbook guidance?*

**13.18** Of the respondents who responded to this question, the majority agreed with our proposal to introduce an additional individual conduct rule to reflect the higher standard of the Duty, although some respondents argued that it added unnecessary complexity.

### Individual Conduct rules

**13.19** Some firms disagreed with the proposed introduction of a new Individual Conduct rule 6 to reflect the higher standard of the Duty. These firms argued that it would add unnecessary complexity to the individual conduct rules and that it was not needed. Some respondents expressed concerns that individuals may not know when Individual Conduct rule 4 or 6 applies.

**13.20** Several respondents asked for further clarification and additional guidance about a number of issues. These included how the rule would apply in practice to more senior and more junior staff and what is meant by 'foreseeable harm' and 'supporting retail customers to pursue their financial objectives' in this context.

**13.21** A few respondents suggested that nine months would not be sufficient to get the required changes in place and argued for a longer implementation period.

**13.22** Some respondents highlighted that the proposed change would not apply to firms who are not subject to the SM&CR regime.

## Our response

We have considered the concerns raised by some respondents that the new individual conduct rule will create additional complexity for firms and their staff where they undertake a mix of retail and non-retail activities. In our view, this is an important change to ensure that individuals at all levels in firms understand how they can act to deliver good outcomes for customers. The training that firms give to their staff should enable them to understand their obligations under the Duty and the individual conduct rules.

We have highlighted the importance of the Individual Conduct rules in the Guidance and explained how we expect this change to help to drive the culture change we expect to see. We have also made some minor changes to the guidance on Individual Conduct rule 6 to provide greater clarity about how the scope of a person's job and their seniority may affect expectations under the Duty. We have emphasised that the guidance on the cross-cutting rules also provides useful context.

In line with our general approach to implementation we have given firms 12 months from when we publish the final rules to implement this change.

The individual conduct rules do not apply to firms who are not subject to the SM&CR, but we note that the requirements to ensure that the Duty is properly embedded throughout a firm do still apply. These firms will need to ensure that their staff are properly equipped to enable the firm to act to deliver good outcomes.

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## 14 Our approach to the Consumer Duty

**14.1** The Duty will set a higher standard of care that firms must provide to customers. Firms will need to focus on delivering good outcomes for customers, this will enable them to identify problems earlier, and prevent problems escalating or becoming widespread.

**14.2** By embedding the Duty in our approach to authorisation, supervision and enforcement, we will also increasingly focus on the outcomes customers experience. This, combined with our more data-led approach, should enable us to intervene more quickly when we identify practices that negatively affect customer outcomes and more assertively before those practices become entrenched as market norms.

### Our approach to the Duty

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**14.3** We will have a central role in making a success of and successfully embedding the Duty. In CP21/36 we explained our approach, should we proceed with the Duty.

- It will drive our supervision strategies and prioritisation, informed by our understanding of the difference in firms' conduct within and between sectors against the Duty's requirements.
- We will work across the organisation, with Authorisations, Supervision and Enforcement, to identify areas where the implementation of the Duty requires us to intervene swiftly and decisively. This will ensure that the Duty is translated into a reduction in harm as quickly as possible.
- At least initially, we will focus on tackling the most serious misconduct and intervening before harmful practices become entrenched as market norms.
- We expect the implementation to be iterative. We will learn from firms' implementation and review of products and services, and we will consider how we can give regular updates on what we are seeing and our views of this.
- We want to take a bolder approach to communicating our expectations to firms, consumer organisations and wider stakeholders, particularly during the implementation period. This could include what we are seeing through multi-firm work, as well as our authorisation, supervision, competition, and enforcement activities.

**14.4** Although we did not ask a consultation question about our regulatory approach, a large number of respondents provided feedback. Almost all respondents agreed that supervising and enforcing the Duty will be critical to its success. Some sought greater clarity about how we will supervise the Duty in practice, and which sectors we propose to focus on first.

**14.5** Respondents particularly welcomed our commitment to have a bolder approach to communicating our expectations but wanted to know what that would mean in practice.

**14.6** Some stakeholders asked us to set out in more detail what success looks like and how we propose to measure successful outcomes. Some asked us to commit to a clear timetable to review the Duty's implementation, and report on progress.

## Our response

Embedding the Duty is a complex task. In Chapter 12, we set out our expectation that firms will make full use of the implementation period to embed the Duty across their businesses. Firms will need to ensure their implementation plans are robust, and firm's executives and boards (or equivalent management bodies) should maintain oversight of the plans and the work to implement them.

As well as monitoring that firms' implementation work is meeting our expectations, we will also support firms during the implementation period and ensure we are ready to supervise the Duty and take action once it is in force. Key activities will include:

- increasing awareness and understanding of the Duty
- building the Duty into our approach to authorising firms at the gateway
- implementing a supervisory strategy that is appropriate for different types of firms and different retail markets
- ensuring our enforcement strategy will enable us to effectively detect, triage and act on breaches of the Duty
- developing sector specific data strategies to enable us to identify areas of concern quickly and measure the Duty's impact

Once the Duty is in force, we will use data and insights to identify outliers and poor practice, intervening quickly where firms fail to deliver good outcomes and taking formal action, where necessary. We will continuously assess progress against the success measures we set out in our [strategy](#).

We set out more detail on each area below.

### **Increasing awareness and understanding of the Duty**

This policy statement and the final rules and Guidance give firms all they need to start implementing the Duty. We are committed to building on that with an extensive programme of industry engagement and communications to ensure firms are aware of and understand our expectations under the Duty and are implementing the changes in a timely way.

We will begin a high-profile campaign at the point of publication that will continue throughout the implementation period. Activities will include:

- Regional events aimed at small and medium sized firms and compliance consultants.
- A series of sector-based webinars in the autumn. We will record these and make them available afterwards on our website alongside other digital content, such as examples of good and poor practice.
- Regular meetings with trade associations and other industry bodies.
- Speaking at key industry conferences, allowing trade bodies and conference organisers to share information with their members.

As well as raising awareness, this approach will enable us to help firms by highlighting the issues we are seeing through firms' reviews and implementation. It will also mean we quickly receive feedback from firms and trade bodies on areas where further FCA communications would help them get a more consistent understanding of the requirements. For example, we intend to publish research on sludge practices, including potential approaches that we may use in our supervisory work to investigate them.

We will also work in partnership with consumer organisations, members of our Consumer Network and other regulators to build understanding of what the Duty will mean for consumers.

### **Approach to authorisations at the gateway**

Firms will need to demonstrate that they could meet the standards of the Duty at the gateway. We would only authorise firms which can demonstrate that they meet, and would continue to meet, these requirements.

Firms will need to demonstrate how the Duty is embedded throughout their organisation. They will also need to demonstrate how they propose to monitor customer outcomes in line with the Duty, and what processes they have in place to ensure that they take action if they identify they are not delivering good customer outcomes.

### **Our supervisory and enforcement strategy**

We supervise most firms as members of a portfolio of firms that share a common business model. We analyse each portfolio and agree a strategy to take action on the firms and issues posing the greatest harm.

For each portfolio, we will develop a strategy to embed the Duty and tackle the key areas of harm we expect the Duty to address.

These strategies will vary depending on where each portfolio is relative to the Duty, and the potential harm to consumers.

We intend to build on these strategies, and deliver a base of supervisory work with firms over the implementation period which will include:

- an initial communication to firms later this year on our expectations for implementation of the Duty in their portfolio, with priority issues clearly identified
- outreach activities engaging the sector and industry bodies, including roundtables and webinars for both large and small firms
- a follow-up communication in the second half of the implementation period highlighting some of the good and poor practice we have seen in firms' implementation plans, to further help firms in delivering on our expectations

For fixed firms, which have a dedicated supervision team, we will also request and regularly review implementation plans and use proactive engagement and annual strategy meetings to assess progress with implementation.

We will also carry out multi-firm work focused on high priority portfolios/ issues and develop a series of metrics to measure progress.

Once the Duty is in force, we will focus on detecting, triaging and acting on breaches of it. Detection is important because it increases public confidence in the regulatory process and shows that we will uncover misconduct and deal with it.

We will ensure that staff are trained and equipped to detect and respond to potential breaches of the Duty, and that we understand what good (and poor) customer outcomes look like.

We will use our intervention powers, such as our requirement or variation of permission powers, to manage ongoing or immediate risks and to stop ongoing or future harms caused by failures to comply with the Duty. We will require corrective action where necessary and ensure forward-looking compliance.

Where we identify serious misconduct by firms against the Duty, we will use our full range of powers to tackle it, including investigating and, where appropriate, using our deterrent and remedial powers. This could include issuing fines against firms and securing redress for customers who have suffered harm through a firm's breach of the Duty.

### **Measuring the Duty's impact**

In line with our commitments in our three-year Strategy we published alongside our Business Plan we intend to measure the impact of our work on the Duty. In April, we published a set of metrics for measuring the impact of our work against our top-line outcomes. Two of the top-line consumer outcomes that we set – fair value, and suitability and treatment – mirror similar outcomes of the Duty. We also set out various measures, including our Financial Lives Survey (FLS) and Financial Ombudsman Service's complaints by which we will understand our high-level impact in those areas.

The same publication also sets out metrics by which we will measure our impact against our strategic commitment of 'putting consumers' needs first'. This details further metrics we will use to assess progress against the Duty outcomes.

As we implement the Duty, we intend to develop a wider range of more detailed outcomes and data, including at sector level, which will help us assess the extent to which firms in particular sectors and portfolios are delivering good outcomes for consumers. As well as using our existing data sources and publicly available ones, we are likely to request additional data from firms to measure progress at the portfolio and sector level.

We are also committed to undertaking a post-implementation evaluation of the Duty to understand how firms have implemented it, whether it is having the intended effect and whether it is leading to any unintended consequences.

## 15 Cost benefit analysis

**15.1** CP21/36 included a cost benefit analysis (CBA) of the proposals and invited feedback from respondents. This chapter summarises the feedback we received and sets out our response.

### Responses to CP21/36

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**15.2** In CP21/36, we asked the following question.

**Q19:** *Do you have any comments on our cost benefit analysis?*

**15.3** Most respondents agreed that the Duty will benefit both the industry and customers. However, several raised concerns that, though we gave indicators of the potential scale of benefits, we have been unable to quantify these benefits in monetary terms. Some argued that this makes it difficult to judge whether the overall benefits of our proposals will exceed overall costs. Others argued that these benefits largely depend on how we supervise and enforce the Duty, and so may be difficult to predict.

**15.4** One key industry trade body said that, while we had met our obligations under the Financial Services and Markets Act 2000 (FSMA), the lack of quantification of benefits underlined the need for greater external scrutiny of FCA CBAs in general.

**15.5** Some firms also argued that our one-off and ongoing costs estimates appeared too low, especially for costs such as IT changes, back-book remediations, training and change projects. Of these, one firm provided an alternative estimate for the total cost of these changes. No firm provided an expected breakdown of their one-off and ongoing compliance costs.

**15.6** Some firms argued that we have not adequately considered unintended consequences such as adverse impacts on competition, innovation, or financial inclusion. A few argued that there is a potential conflict between the Duty and the proposal to add a secondary long-term growth and international competitiveness objective to the FCA's existing objectives.

**15.7** A few respondents more generally commented on our methodology including the following.

- **Alternative options:** A few firms argued that our CBA did not adequately consider alternative options to achieve the same outcomes at a lower cost to industry.
- **Sensitivity Analysis:** Some respondents said that our analysis could have benefited from sensitivity analyses for how different industries might be differently affected.
- **Opportunity cost of foregone projects:** Some respondents said that we did not put forward any consideration of the opportunity cost of other projects that the firm would have to put off due to the implementation of the Duty.

## Our response

Given the pre-emptive and broad nature of our interventions, we do not believe that it is reasonably practicable to quantify the benefits of the Duty.

In our CBA, we set out the key drivers of harm that we are seeking to tackle. We have attempted to explain how and why we expect benefits to arise from tackling these harms. We have used past interventions in specific sectors to give a sense of the scale of harm that could be prevented by tackling similar harms in other sectors. Overall, we believe that the Duty will be net beneficial for the market based on our experience of the harms we are aiming to tackle, the potential scale of those harms and the cost and benefits of past interventions.

As part of producing this CBA, we sought external scrutiny on our approach from an economics consultancy who also supported our Practitioner Panel in its submission. As part of their review, they agreed with our approach and methodology.

We acknowledge that the effectiveness of the Duty will be linked to how well we implement and supervise the new rules and agree that it will be important to monitor the success of the Duty in helping us achieve our outcome. Chapter 14 provides more detail on our approach to embedding the Duty.

We used the Standardised Cost Model to estimate firms' costs and our CBA considers all the costs raised by firms. We note that some firms and some sectors may have costs above or below our average figure. However, respondents did not provide detailed evidence or data on their costs that would lead us to question whether the average costs in our CBA were representative, or to conclude that benefits from our proposals would likely be outweighed by these costs. We also have not made changes to our rules or guidance following CP21/36 that we believe would materially impact the overall cost-benefit ratio of our CBA and so we believe our CBA is still applicable.

We understand respondents' concerns about the risk of unintended consequences arising from the Duty. However, we do not agree that our proposal will weaken competition or inhibit innovation. We believe that firms will be able to compete more effectively in the interests of consumers where all firms are held to a higher standard and consumers are put in a position to make informed decisions and act in their own interests. We would expect effective competition to encourage entry and innovation rather than hinder it, as firms are incentivised to improve their product offerings and compete effectively in consumers' interests.

We do not expect our rules to restrict access to products in the way some respondents fear. The Duty is underpinned by reasonableness, and we intend to apply our rules proportionately. We think that only in extreme cases will firms decide to withdraw a product or service and we expect competing firms to enter to fill any gap in the market.

In Chapter 1 and 6 of this Policy Statement, we set out the steps we have taken to mitigate the risks of financial exclusion. In particular, we will work closely with firms during implementation to address any issues that arise. We will monitor the effects the Duty is having on retail markets for signs of unintended consequences and report back on our findings in our post-implementation review.

We do not agree that the Duty would conflict with any proposed secondary objective of increased competitiveness and growth of the UK economy. While the secondary objective has not yet come into force, we recognise that we have a key role in supporting the attractiveness of the UK as an international centre of financial services, and the role of financial services in supporting long-term growth of the UK economy. In our view, our consumer protection and competition objectives are key to achieving these outcomes. We believe that increased consumer confidence in financial services alongside more effective competition is an important driver for the increased growth and competitiveness of the UK economy.

We have considered alternative options to the Duty, some of which we set out in CP 21/13. These alternatives included making new rules under our existing Principles or through more rigorous supervision and enforcement of existing rules. However, we did not believe these options would be likely to bring about the outcomes we are seeking. The Duty represents a clear shift in approach, enabled by a reset in our expectations. We think this reset is helpful to firms and protects them from retrospective changes to our expectations under Principle 6. Without such a reset, we believe that costs to firms might be higher, such as from greater legal uncertainty or from retrospective complaints.

We agree that some sectors of the industry will be affected more by our proposals than others. We want the Duty to raise standards in all sectors. We don't believe that a sensitivity analysis in each sector is likely to change the way we have thought about implementing this proposal because we want a consistent approach across financial services. We expect in some sectors, higher costs will be offset by greater benefits for consumers.

We do not agree that we should consider firms' opportunity cost of forgone projects. Our assessment is on the net benefits of the Duty alone, not on the full range of opportunity costs across every firm.

---

# Annex 1

## List of non-confidential respondents to CP21/36

abrdrn plc

Access to Insurance Working Group (A2I Group)

AFS Compliance

AJ Bell

Amigo

Amplified Global Ltd

Association for Financial Markets in Europe (AFME)

Association of British Credit Unions Limited (ABCUL)

Association of British Insurers (ABI)

Association of Finance Brokers (AFB)

Association of Financial Mutuals (AFM)

Association of Foreign Banks (AFB)

Association of Investment Companies (AIC)

Association of Mortgage Intermediaries (AMI)

Association of Professional Compliance Consultations (APCC)

British Insurance Brokers' Association (BIBA)

Building Societies Association (BSA)

Capita Life & Pensions Regulated Services

CFA Society of the United Kingdom

Citizens Advice

Citizens Advice Scotland

ClearBank Limited

Consumer Council of Northern Ireland

Consumer Credit Trade Association (CCTA)

Debt Hacker

Debt Managers Standards Association (DEMSA)

Depository and Trustee Association (DATA)

Fair4All Finance

Fair by Design

Fairer Finance

FCA Practitioner Panel

FCA Smaller Business Practitioner Panel

Federation of Small Businesses' (FSB)

Finance & Leasing Association (FLA)

Financial Services Consumer Panel

Financial Solutions Limited

Gneiss Energy

Innovate Finance

Institute and Faculty of Actuaries (IFoA)

Institute of Chartered Accountants in England and Wales (ICAEW)

interactive investor

Intermediary Mortgage Lenders Association (IMLA)

International Capital Market Association (ICMA)

International Underwriting Association (IUA)

Investment and Life Assurance Group (ILAG)

Investment Association (IA)

Investor in Customers

Irish League of Credit Unions

Johnston Carmichael LLP

LifeSearch

Lloyds Market Association (LMA)

LSL Financial Services

Money Advice Scotland

Money Advice Trust

Money & Mental Health

Money and Pensions Service (MaPS)

MoneySavingExpert

National Consumer Federation (NCF)

National Franchised Dealers Association (NFDA)

National Pawnbrokers Association (NPA)

New City Agenda

Payments Innovation Forum (PIF)

Personal Investment Management and Financial Advice Association (PIMFA)

Property Bar Association (PBA)

Provident Financial Group

Radiocentre Ltd

Retirement Bridge Management Ltd

Roliscon Limited

Sesame Bankhall Group

ShareSoc

Smart Data Foundry

Society of Lloyds

Sovereign Healthcare

SS&C Financial Services International Limited

StepChange Debt Charity

TheCityUK

The co-operative bank

The Money Charity

The Society of Pensions Professionals (SPP)

threesixty services LLP

Transparency Task Force

UK Finance

UK Shareholder's Association (UKSA)

Vanguard Consulting Ltd

VCX Ltd

Vodafone UK

Which?

Wise

Zurich Insurance

## Annex 2

### Abbreviations used in this paper

Abbreviation	Description
<b>BBLs</b>	Bounce Back Loan Scheme
<b>BCOBS</b>	Banking: Conduct of Business Sourcebook
<b>CBA</b>	Cost benefit analysis
<b>CCA</b>	Consumer Credit Act 1974
<b>CMCs</b>	Claims management companies
<b>COBS</b>	Conduct of Business sourcebook
<b>COCON</b>	Code of Conduct sourcebook
<b>COLL</b>	Collective Investment Schemes sourcebook
<b>CONC</b>	Consumer Credit sourcebook
<b>CP</b>	Consultation Paper
<b>DISP</b>	Dispute Resolution: Complaints sourcebook
<b>EMR 2011</b>	The Electronic Money Regulations 2011
<b>EU</b>	European Union
<b>FCA</b>	Financial Conduct Authority
<b>FLS</b>	Financial Lives Survey
<b>FRF</b>	Future Regulatory Framework
<b>FSCS</b>	Financial Services Compensation Scheme
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>GAA</b>	Governance Advisory Arrangements
<b>GAR</b>	Gibraltar Authorisations Regime
<b>GFSC</b>	Gibraltar Financial Services Commission

Abbreviation	Description
<b>HNW</b>	High net worth individuals
<b>ICO</b>	Information Commissioner's Office
<b>ICOBs</b>	Insurance: Conduct of Business sourcebook
<b>IGCs</b>	Independent Governance Committees
<b>MCOB</b>	Mortgages and Home Finance: Conduct of Business sourcebook
<b>MI</b>	Management information
<b>PRIN</b>	Principles for Businesses
<b>PECR</b>	Privacy and Electronic Communications Regulations 2003
<b>PROA</b>	Private right of action
<b>PROD</b>	Product Intervention and Product Governance sourcebook
<b>PSR 2017</b>	Payment Services Regulations 2017
<b>SM&amp;CR</b>	Senior Managers and Certification Regime
<b>SMEs</b>	Small and medium enterprises
<b>SUP</b>	Supervision sourcebook
<b>SYSC</b>	Senior Management Arrangements, Systems and Controls sourcebook
<b>TCF</b>	Treating customers fairly
<b>TPR</b>	The Pensions Regulator

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# Appendix 1

## Made rules (legal instrument)

**CONSUMER DUTY INSTRUMENT 2022****Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”) including as applied by paragraph 3 of Schedule 6 to the Payment Services Regulations 2017 (SI 2017/752) (“the PSRs”) and paragraph 2A of Schedule 3 to the Electronic Money Regulations 2011 (SI 2011/99) (“the EMRs”):
    - (a) section 64A (Rules of conduct);
    - (b) section 64C (Requirement for *relevant* authorised persons to notify regulator of disciplinary action);
    - (c) section 137A (The FCA’s general rules);
    - (d) section 137R (Financial promotion rules);
    - (e) section 137T (General supplementary powers);
    - (f) section 138C (Evidential provisions);
    - (g) section 139A (Power of the FCA to give guidance);
    - (h) section 247 (Trust scheme rules);
    - (i) section 261I (Contractual scheme rules);
  - (2) Regulation 120 (Guidance) of the PSRs;
  - (3) Regulation 60 (Guidance) of the EMRs;
  - (4) Regulation 6 (FCA Rules) of the Open-Ended Investment Companies Regulations 2001; and
  - (5) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA’s Handbook.
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 31 July 2023.

**Amendments to the Handbook**

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below.

(1)	(2)
Glossary of definitions	Annex A
Principles for Businesses (PRIN)	Annex B
Code of Conduct sourcebook (COCON)	Annex C
General Provisions (GEN)	Annex D
Product Intervention and Product Governance sourcebook (PROD)	Annex E

### Notes

- E. In the Annexes to this instrument, the “notes” (indicated by “**Note:**” or “*Editor’s note:*”) are included for the convenience of readers, but do not form part of the legislative text.

### Citation

- F. This instrument may be cited as the Consumer Duty Instrument 2022.

By order of the Board  
15 July 2022

## Annex A

### Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>closed product</i>	<p>a <i>product</i>:</p> <ol style="list-style-type: none"> <li>(1) where there are existing contracts with <i>retail customers</i> entered into before 31 July 2023; and</li> <li>(2) which is not marketed or <i>distributed</i> to <i>retail customers</i> (including by way of renewal) on or after 31 July 2023; or</li> </ol>
<i>COCON firm activities</i>	<p>(as defined in more detail in <i>COCON</i> 1.1.7AR(1) and in relation to conduct of a <i>person</i> in relation to a <i>firm</i>) the corresponding activities of the <i>firm</i> as referred to in <i>COCON</i> 1.1.6R to <i>COCON</i> 1.1.7R (To what conduct does it apply?).</p>
<i>existing product</i>	<p>a <i>product</i> which:</p> <ol style="list-style-type: none"> <li>(1) was <i>manufactured</i>, marketed or <i>distributed</i> before 31 July 2023; and</li> <li>(2) is marketed or <i>distributed</i> to <i>retail customers</i> (including by way of renewal) on or after 31 July 2023.</li> </ol>
<i>non-retail financial instrument</i>	<p>a <i>financial instrument</i> in respect of which the conditions in either paragraphs (1)(a) and (b) or (2) are met:</p> <ol style="list-style-type: none"> <li>(1) <ol style="list-style-type: none"> <li>(a) the marketing materials for the <i>financial instrument</i> (including the <i>prospectus</i>, if there is one) feature prominent and clear disclosures to the effect that the <i>financial instrument</i>: <ol style="list-style-type: none"> <li>(i) is being offered only to investors eligible for categorisation as <i>professional clients</i> or <i>eligible counterparties</i> under the <i>FCA's rules</i>; and</li> <li>(ii) is not intended for <i>retail customers</i>;</li> </ol> </li> <li>(b) the issuer of the <i>financial instrument</i> or, in relation to secondary market offers, the distributor, has taken reasonable steps to ensure that the offer and any associated promotional communications are directed only to investors</li> </ol> </li> </ol>

eligible for categorisation as *professional clients* or *eligible counterparties*;

- (2) a minimum denomination or otherwise a minimum investment of £50,000 applies to the *financial instrument*, or equivalent amount for a *financial instrument* denominated in another currency, where the equivalent amount is calculated not more than three *business days* before the date the *financial instrument* was first issued.
- product*
- (1) any *specified investment distributed* or to be *distributed* to *retail customers*; and
- (2) any service which involves or includes the carrying on of a *regulated activity* or an *ancillary activity*, providing a *payment service*, or issuing *electronic money* and activities connected to providing a *payment service* or issuing *electronic money* which is:
- (a) provided directly to a *retail customer*;
- (b) provided by Firm A to Firm B (further to an arrangement between them) for the purpose of enabling Firm B to distribute a *specified investment* to a *retail customer* or provide a *regulated activity* directly to a *retail customer* (for example providing a credit reference for the purposes of mortgage lending or consumer credit); or
- (c) provided by Firm A to Firm B (further to an arrangement between them) to enable Firm B to operate or procure performance of the terms of a *specified investment*, or a *credit agreement*, that has been *distributed* to a *retail customer* (for example debt collection).
- (3) The term '*product*' is intended to refer to the *distribution* of a *specified investment* or provision of a service generally and not, unless the contrary intention appears, to arrangements with or in relation to individual *retail customers*.

[**Note:** paragraph (1) includes a *fund* the *units* or *shares* of which are *distributed* or to be *distributed* to *retail customers*]

*target market* one or more groups of *retail customers* sharing common features whose characteristics, needs and objectives the *product* is or will be designed to meet, as identified by the *manufacturer* in accordance with *PRIN 2A.3.4R*.

*retail market business* the *regulated activities* and *ancillary activities* to those activities, *payment services*, issuing *electronic money*, and activities connected to the provision of *payment services* or issuing of *electronic money*, of a *firm* in a distribution chain (including a *manufacturer* and a *distributor*) which involves a *retail customer*, but not including the following activities:

- (1) the *manufacture* of a *product* that is:
  - (a) only marketed and approved for *distribution* to *non-retail customers*; and
  - (b) not a *product* provided by Firm A to Firm B (further to an arrangement between them) to enable Firm B to *distribute* another *product* to a *retail customer*, or operate a *specified investment* held by a *retail customer*;
- (2) activities carried on in relation to *non-retail financial instruments*;
- (3) an *offer* and any associated promotional communications, where that *offer* is:
  - (a) carried on by a *firm* with or for any issuer, holder or owner of a *financial instrument* and relates to the *offer, issue, underwriting, repurchase, exchange or redemption of, or the variation of the terms of that financial instrument or any related matter*; and
  - (b) of a *financial instrument* which meets all the following criteria:
    - (i) it is when issued, traded or intended to be traded on an *RIE* or *trading venue* operated by a *regulated market*;
    - (ii) it does not involve any actual or potential liability for the investor that exceeds the cost of acquiring the instrument;
    - (iii) it does not incorporate a clause, condition or trigger that could fundamentally alter the nature or risk of the investment or pay out profile, such as investments that incorporate a right to convert the instrument into a different investment; or where the return of initial capital invested at the end of the investment period is linked by a pre-set formula to the performance of an index, a combination of indices, a 'basket' of selected stocks (typically from an index or indices), or other factor or combination of factors;
    - (iv) it does not include any explicit or implicit exit charges that have the effect of making the investment illiquid even though there are technically frequent opportunities to dispose of, redeem or otherwise realise it;

(v) it is not a *collective investment scheme* or an *AIF*; and

(vi) it is not a *structured finance product*;

[**Note:** paragraphs (ii) to (iv) derive from article 57 of the MiFID Org Regulation]

(4) activities carried on in relation to *contracts of large risks* for a *commercial customer* or where the risk is located outside the *United Kingdom*;

(5) the *regulated activity* of *administering a benchmark*, any *ancillary activity* to that activity and any activities undertaken by a benchmark administrator for the purpose of complying with the *Benchmarks Regulation*;

(6) *insurance distribution activities* carried on by a *firm* in respect of a *group policy* that:

(a) are carried on by the *firm* at the time the *group policy* is entered into or subsequently;

(b) are for the purpose of a *person*, other than the legal holder of the *policy*, becoming a *policyholder*; and

(c) do not involve any direct contact between the *firm* and that *person*.

Amend the following definitions as shown.

*banking customer* (in PRIN and BCOBS):

(a) a *consumer*;

(b) ...

*commercial customer* (in PRIN, ICOBS and SUP 16) a *customer* who is not a *consumer*.

*complaint* (1) ...

...

(3) (in PRIN, DISP 1.1 and (in relation to *collective portfolio management*) in the *consumer awareness rules*, the *complaints handling rules* and the *complaints record rule*) ...

*conduct rules staff* (1) any *persons* who are subject to *COCON*, as set out in *COCON 1 (Application)*; and

- (2) a person is a “member” of the *conduct rules staff* of a firm in the circumstances described in COCON 1.1.7AR(2) (To what conduct does it apply?).
- contracts of large risks* (in *PRIN*, *ICOBS* and *PROD*) *contracts of insurance* covering risks within the following categories, in accordance with the UK provisions which implemented article 13(27) of the *Solvency II Directive*:
- (a) *railway rolling stock, aircraft, ships* (sea, lake, river and canal vessels), *goods in transit, aircraft liability* and *liability of ships* (sea, lake, river and canal vessels);
  - (b) *credit* and *suretyship*, where the policyholder is engaged professionally in an industrial or commercial activity or in one of the liberal professions, and the risks relate to such activity;
  - (c) *land vehicles* (other than *railway rolling stock*), *fire and natural forces*, *other damage to property, motor vehicle liability, general liability*, and *miscellaneous financial loss*, in so far as the *policyholder* exceeds the limits of at least two of the following three criteria:
    - (i) balance sheet total: €6.2 million;
    - (ii) net turnover: €12.8 million;
    - (iii) average number of *employees* during the financial year: 250.
- [Note: article 13(27) of the *Solvency II Directive* and article 2(1)(16) of the *IDD*]
- distribute* ...
- (5) (in *PRIN*) in relation to a *retail customer*, offering, selling, recommending, advising on, arranging, dealing, proposing or providing a *product* (including a renewal).
- For the purposes of this definition *retail customer* has the same meaning as in *PRIN*.
- distributor* ...
- (4) (in relation to *PRIN*) a *firm* which offers, sells, recommends, advises on, arranges, deals, proposes or provides a *product*.
- eligible counterparty* (1) (for the purposes other than those set out in (2), including in relation to the definition of *non-retail financial instrument*) (in accordance with *COBS* 3.6.1R) a client that is either a *per se eligible counterparty* or an *elective eligible counterparty*.

	(2)	...
<i>employer</i>	(1)	(for the purposes of <i>SUP</i> 15.11 (Notification of conduct rule breaches and disciplinary action) and <i>COCON</i> , and as defined in more detail in section 64A of the <i>Act</i> (Rules of conduct)), the <i>person</i> described as the “employer” in paragraph (4) of the <i>Glossary</i> definition of <i>employee</i> .
	(2)	...
<i>financial promotion rules</i>	...	
	(8)	<u>(in relation to <i>PRIN</i>) any or all of the rules in <i>PRIN</i> that impose requirements in relation to a financial promotion (including, in particular, <i>Principles</i> 7 and 12 and the rules in <i>PRIN</i> 2A.2 and <i>PRIN</i> 2A.5) but only to the extent that they apply to a financial promotion.</u>
	(9)	<u>(otherwise, in accordance with section 417(1) of the <i>Act</i>) a rule made under section 137R of the <i>Act</i>.</u>
<i>firm</i>	(1)	...
	...	
	(11)	(in <i>PRIN</i> 2 and <i>PRIN</i> 2A) includes an <i>electronic money institution</i> , a <i>payment institution</i> and a <i>registered account information service provider</i> .
<i>governance advisory arrangement</i>		(in <i>PRIN</i> , and <i>COBS</i> 19.5) ...
<i>IGC</i>		(in <i>PRIN</i> , <i>COBS</i> 19.5 and <i>COBS</i> 19.8) ...
<i>legacy non-investment insurance product</i>		(in <i>PRIN</i> and <i>PROD</i> ) ...
<i>offer</i>	(1)	...
	(2)	...
	(3)	...
	(4)	<u>(in <i>PRIN</i>) an offer as defined in the <i>Takeover Code</i> or an offer of transferable securities to the public.</u>
<i>prospectus</i>	(1)	(in <i>LR</i> and <i>PRR</i> , <i>FEES</i> , <del>and</del> <i>FUND</i> 3 (Requirements for managers of alternative investment funds) <u>and in the definition</u>

*of non-retail financial instrument) a prospectus required under the Prospectus Regulation.*

- ...
- regulated market*
- (1) ...
- (2) (in addition, in *INSPRU*, *IPRU(INS)*, *SYSC 3.4*, ~~and~~ *COBS 2.2B* and for the purposes of *Principle 12* and *PRIN 2A* only) a market situated outside the *United Kingdom* which is characterised by the fact that:
- (a) it meets comparable requirements to those set out in (1); and
- (b) the *financial instruments* dealt with are of a quality comparable to those in a regulated market in the *United Kingdom*.
- (3) ...
- relevant scheme*
- (1) ...
- ...
- (3) (in *PRIN*, *SYSC 3.2*, *SYSC 4.1* and *COBS 19.5*) ...
- ...
- retail customer*
- (1) (other than in *PRIN* and *COCON*) an individual who is acting for purposes which are outside his their trade, business or profession.
- (2) (in *PRIN* and *COCON*):
- (a) in relation to activities to which *BCOBS* applies, a *banking customer* or prospective *banking customer*;
- (b) in relation to activities to which *ICOBS* applies, a *policyholder* or prospective *policyholder*;
- (c) in relation to activities to which *COBS* applies, a *customer* who is not a *professional client*;
- (d) in relation to *managing a UK UCITS*, *managing an AIF* or *establishing, operating or winding up a collective investment scheme*, a *person who is a unitholder*, an investor in an *AIF* or the beneficial owner of *units* or *shares* in a *fund*, excluding a *customer* who is or would be a *professional client*;

- (e) in relation to any other activities, a *customer* for the purpose of that activity;
- (f) where a *firm* is involved in a distribution chain, any *person* who is, or would be, the end *retail customer* in that distribution chain but is not a direct client of that *firm*;
- (g) where a *firm* carries out activities in relation to an *occupational pension scheme*, any *person* who is not a *client* of the *firm* but who is or would be a beneficiary in relation to *investments* held in that *occupational pension scheme*.

COCON 2.4.3R modifies this definition for the purposes of COCON.

[Note: article 2(d) of the Distance Marketing Directive]

[Note: for the purposes of *retail customer* the term *customer* has the definition given for the purposes of the activity for which it is defined, or the chapter of the Handbook which applies (as relevant).]

*manufacture*

- (1) ...
- ...
- (5) (in *PRIN*)
  - (a) creating, developing, designing, issuing, managing, operating, carrying out, or (for insurance or credit purposes only) underwriting a *product*; or
  - (b) in relation to a *closed product* or an *existing product*:
    - (i) having created, developed, designed or issued the *product*; or
    - (ii) currently managing, operating, carrying out, or (for insurance or credit purposes only) underwriting the *product*.

*manufacturer*

- (1) ...
- ...
- (4) (in *PRIN*) a *firm* which:
  - (a) creates, develops, designs, issues, manages, operates, carries out, or (for insurance or credit purposes only) underwrites a *product*; or

- (b) in relation to a *closed product* or an *existing product*:

  - (i) created, developed, designed or issued the *product*; or
  - (ii) manages, operates, carries out, or (for insurance or credit purposes only) underwrites the *product*.

## Annex B

### Amendments to the Principles for Businesses (PRIN)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

#### 1 Introduction

...

#### 1.2 Clients and the Principles

Characteristics of the client

1.2.1 G *Principles 6 (Customers’ interests), 7 (Communications with clients), 8 (Conflicts of interest), 9 (Customers: relationships of trust) and 10 (Clients’ assets) and 12 (Consumer Duty) impose requirements on firms expressly in relation to their clients or customers. These requirements depend, in part, on the characteristics of the client or customer concerned. This is because what is “due regard” (in Principles 6 and 7), “fairly” (in Principles 6 and 8), “clear, fair and not misleading” (in Principle 7), “reasonable care” (in Principle 9), or “adequate” (in Principle 10) or “good outcomes” (in Principle 12) will, of course, depend on those characteristics. For example, the information needs of a general insurance broker will be different from those of a retail general insurance policyholder.*

...

#### 2 The Principles

##### 2.1 The Principles

2.1.1 R The Principles

...	
<u>12 Consumer Duty</u>	<u>A firm must act to deliver good outcomes for retail customers.</u>

Insert the following new chapter PRIN 2A, after PRIN 2 (The Principles). All of the text is new and is not underlined.

#### 2A The Consumer Duty

##### 2A.1 Application and purpose

Application

- 2A.1.1 R References in *PRIN* to the obligations on *firms* under *Principle 12* include the obligations imposed by *rules* in *PRIN 2A*.
- 2A.1.2 R References in *PRIN* to obligations imposed on *firms* under *PRIN 2A* include the obligation imposed by *Principle 12*.
- 2A.1.3 G The application of *Principle 12* is set out in *PRIN 3*, including *PRIN 3.2.6R* to *PRIN 3.2.12G*. *Principle 12* only applies in relation to a *firm's retail market business*. To the extent that *Principle 12* applies, *Principles 6* and *7* do not apply.
- 2A.1.4 G The definition of a *product* for the purposes of *Principle 12* and *PRIN 2A* includes both products and services.
- 2A.1.5 G The definition of a *retail customer* for the purposes of *Principle 12* and *PRIN 2A* includes a prospective customer.
- 2A.1.6 G The *rules* in *Principle 12* and *PRIN 2A* are to be interpreted in accordance with the standard that could reasonably be expected of a prudent *firm* carrying on the same activity in relation to the same *product* and taking appropriate account of the needs and characteristics of *retail customers* as set out in *PRIN 2A.7.1R*. Further guidance about what can reasonably be expected and the needs and characteristics of *retail customers* is set out at *PRIN 2A.7.2G* to *2A.7.5G*.
- 2A.1.7 R References in this chapter (including those within Glossary definitions used in this chapter) to *regulated activities* include *payment services* and issuing *electronic money* (whether or not the activity of *issuing electronic money* specified in *article 9B* of the *Regulated Activities Order*); and unless otherwise stated are to be taken to include activities connected to the provision of *payment services* and to the issuing of *electronic money* (whether or not the activity of *issuing electronic money* specified in *article 9B* of the *Regulated Activities Order*).

#### Purpose

- 2A.1.8 G *Principle 12* reflects a general expectation by the *FCA* that *firms* should conduct their business to a standard which ensures an appropriate level of protection for *retail customers*.
- 2A.1.9 G While recognising the general principle that *consumers* should take responsibility for their decisions, having regard to the other factors set out in s.1C of the *Act*, it is appropriate to require a high level of protection for *retail customers* for reasons including:
- (1) that they typically face a weak bargaining position in their relationships with *firms*;
  - (2) that they are susceptible to cognitive and behavioural biases;

- (3) that they may lack experience or expertise in relation to *products* offered through *retail market business*; and
- (4) that there are frequently information asymmetries involved in *retail market business*.
- 2A.1.10 G (1) The cross-cutting obligations at *PRIN 2A.2* set out the overarching conduct which *firms* must demonstrate when they act to deliver good outcomes for *retail customers*.
- (2) The main elements of *firms*' conduct obligations under *Principle 12* and *PRIN 2A* are set out in *PRIN 2A.3* to *PRIN 2A.11*.
- (3) The *retail customer* outcome rules and guidance at *PRIN 2A.3* to *PRIN 2A.6* set out *firms*' key obligations in relation to product governance, price and value, consumer understanding and supporting consumers.
- (4) There are particular provisions concerning *closed products* and *existing products distributed to retail customers* before 31 July 2023 in *PRIN 2A.3* and *PRIN 2A.4*.
- 2A.1.11 G *Principle 12* does not change the nature of a *firm*'s relationship with any given *retail customer*. In particular, it does not create a fiduciary relationship where one would not otherwise exist nor require a *firm* to provide advice or carry out any other *regulated activity* where it would not otherwise have done so.
- 2A.1.12 G The *FCA* has issued guidance on the Consumer Duty in FG22/5, which *firms* should read alongside *Principle 12* and *PRIN 2A* as a guide to the *FCA*'s view as to how *Principle 12* and *PRIN 2A* might be complied with.
- Guidance on responsibilities of firms in a product's distribution chain
- 2A.1.13 G (1) *Principle 12* imposes obligations on *firms* towards *retail customers* of *products* irrespective of whether the customer is a *client* of the *firm*.
- (2) This extended application aims to ensure the effectiveness of obligations under *Principle 12* which may properly relate to activities which determine or materially influence *retail customer* outcomes carried out by a *firm* with whom the *retail customer* is not in a *client* relationship.
- (3) A *firm*'s role in the distribution chain may mean it is unable to determine or materially influence *retail customer* outcomes in connection with the *product*. If so, the *firm* may not be subject to any obligation under *Principle 12*.
- 2A.1.14 G Obligations on *firms* in the distribution chain of a *product* must be interpreted reasonably, in a manner that reflects the *firm*'s role in that

distribution chain and the degree to which it can determine or materially influence *retail customer* outcomes.

- 2A.1.15 G The extent of a *firm's* responsibilities under *Principle 12* in any one case will turn on the substance of the *firm's* role in the arrangements relating to the *product*. A *firm* which determines or has a material influence over *retail customer* outcomes is accountable notwithstanding that the *retail customer* may not be its *client* due to the indirect nature of their relationship.

Relevance of guidance about Principles 6 and 7

- 2A.1.16 G Given the high-level nature and breadth of application of the *Principles*, guidance about a *Principle* cannot exhaustively cover its implications (see also *PRIN 1.1.9G*).

- 2A.1.17 G
- (1) In general terms, *Principle 12* imposes a higher and more exacting standard of conduct in relation to a *firm's retail market business* relative to what *Principles 6* or *7* would have otherwise required. *Principle 12* also has a broader application in relation to a *firm's retail market business* relative to *Principles 6* and *7*, with a greater focus on consumer protection outcomes for *retail customers*, including where those *retail customers* do not stand in a *client* relationship with that *firm* in the distribution chain.
  - (2) While existing, formal guidance on *Principles 6* and *7* will remain relevant to *firms* in considering their obligations under *Principle 12*, *firms* should also take due account of the inherent limits of such guidance in light of the factors in (1). See also *PRIN 2A.1.3G*.
  - (3) To the extent that a *firm* is not acting in accordance with existing guidance on *Principles 6* and *7* and the behaviour would amount to a breach of *Principle 6* or *7* in the event that they had continued to apply, the behaviour is likely to amount to a breach of *Principle 12*.
  - (4) Where a *firm* is acting in accordance with guidance on *Principles 6* and *7* that should not be relied on alone in considering how to comply with *Principle 12*. *Firms* also need to consider all their obligations not only under the *Principles*, but under any other applicable law, including other *FCA rules* such as those expanding upon *Principle 12* as set out in *PRIN 2A*.

- 2A.1.18 G The effect of *PRIN 3.2.10R* is that the application of *Principles 6* and *7* is unchanged with respect to a *firm's* activities insofar as they are not subject to *Principle 12*.

## 2A.2 Cross-cutting obligations

Act in good faith

- 2A.2.1 R A *firm* must act in good faith towards *retail customers*.

- 2A.2.2 R Acting in good faith is a standard of conduct characterised by honesty, fair and open dealing and acting consistently with the reasonable expectations of *retail customers*.
- 2A.2.3 G Examples of where a *firm* is not acting in good faith would include:
- (a) failing to take account of *retail customers*' interests, for example in the way it designs a *product* or presents information;
  - (b) seeking inappropriately to manipulate or exploit *retail customers*, for example by manipulating or exploiting their emotions or behavioural biases to mis-lead or create a demand for a *product*;
  - (c) taking advantage of a *retail customer* or their circumstances, for example any characteristics of vulnerability, in a manner which is likely to cause detriment;
  - (d) carrying out the same activity to a higher standard or more quickly when it benefits the *firm* than when it benefits the *retail customer*, without objective justification.
- 2A.2.4 G Acting in good faith does not mean a *firm* is prevented from pursuing legitimate commercial interests or seeking a profit, provided it does so in a manner which is compliant with *Principle 12* and *PRIN 2A*. Acting in good faith does not require a *firm* to act in a fiduciary capacity where it was not already obliged to do so.
- 2A.2.5 R If a *firm* identifies through *complaints*, its internal monitoring or from any other source, that *retail customers* have suffered foreseeable harm as a result of acts or omissions by the *firm*, it must act in good faith and take appropriate action to rectify the situation, including providing redress where appropriate.
- [**Note:** *PRIN 2A.10* contains *rules* which are relevant when a *firm* is considering what "appropriate action" it must take.]
- 2A.2.6 R *PRIN 2A.2.5* does not apply where the harm identified was caused by risks inherent in a *product*, provided the *firm* reasonably believed that *retail customers* or the relevant *retail customer* (as the context requires) understood and accepted those risks.
- 2A.2.7 G Whether such a belief is reasonable will depend (among other things) on the nature of the *product* offered by the *firm*; the adequacy of the *firm*'s product design, communications and customer services; the needs and characteristics of *retail customers* or the relevant *retail customer* (as the context requires); and the extent to which the *firm* is compliant with applicable law in relation to the sale of that *product*, including the *rules* set out in *PRIN 2A*.

Avoid causing foreseeable harm

- 2A.2.8 R A *firm* must avoid causing foreseeable harm to *retail customers*.
- 2A.2.9 R Foreseeable harm may be caused by both act and omission, in a *firm*'s direct relationship with a *retail customer* or through its role in the distribution chain even where another *firm* in that chain also contributes to the harm.
- 2A.2.10 G Avoiding causing foreseeable harm to *retail customers* includes:
- (1) ensuring all aspects of the design, terms, marketing, sale of and support for its *products* avoid causing foreseeable harm;
  - (2) ensuring that no aspect of its business involves unfairly exploiting behavioural biases displayed or characteristics of vulnerability held by *retail customers*;
  - (3) identifying the potential for harm that might arise if it withdraws a product, its *products* change or its understanding about the impact on *retail customers* changes;
  - (4) responding to emerging trends that identify new sources of harm, including FCA supervisory action and/or communications; and
  - (5) taking appropriate action to mitigate the risk of actual or foreseeable harm, including for example by:
    - (i) updating or otherwise amending the design of the *product* or distribution strategy;
    - (ii) updating information about a *product* or updating *investment advice*;
    - (iii) ensuring that *retail customers* do not face unreasonable barriers (including unreasonable additional costs), for example when they want to switch *products* or providers or to complain;
    - (iv) allowing time and support for *retail customers* to find suitable alternatives where a *product* is withdrawn.
- 2A.2.11 G A *firm* with an ongoing relationship with a *retail customer* in relation to a *product* would need to act to avoid causing foreseeable harm to that *customer* throughout the lifecycle of that *product*.
- 2A.2.12 G A *firm* which is involved with the provision of a *product* at a point in time and without an ongoing relationship with the *retail customer* does not need to act to avoid causing harm which only later becomes foreseeable.
- 2A.2.13 G Avoiding causing foreseeable harm to *retail customers* does not mean a *firm* has a responsibility to prevent all harm. For example:

- (1) a *product* may have inherent risks which *retail customers* accept by selecting that *product*. Where a *firm* reasonably believes a *retail customer* understands and accepts such risks, it will not breach the *rule* if it fails to prevent them;
- (2) whether such a belief is reasonable will depend (among other things) on the nature of the *product* offered by the *firm*, the adequacy of the *firm*'s product design, communications and customer services; and the extent to which it is compliant with applicable law in relation to the sale of that *product*, including the *rules* set out in *PRIN 2A*; and
- (3) examples of risks which are inherent to a *product* include that a mortgage carries a risk of repossession and most investments carry a risk that the market may move resulting in capital loss.

#### Enable and support retail customers

- |         |   |  |
|---------|---|--|
| 2A.2.14 | R | A <i>firm</i> must enable and support <i>retail customers</i> to pursue their financial objectives.  |
| 2A.2.15 | G | The conclusions a <i>firm</i> can properly reach about the financial objectives of <i>retail customers</i> will depend on the type of <i>product</i> it provides.  |
| 2A.2.16 | G | A <i>firm</i> which provides an execution-only service or a non-advised service can assume (unless it knows or could reasonably be expected to have known otherwise) that the financial objectives of <i>retail customers</i> are to purchase, use and enjoy the full benefits of the <i>product</i> in question.  |
| 2A.2.17 | G | A <i>firm</i> which provides advisory or discretionary services is entitled to rely on the objectives that <i>retail customers</i> have disclosed unless it knows or could reasonably be expected to know that information disclosed is manifestly out of date, inaccurate or incomplete.  |
| 2A.2.18 | G | Information a <i>firm</i> must obtain under a provision of law (including, but not limited to, information required by <i>COBS 9.2.1R</i> , <i>COBS 9A.2.1R</i> , <i>COBS 10.2.1R</i> , <i>COBS 10A.2.1R</i> , <i>ICOB 5.2.2R</i> , <i>MCOB 4.7A.6 R</i> , <i>MCOB 11.6.2R</i> and <i>CONC 5.2A.5R</i> ) is relevant to whether a <i>firm</i> knew or could reasonably be expected to know that a customer has different financial objectives for the purposes of <i>PRIN 2A.2.16G</i> and <i>2A.2.17G</i> . |
| 2A.2.19 | G | To the extent that a <i>firm</i> becomes aware or should reasonably have become aware of a specific financial objective sought by a <i>retail customer</i> in connection with a <i>product</i> , it should consider how to support progress towards achieving that objective in its interactions with that <i>retail customer</i> .  |
| 2A.2.20 | G | Enabling and supporting <i>retail customers</i> to pursue their financial objectives includes acting to empower <i>retail customers</i> to make good choices in their interests, including by:   |

- (1) ensuring all aspects of the design, terms, marketing, sale of and support for its *products* meet and not frustrate the objectives and interests of *retail customers*;
- (2) making sure *retail customers* have the information and support they need, when they need it, to make and act on informed decisions;
- (3) enabling *retail customers* to enjoy the use of their *product* and to switch or exit the *product* where they want to without unreasonable barriers or delay; and
- (4) taking account of *retail customers*' behavioural biases and the impact of characteristics of vulnerability in all aspects of customer interaction.

2A.2.21 G Enabling and supporting *retail customers* to pursue their financial objectives may include the proactive provision of information or offer of support when a *firm* declines to provide a particular *product* to a *retail customer*. In particular:

- (1) *firms* should consider in light of the financial objectives of that *retail customer* whether it would be appropriate to provide information to enable and support that *retail customer* to achieve those objectives, and where appropriate should provide it; and
- (2) they should take reasonable steps to ensure any information they provide to a *retail customer* which is produced by an external third party such as a money advice charity, to which the *retail customer* is signposted, is independent and reliable.

2A.2.22 G Enabling and supporting *retail customers* to pursue their financial objectives does not mean that a *firm* is expected to go beyond what a prudent *firm* carrying out the same activity in relation to the same *product*, taking appropriate account of the needs and characteristics of *retail customers*, including in particular as set out in *PRIN* 2A.7.4G to *PRIN* 2A.7.5G, would do. For example, it does not require *firms* to go beyond what is reasonably expected by *retail customers* in the delivery of the *product*.

#### Guidance on the cross-cutting obligations

- 2A.2.23 G
- (1) The obligations in *PRIN* 2A.2 apply at all stages of the customer journey and during the whole lifecycle of a *product*. *Firms* will therefore need to keep *products* under regular review and consider the impact of any changes they make to those *products*.
  - (2) In applying the obligations in *PRIN* 2A.2, *firms* should note that each of the cross-cutting obligations in this section requires *firms* to act both proactively and reactively, as the context requires.

- 2A.2.24 G The obligations in *PRIN 2A.2* apply both at a *target market* and (where context requires) at an individual customer level, for example:
- (1) Where a *firm* interacts with an individual *retail customer* or is providing a bespoke service the obligations in *PRIN 2A.2* apply to those interactions and that service;
  - (2) Where a *firm* is not interacting with an individual *retail customer*, for example in the design of a *product*, when making pricing decisions or designing communications, the obligations in *PRIN 2A.2* apply at the level of that *target market*.

- 2A.2.25 G Each of the cross-cutting obligations in this section requires *firms* to understand and take account of cognitive and behavioural biases and the impact of characteristics of vulnerability and/or lack of knowledge on *retail customers*' needs and decisions.

Interaction between Principle 12 and the cross-cutting obligations

- 2A.2.26 R The cross-cutting obligations (the *rules* in *PRIN 2A.2*) exhaust what is required under *Principle 12*.

- 2A.2.27 G The cross-cutting obligations define how *firms* should act to deliver good outcomes for *retail customers*.

Interaction between the cross-cutting obligations and the outcomes rules

- 2A.2.28 G The outcomes *rules* at *PRIN 2A.3* to *PRIN 2A.6* help to define what is required by *Principle 12* and *PRIN 2A.2* but do not exhaust those *rules*.

### **2A.3 Consumer Duty: retail customer outcome - products and services**

General nature of product governance obligations

- 2A.3.1 G The product governance obligations on *firms* under *Principle 12* are general in nature and should be considered alongside any other legal or regulatory obligations that may apply, for example any marketing restrictions in relation to the *product*.

Manufacturer product governance arrangements

- 2A.3.2 R A *manufacturer* must maintain, operate and review a process for the approval of:
- (1) a *product*; and
  - (2) significant adaptations of a *product*,
- in each case before it is marketed or *distributed* to *retail customers*.

- 2A.3.3 G *PRIN 2A.3.2R* includes any *product* which is a new *product* manufactured on or after 31 July 2023, or an *existing product*. In relation to an *existing*

*product* “marketing” or “distributing” includes reference to any future activity regardless of whether the *product* has previously been made available for marketing or distribution.

Manufacturers: product approval process for products that are not closed products

- 2A.3.4 R For each *product* that is not a *closed product*, a *manufacturer’s* product approval procedures must:
- (1) specify the *target market* for the *product* at a sufficiently granular level, taking into account the characteristics, risk profile, complexity and nature of the *product*;
  - (2) take account of any particular additional or different needs, characteristics and objectives that might be relevant for *retail customers* in the *target market* with characteristics of vulnerability;
  - (3) ensure that all relevant risks to the *target market*, including any relevant risks to *retail customers* with characteristics of vulnerability, are assessed;
  - (4) ensure that the design of the *product*:
    - (i) meets the needs, characteristics and objectives of the *target market*;
    - (ii) does not adversely affect groups of *retail customers* in the *target market*, including groups of *retail customers* with characteristics of vulnerability; and
    - (iii) avoids causing foreseeable harm in the *target market*;
  - (5) ensure that the intended distribution strategy is appropriate for the *target market*; and
  - (6) require the *manufacturer* to take all reasonable steps to ensure that the *product* is *distributed* to the identified *target market*.

Manufacturers: product approval process for closed products

- 2A.3.5 R (1) A *manufacturer* of a *closed product* must maintain, operate and review a process to assess and regularly review whether any aspect of the *product* results in the *firm* not complying with the cross-cutting obligations (*PRIN* 2A.2) in relation to existing *retail customers*.
- (2) The *manufacturer’s* process in (1) does not have to comply with *PRIN* 2A.3.2R, *PRIN* 2A.3.4R, *PRIN* 2A.3.7R, *PRIN* 2A.3.9R, *PRIN* 2A.3.10R, *PRIN* 2A.3.11R or *PRIN* 2A.3.12R.

- 2A.3.6 R The *manufacturer's* process must also assess and regularly review whether the *closed product* affects groups of *retail customers* in different ways and in particular whether any *retail customers* in the *target market* with characteristics of vulnerability are adversely affected by any aspect of the *product*.

Manufacturer: review

- 2A.3.7 R A *manufacturer* must regularly review its *products* taking into account any event that could materially affect the potential risk to the *target market*. In doing so, the *manufacturer* must assess at least the following:
- (1) whether the *product* meets the identified needs, characteristics and objectives of the *target market*, including identified needs, characteristics and objectives of *retail customers* in the *target market* with characteristics of vulnerability; and
  - (2) whether the intended distribution strategy remains appropriate, including whether the *product* is being *distributed* to the *target market* or reaching *retail customers* outside the *target market*.

Manufacturer: action following review of products

- 2A.3.8 R Where a *manufacturer* identifies any circumstances related to the *product* that may adversely affect *retail customers*, the *manufacturer* must:
- (1) take appropriate action to mitigate the situation and prevent any further harm; and
  - (2) where appropriate, promptly inform other relevant *persons* in the distribution chain about the circumstances that led to action being taken and the remedial action taken.

Manufacturers: testing products

- 2A.3.9 R
- (1) *Manufacturers* must test their *products* appropriately, including scenario analyses where relevant.
  - (2) A *manufacturer* must, as part of discharging its obligations in (1), assess whether the *product* meets the identified needs, characteristics and objectives of the *target market*, including identified needs, characteristics and objectives of *retail customers* in the *target market* with characteristics of vulnerability.
  - (3) *Manufacturers* must test their *products* in a qualitative manner and, depending on the type and nature of the *product* and the related risk of detriment to *retail customers*, quantitative manner.

- 2A.3.10 R If the results of the testing show that the *product* does not meet the identified needs, characteristics and objectives of the *target market*, including identified needs, characteristics and objectives of any group or

groups of *retail customers* in the *target market* with characteristics of vulnerability:

- (1) in relation to a new *product* or a significant adaptation of an *existing product*, the *manufacturer* must not bring the new or adapted *product* to the market;
- (2) in relation to an *existing product*, it must immediately:
  - (a) cease marketing or distributing the *product* (whether directly or indirectly);
  - (b) cease any renewals for existing *retail customers*, provided that existing *retail customers* are easily able to move to an alternative *product* that provides at least the same level of benefit at an equivalent cost to the customer, whether with the *firm* or with another *firm*; and
  - (c) (where the *firm* intends to continue to market and *distribute* the *product*), make such changes as are necessary for the *product* to meet the identified needs, characteristics and objectives of the *target market*, including identified needs, characteristics and objectives of any group or groups of *retail customers* in the *target market* with characteristics of vulnerability.

Manufacturers: collaborating on manufacture

- 2A.3.11 R Where *firms* collaborate to *manufacture* a *product*, they must set out in a written agreement their respective roles and responsibilities in the product approval process in *PRIN 2A.3*.

Manufacturer: selecting distribution channels and providing information to distributors

- 2A.3.12 R
- (1) A *manufacturer* must select distribution channels that are appropriate for the *target market*.
  - (2) A *manufacturer* must provide each *distributor* with adequate information in good time to enable it to comply with the *rules* applicable to it in this section.
  - (3) The information to be made available under (2) includes all appropriate information regarding the *product* and the product approval process from time to time to enable the *distributor* to comply with *PRIN 2A.3.16R*.

Distributors: unregulated manufacturer

- 2A.3.13 R Where a *distributor* *distributes* a *product* manufactured by a *person* to whom the *rules* in *PRIN 2A.3* do not apply, it must take all reasonable steps to comply with *PRIN 2A.3.14R* to *PRIN 2A.3.23G*.

## Distributor: distribution arrangements

- 2A.3.14 R A *distributor* must maintain, operate and review product distribution arrangements for each *product* it *distributes* that:
- (1) avoid causing and, where that is not practical, mitigates foreseeable harm to *retail customers*;
  - (2) support a proper management of conflicts of interest; and
  - (3) ensure the needs, characteristics and objectives of the *target market* are duly taken into account.
- 2A.3.15 G *PRIN* 2A.3.14R includes any *product* whether a new *product distributed* on or after 31 July 2023, or an *existing product*. In relation to an *existing product*, “distributes” includes reference to any future distribution activity regardless of whether the *product* has previously been made available for distribution, for example, renewing a contract with an existing *retail customer*.

## Distributors: obtaining information from manufacturers

- 2A.3.16 R A *distributor* must ensure that the product distribution arrangements contain effective measures and procedures to obtain sufficient, adequate and reliable information from the *manufacturer* about the *product* to:
- (1) understand the characteristics of the *product*;
  - (2) understand the identified *target market*;
  - (3) consider the needs, characteristics and objectives of any *retail customers* in the *target market* with characteristics of vulnerability;
  - (4) identify the intended distribution strategy for the *product*; and
  - (5) ensure the *product* will be *distributed* in accordance with the needs, characteristics and objectives of the *target market*.

## Distributors: specific distribution strategy

- 2A.3.17 R (1) This *rule* applies where a *distributor* sets up or implements a specific distribution strategy to supplement the *manufacturer’s* strategy under *PRIN* 2A.3.4R(5).
- (2) Any strategy set up or implemented by a *distributor* must be consistent with:
- (a) the *manufacturer’s* intended distribution strategy; and
  - (b) the identified *target market*.

## Distributors: providing sales information to manufacturers

- 2A.3.18 R To support *product* reviews carried out by *manufacturers*, a *distributor* must, upon request, provide *manufacturers* with relevant information including, where appropriate, sales information and information on the regular reviews of the product distribution arrangements.

Distributors: review

- 2A.3.19 R (1) A *distributor* must regularly review its distribution arrangements to ensure that they are still appropriate and up to date.
- (2) When reviewing the distribution arrangements, a *distributor* must verify that it is only *distributing* each *product* to the identified *target market*.

Distributor: action following review of products

- 2A.3.20 R Where a *distributor* identifies an issue following a review, it must:
- (1) make appropriate amendments to the product distribution arrangements;
- (2) where harm has been identified, take appropriate action to mitigate the situation and prevent any further harm; and
- (3) promptly inform all relevant *persons* in the distribution chain about any action taken.

Vested rights

- 2A.3.21 R Where a *product* has existing contracts entered into before 31 July 2023, unless the *firm* has identified a breach of *rules* in force at the time, the appropriate action a *firm* must take under *PRIN* 2A.3.8R or *PRIN* 2A.3.20R does not require a *firm* to waive its vested rights under those existing contracts.
- 2A.3.22 G For the purposes of *PRIN* 2A.3.21R, vested rights are likely to include the following:
- (1) payments already due under the terms of the contract;
- (2) remuneration for services wholly or partly provided under the contract; and
- (3) contractual charges payable on early termination of the contract.
- 2A.3.23 G Whether a right is a vested right or not will depend on all the facts of the case and interpretation of the relevant contract.

Application of the product governance outcome

- 2A.3.24 R *PRIN 2A.3* does not apply to any *firm* subject to *PROD 3*, *PROD 4*, or *PROD 7* for any *product* they *manufacture* or *distribute* that falls within the scope of the relevant *PROD* chapter.
- 2A.3.25 G *Products* within scope of *PROD* include any *product* significantly adapted since the relevant *PROD* rules came into force, *legacy non-investment insurance* products and *funeral plans* which were existing products as of 29 July 2022.
- 2A.3.26 R A *closed product* not already subject to *PROD* must follow the *closed product rules* set out in *PRIN 2A.3.5R* to *2A.3.6R* and *PRIN 2A.3.21R* to *2A.3.23G*.
- 2A.3.27 G A *closed product* will already be subject to *PROD* if it is:
- (1) a *financial instrument* or *structured deposit manufactured* by a *firm* subject to *PROD 3* on or after 3 January 2018;
  - (2) an insurance product *manufactured* on or after 1 October 2018 or a *legacy non-investment insurance product*; or
  - (3) a *funeral plan product manufactured* on or after 29 July 2022.
- 2A.3.28 R *PRIN 2A.3* does not apply to both:
- (1) *units* in an *authorised fund* or the *sub-fund* of such a scheme, where the relevant *authorised fund* or *sub-fund* is in the process of winding up or termination under, or in accordance with, *COLL 7.3*, *COLL 7.4*, or *COLL 7.4A*; and
  - (2) *units* or *shares* in a *fund* or *sub-fund* which is not an *authorised fund* or a *sub-fund* of such a scheme or *AIF*, where the relevant *fund* or *sub-fund* is in a process of winding up or termination which is equivalent to that referred to in (1).

#### Compliance with other Handbook provisions

- 2A.3.29 G A *firm* which either:
- (1) conducts business in relation to *products* that would be covered by chapters in *PROD* if they were *manufactured* after the date the relevant chapter in *PROD* came into force; or
  - (2) is subject to *PROD 1.3.2R*,
- may choose whether to apply either the processes set out in the relevant chapter of *PROD* that applies to the *product* (*PROD 3* for *financial instruments* and *structured deposits* and *PROD 4* for insurance products) or the processes set out in *PRIN 2A.3*. *PRIN 2A.3.30E* sets out the circumstances where a *firm* that chooses to comply with the relevant chapter of *PROD* is likely to be considered in breach of *PRIN 2A.3*.

- 2A.3.30 E (1) This provision applies to:
- (a) any *firm* to which *PROD* 1.3.2R applies;
  - (b) a *manufacturer* of an *existing product manufactured* before 3 January 2018, which is a *financial instrument* or a *structured deposit*; and
  - (c) a *manufacturer* of an *existing product manufactured* before 1 October 2018 which is an insurance product, but which is not a *legacy non-investment insurance* product.
- (2) For *firms* within (1)(a) or (b), where the *firm* is following the provisions of *PROD* 3, contravention of *PROD* 3 may be relied on as tending to establish contravention of those provisions of *PRIN* 2A.3 that apply to the *firm*.
- (3) For *firms* within (1)(c), where the *firm* is following the provisions of *PROD* 4, contravention of *PROD* 4 may be relied on as tending to establish contravention of those provisions of *PRIN* 2A.3 that apply to the *firm*.

#### 2A.4 Consumer Duty: retail customer outcome on price and value

What is value?

- 2A.4.1 R For the purposes of this outcome:
- (1) value is the relationship between the amount paid by a *retail customer* for the *product* and the benefits they can reasonably expect to get from the *product*; and
  - (2) a *product* provides fair value where the amount paid for the *product* is reasonable relative to the benefits of the *product*.

Price and value: manufacturers general obligation

- 2A.4.2 R A *manufacturer* must:
- (1) ensure that its *products* provide fair value to *retail customers* in the *target markets* for those *products*; and
  - (2) carry out a value assessment of its *products* and review that assessment on a regular basis appropriate to the nature and duration of the *product*.
- 2A.4.3 R An initial value assessment must be carried out for:
- (1) a *product*; and
  - (2) any significant adaptation of a *product*,

in each case before it is marketed or *distributed* to a *retail customer*.

- 2A.4.4 G *PRIN 2A.4.2R* and *PRIN 2A.4.3R* include any *product* whether a new *product* manufactured on or after 31 July 2023, an *existing product* or a *closed product*. In relation to an *existing product* or a *closed product*, “marketing” or “distributing” includes reference to any future activity regardless of whether the *product* has previously been made available for marketing or distribution.
- 2A.4.5 R In ensuring that a *product* provides fair value, a *manufacturer* must be satisfied that this will be the case from the point at which the *manufacturer* completes the assessment for a reasonably foreseeable period, including, where the *product* is one that renews, following renewal.
- 2A.4.6 G What constitutes a ‘reasonably foreseeable period’ will depend on the type of *product*. This could include the expected length of time a *retail customer* in the *target market* will keep it, including, where relevant, the number of occasions the *firm* would reasonably expect that a *retail customer* would renew the *product*.

#### Product packages

- 2A.4.7 R Where a *product* is intended to be provided with one or more other *products*, a *manufacturer* must ensure that:
- (1) each component *product*; and
  - (2) the package as a whole,
- provides fair value to *retail customers* in the *target market*.

#### The value assessment

- 2A.4.8 R A *manufacturer’s* assessment of whether or not a *product* provides fair value must include (but is not limited to) consideration of the following:
- (1) the nature of the *product*, including the benefits that will be provided or may be reasonably expected and its quality;
  - (2) any limitations that are part of the *product*;
  - (3) the expected total price to be paid by the *retail customer* or that may become due from the *retail customer*. The expected total price includes:
    - (a) the price paid or agreed to be paid by the *retail customer* on entering into a contract for the *product*, including by way of repayments;
    - (b) any regular charges or fees payable over the lifetime of the *product*, for example an annual management charge;

- (c) any contingent fees or charges, for example, administrative charges for changes of address, charges for falling into arrears on a loan, or charges for transferring investments; and
  - (d) any non-financial costs the *retail customer* is asked or required to provide to the *firm*; and
- (4) any characteristics of vulnerability that *retail customers* in the *target market* display and the impact these characteristics have on the likelihood that *retail customers* may not receive fair value from its *products*.

Guidance on the value assessment: factors that may be considered

- 2A.4.9 G A *manufacturer* may consider one or more of the following in its assessment of whether or not a *product* is providing fair value:
- (1) the costs incurred by the *firm* in *manufacturing* or *distributing* the *product*;
  - (2) the market rate and charges for a comparable *product*;
  - (3) any accrued costs and/or benefits for *existing* or *closed products*; and
  - (4) whether there are any *products* that are priced significantly lower for a similar or better benefit.

Guidance on the value assessment: benefits and costs

- 2A.4.10 G (1) The types of benefits that *retail customers* may reasonably expect to obtain may include non-financial benefits such as an enhanced level of customer service providing extra assistance to *retail customers* in using the *product*.
- (2) Examples of non-financial costs include the provision of personal data and the granting of permission to use that data.

Guidance on the value assessment: characteristics of retail customers

- 2A.4.11 G In considering the value assessment and how it applies when *manufacturers* have different groups of *retail customer* in their *target market* for a *product*, they should have regard in particular to the following:
- (1) whether any *retail customers* who have characteristics of vulnerability may be less likely to receive fair value; and
  - (2) whether the *product* provides fair value for each of the different groups of *retail customer* in the *target market*, including in circumstances where the pricing structure of the *product* involves

different prices being charged to different groups of *retail customers*.

Guidance on the value assessment: interaction with the Duty and the retail customer outcomes

- 2A.4.12 G In ensuring that a *product* provides fair value, a *manufacturer* should have regard to how the cross-cutting obligations (*PRIN 2A.2*) and the other *retail customer outcome rules* (*PRIN 2A.3 to PRIN 2A.6*) are met in respect of the *product*.

Manufacturers: collaboration with another firm or with unregulated persons

- 2A.4.13 R Where *firms* collaborate to *manufacture a product*, they must set out in a written agreement their respective roles and responsibilities in the value assessment in *PRIN 2A.4*.
- 2A.4.14 R Where a *firm* collaborates with a *person* who is not a *firm* to *manufacture a product*, it remains fully responsible for discharging all its obligations under *PRIN 2A.4*.

Manufacturers: information for distributors

- 2A.4.15 R The *manufacturer* of a *product* must ensure that *firms* *distributing the product* have all necessary information to understand the value that the *product* is intended to provide to a *retail customer*.

Price and value: distributors general obligation

- 2A.4.16 R
- (1) A *distributor* must not *distribute a product* unless its distribution arrangements are consistent with the *product* providing fair value to *retail customers*.
  - (2) Arrangements will be consistent with providing fair value to *retail customers* where they enable the *distributor* to obtain enough information from the *manufacturer* to understand the outcome of the value assessment and in particular to identify:
    - (a) the benefits the *product* is intended to provide to a *retail customer*;
    - (b) the characteristics, objectives and needs of the *target market*;
    - (c) the interaction between the price paid by the *retail customer* and the extent and quality of any services provided by the *distributor*; and
    - (d) whether the impact that the *distribution* arrangements (including any remuneration it or (so far as the *distributor* is aware of it) another person in the distribution chain receives)

would result in the *product* ceasing to provide fair value to *retail customers*.

Distributors: unregulated manufacturer

- 2A.4.17 R Where a *distributor* distributes a *product* manufactured by a *person* to whom the *rules* in *PRIN* 2A.4 do not apply, it must take all reasonable steps to comply with *PRIN* 2A.4.16R.

Distribution chains

- 2A.4.18 R
- (1) A *firm* which *distributes products* to *retail customers* is responsible for ensuring the fair value obligations in relation to distribution are met in respect of any *product* it distributes to a *retail customer*.
  - (2) A *firm* which *distributes products* to other *distributors* must ensure that all information relevant to the value assessment is passed to the *distributor* at the end of the distribution chain.
  - (3) A *firm* which *distributes products* to other *firms* in the distribution chain must consider whether they are also a *co-manufacturer* of the product they are *distributing* and if they are, apply the *manufacturer rules* in this section.

When must a manufacturer and a distributor consider the value assessment?

- 2A.4.19 R *Manufacturers* and *distributors* are responsible for the value assessment as follows:
- (1) A *manufacturer* must consider the fair value assessment at every stage of the product approval process, including in particular when:
    - (a) designing the *product*;
    - (b) identifying *retail customers* in the *target market* for whom the *product* needs to provide fair value; and
    - (c) selecting distributions methods/channels.
  - (2) A *distributor* must consider the fair value assessment when determining the distribution strategy for the *product* and in particular where the *product* is to be *distributed* with another *product* whether as part of a package or not.

The value assessment: general

- 2A.4.20 R In determining whether a *product* provides fair value, or distribution arrangements are consistent with fair value being provided, a *firm* must not rely on individual *retail customers* to consider whether they believe the *product* provides fair value in place of the *firm*'s own assessment.

Closed products

- 2A.4.21 R (1) The obligation on *manufacturers* in *PRIN 2A.4.2R* to ensure that a *product* provides fair value applies to *closed products* as well as new and *existing products*.
- (2) In the case of a *closed product*, the reference to a *target market* in *PRIN 2A.4.2R* should be read as referring to the *retail customers* who are *customers* of the *closed product*.

Guidance on the value assessment: closed and existing products

- 2A.4.22 G The assessment of whether a *closed product* or an *existing product* provides fair value should be on a forward-looking basis only. Unless required to do so by any other *rule*, *manufacturers* do not need to consider whether their *closed products* or *existing products* provided fair value prior to these *rules* coming into force.
- 2A.4.23 G In assessing whether a *closed product* or an *existing product* provides fair value, a *manufacturer* may take into account the benefits provided, the costs charged to the *retail customer* and the costs incurred by the *firm* prior to these *rules* coming into effect.
- [**Note:** See also *PRIN 2A.4.29R* regarding appropriate action for *closed products* if the *product* no longer provides fair value.]

Reviewing the value assessment

- 2A.4.24 R (1) A *manufacturer* must regularly review the value assessment throughout the life of the *product* to ensure that the *product* continues to provide fair value to *retail customers* in the *target market*.
- (2) A *distributor* must regularly review its distribution arrangements throughout the life of the *product* to ensure that they remain consistent with the *product* providing fair value to *retail customers* in the *target market*.
- 2A.4.25 R Where a *manufacturer* identifies in its review of its value assessment that the *product* no longer provides fair value, it must take appropriate action to:
- (1) mitigate, and where appropriate, remediate any harm caused to existing *retail customers*; and
- (2) prevent harm to new *retail customers*.
- 2A.4.26 R Appropriate action under *PRIN 2A.4.25R* includes notifying the *distributor(s)* of the *product* of the issue and of any changes to the *product* and the *distribution* strategy that the *manufacturer* has put place to mitigate and prevent further harm.
- 2A.4.27 R Where a *distributor* identifies that the *product* no longer provides fair value, whether that is due to aspects of the *product* or the distribution arrangements, it must take appropriate action to:

- (1) mitigate the situation and prevent further occurrences of any possible harm to *retail customers*, including, where appropriate, amending the distribution strategy for that *product* (and, where relevant, the package);
- (2) redress any foreseeable harm that has been caused to *retail customers* by faults in the *distributor's* distribution arrangements; and
- (3) inform any relevant *manufacturers* and other *distributors* in the chain promptly about any concerns they have and any action the *distributor* is taking.

2A.4.28 G The appropriate action that a *distributor* may need to take under *PRIN* 2A.4.27R will depend on the role the *distributor* has in the distribution chain and in relation to the *product* being *distributed*. A *distributor* who is a *co-manufacturer* of the *product* being *distributed* is likely to be able to do more to mitigate the situation than *distributors* who are not *co-manufacturers*.

#### Vested rights

2A.4.29 R In the case of a *closed product*, or an *existing product* held by a *retail customer* before 31 July 2023, unless the *firm* has identified a breach of *rules* in existence before 31 July 2023, the appropriate action a *firm* may take does not require a *firm* to waive its vested contractual rights.

2A.4.30 G For the purposes of *PRIN* 2A.4.29R, vested contractual rights include the following:

- (1) payments already due under the terms of the contract;
- (2) remuneration for services wholly or partly provided under the contract; and
- (3) contractual charges payable on early termination of the contract.

2A.4.31 G Whether a right is a vested right or not will depend on all the facts of the case and interpretation of the relevant contract.

#### Application of the price and value outcome

2A.4.32 R (1) The *rules* in *PRIN* 2A.4 do not apply to:

- (a) a *firm* which *manufactures* or *distributes* a *non-investment insurance product* or a *legacy non-investment insurance product*;
- (b) a *firm* which *manufactures* or *distributes* any *funeral plan product* subject to *PROD* 7; and

- (c) an *authorised fund manager* in relation to *products* subject to *COLL* 6.6.19R to 6.6.26G, *COLL* 8.5.16R to 8.5.22R, or *COLL* 15.7.16R to 15.7.24R.
- (2) A *firm* in (1) must continue to apply *PROD* 4 and 7 or the relevant *COLL* rules.
- 2A.4.33 R *PRIN* 2A.4 does not apply to both:
- (1) *units* in an *authorised fund* or the *sub-fund* of such a scheme, where the relevant *authorised fund* or *sub-fund* is in the process of winding up or termination under, or in accordance with, *COLL* 7.3, *COLL* 7.4, or *COLL* 7.4A; and
- (2) *units* or *shares* in a *fund* or *sub-fund* which is not an *authorised fund* or a *sub-fund* of such a scheme or *AIF*, where the relevant fund or sub-fund is in a process of winding up or termination which is equivalent to that referred to in (1).
- 2A.4.34 R (1) A *manufacturer* of a *funeral plan product* which is a *closed product* and was *manufactured* before 29 July 2022 must apply the *closed product rules* and *guidance* in *PRIN* 2A.4.
- (2) The *closed product rules* and *guidance* are *PRIN* 2A.4.1R to 2A.4.2R, 2A.4.4G to 2A.4.6G, 2A.4.8R to 2A.4.12G 2A.4.20R to 2A.4.25R and 2A.4.29R to 2A.4.31G.
- 2A.4.35 E Where a *manufacturer* of a *closed product* which is a *funeral plan product* *manufactured* before 29 July 2022 is following the provisions of *PROD* 7 concerning the fair value of *funeral plan products*, contravention of *PROD* 7 may be relied on as tending to establish contravention of those provisions of *PRIN* 2A.4 that apply to the *firm*.

#### Application to pension scheme operators and providers of pathway investments

- 2A.4.36 R (1) This *rule* applies to a *firm* that is required to comply with *COBS* 19.5 (Independent Governance Committees (IGCs) and publication and disclosure of costs and charges).
- (2) A *firm* to which this *rule* applies must use the value for money assessment carried out by the *IGC* or the *governance advisory arrangement* when carrying out its value assessment under *PRIN* 2A.4.2R.
- (3) Where a *firm* disagrees with the value for money assessment carried out by the *IGC* or the *governance advisory arrangement* it must:
- (a) explain why it disagrees with the assessment; and
- (b) set out how it considers the *relevant scheme* or *pathway investment* provides fair value.

- (4) In setting out how it considers the *relevant scheme* or *pathway investment* provides fair value the *firm* must use the framework set out in *COBS* 19.5.
- (5) A *firm* that is unable to adequately explain why it disagrees with a value for money assessment conducted under *COBS* 19.5 must apply *PRIN* 2A.4.25R to the *relevant scheme* or *pathway investment*.

## 2A.5 Consumer Duty: retail customer outcome on consumer understanding

### Application

- 2A.5.1 R (1) Other than *PRIN* 2A.5.15R, this section applies to:
- (a) all *firms* involved in the production, *approval* or distribution of *retail customer* communications, regardless of whether the *firm* has a direct relationship with a *retail customer*, and including where a *firm* produces, *approves* or distributes *financial promotions* or other advertisements, sales-related communications, and post-sale communications (and references to a *firm's* communications or a *firm* communicating are to be read accordingly);
  - (b) all communications throughout a *firm's* interactions with *retail customers*, including:
    - (i) before, during, and after any sale of a *product*; and
    - (ii) interactions that do not relate to a specific *product*; and
  - (c) all communications including verbal, visual or in writing, from a *firm* to a *retail customer*, regardless of the channel used or intended to be used for the communication, including *electronic communications*, such as on social media.
- (2) *PRIN* 2A.5.15R, applies to all *firms* within scope of *Principle* 12 in relation to a *firm's* *retail market business*.
- 2A.5.2 G *Retail customers* in this section means the *retail customers* intended to receive the communication.

### Communications to retail customers

- 2A.5.3 R (1) A *firm* must support *retail customer* understanding so that its communications:
- (a) meet the information needs of *retail customers*;
  - (b) are likely to be understood by *retail customers*; and

- (c) equip *retail customers* to make decisions that are effective, timely and properly informed.
- (2) A *firm* must communicate information to *retail customers* in a way which is clear, fair and not misleading.
- 2A.5.4 R With regard to *PRIN 2A.5.3R(1)*:
- (1) for *product*-specific communications, a *firm* should consider the *target market* for that *product*; or
- (2) for non *product*-specific communications, a *firm* should consider its *retail customers*.
- 2A.5.5 R With regard to *PRIN 2A.5.3R(1)(c)*, for a *firm* to provide information on a timely basis, it must communicate in good time for *retail customers* to make effective decisions, including:
- (1) before the purchase of a *product*; and
- (2) at suitable points throughout the lifecycle of the *product*.
- 2A.5.6 R In considering the methods of communicating with *retail customers*, a *firm* must satisfy itself that the communication channel:
- (1) enables the communication of relevant information which *retail customers* are likely to need in a way that supports effective decision making; and
- (2) provides an appropriate opportunity for *retail customers* to review the information and, where relevant, assess their options.
- 2A.5.7 G In supporting the understanding of *retail customers* through its communications, a *firm* should:
- (1) explain or present information in a logical manner;
- (2) use plain and intelligible language and, where use of jargon or technical terms is unavoidable, explain the meaning of any jargon or technical terms as simply as possible;
- (3) make key information prominent and easy to identify, including by means of headings and layout, display and font attributes of text, and by use of design devices such as tables, bullet points, graphs, graphics, audio-visuals and interactive media;
- (4) avoid unnecessary disclaimers; and
- (5) provide relevant information with an appropriate level of detail, to avoid providing too much information such that it may prevent *retail customers* from making effective decisions.

- 2A.5.8 R In supporting the understanding of *retail customers*, the *firm* must tailor communications provided to *retail customers*, taking into account:
- (1) the characteristics of *retail customers*, including any characteristics of vulnerability;
  - (2) the complexity of the *product*;
  - (3) the communication channel(s) used; and
  - (4) the role of the *firm*, including whether the *firm* is providing regulated advice or information only.

Interacting on a one-to-one basis

- 2A.5.9 R When a *firm* is interacting directly with a *retail customer* on a one-to-one basis, such as in branch, during a telephone conversation or other interactive dialogue, the *firm* must, where appropriate:
- (1) tailor the communication to meet the information needs of that *retail customer*, taking into account whether they have characteristics of vulnerability; and
  - (2) ask the *retail customer* whether they understand the information and if they have any further questions, particularly if the information is reasonably regarded as key information, such as where it prompts that *retail customer* to make a decision.

Testing, monitoring and adapting communications

- 2A.5.10 R (1) Where appropriate, a *firm* must:
- (a) test communications before communicating them to *retail customers*; and
  - (b) (as set out in *PRIN* 2A.9) regularly monitor the impact of the communications once they have been communicated, to identify whether they are supporting good outcomes for *retail customers*.
- (2) Where a *firm* has identified any issues in its communications through *PRIN* 2A.5.10R(1), it must:
- (a) investigate the issue;
  - (b) correct any deficiencies through:
    - (i) adapting its communications; and
    - (ii) (where appropriate) adapting its *products* or processes, for example its sales processes, if it is aware or ought to

reasonably be aware that adapting its communications would not be sufficient in isolation to support good outcomes for *retail customers*; and

- (c) (where appropriate) follow the requirements in relation to remedies and other action in *PRIN 2A.2.5R* and *PRIN 2A.10*.

2A.5.11 G With regard to the *firm's* role, it would be more appropriate for the *firm* to:

- (1) test communications if the *firm* is or ought to reasonably be responsible for:
  - (a) the production of those communications; or
  - (b) adapting those communications after testing; and
- (2) monitor the impact of communications where the *firm* has direct interactions with *retail customers*, such as through the provision of customer services (whether outsourced in whole or in part).

2A.5.12 G In determining whether testing of a communication is appropriate, a *firm* should consider factors such as:

- (1) the purpose of the communication and, in particular, if it is designed to prompt or inform a decision, and the relative importance of that decision;
- (2) the context of the communication, its timing, and its frequency (for example, it is likely to be more appropriate to test communications that could impact many *retail customers*);
- (3) the information needs of *retail customers*;
- (4) the characteristics of vulnerability of *retail customers*;
- (5) whether the scope for harm to *retail customers* is likely to be significant, including if the information being conveyed were misunderstood or overlooked by *retail customers*; and
- (6) whether, to support good outcomes for *retail customers*, it is more important to communicate information urgently, rather than carrying out testing beforehand.

2A.5.13 G (1) A *firm* should adapt its communications in accordance with *PRIN 2A.5.10R(2)(b)(i)* to support *retail customer* understanding if it identifies that:

- (a) there are areas of common misunderstanding among *retail customers*; or

- (b) *retail customers* are not experiencing good outcomes, including particular groups of *retail customers* such as those with characteristics of vulnerability.
  - (2) For the purposes of *PRIN* 2A.5.13G(1)(a), if there is a notably different response by *retail customers* than was reasonably anticipated by the *firm* or ought to have been reasonably anticipated, including a notably lower response rate, following a communication prompting *retail customers* to take action, then this would suggest that the communication has not been understood.
- 2A.5.14 R Where a *firm* identifies or becomes aware of a communication produced by another *firm* in its distribution chain that is not delivering good outcomes for *retail customers*, it must promptly notify the issue to the relevant *firm* in the distribution chain, such as a *manufacturer*.

#### Providing information to other firms

- 2A.5.15 R A *firm* must provide information in good time to another *firm* in the same distribution chain, where such information is:
- (1) requested by the other *firm* and is reasonably required; or
  - (2) otherwise considered to be reasonably required by the *firm*,
- so that it can be communicated to *retail customers*.

## 2A.6 Consumer Duty: retail customer outcome on consumer support

### Application

- 2A.6.1 R (1) Other than in *PRIN* 2A.6.6R, this section applies:
- (a) to all *firms* who are responsible for interacting directly with, and providing support to, *retail customers*, such as through its customer services functions and including where the *firm* outsources its interactions with *retail customers* to a third party (in whole or part);
  - (b) regardless of the channel used or intended to be used when interacting with, or providing support to, *retail customers*, including via *electronic communications* such as on social media; and
  - (c) to all support provided by a *firm* to *retail customers*, such as in the course of or in connection with the *firm* providing customer services, including:
    - (i) before, during, and after any sale of a *product*; and
    - (ii) support that does not relate to a specific *product*.

- (2) *PRIN 2A.6.6R* applies to all *firms* within scope of *Principle 12* in relation to a *firm's retail market business*.

Design and delivery of customer support

- 2A.6.2 R A *firm* must design and deliver support to *retail customers* such that it:
- (1) meets the needs of *retail customers*, including those with characteristics of vulnerability;
  - (2) ensures that *retail customers* can use their *product* as reasonably anticipated;
  - (3) ensures that it includes appropriate friction in its customer journeys to mitigate the risk of harm and give *retail customers* sufficient opportunity to understand and assess their options, including any risks; and
  - (4) ensures that *retail customers* do not face unreasonable barriers (including unreasonable additional costs) during the lifecycle of a *product*, such as when they want to:
    - (a) make general enquiries or requests to the *firm*;
    - (b) amend or switch the *product*;
    - (c) transfer to a new *product* provider;
    - (d) access a benefit which the *product* is intended to provide;
    - (e) submit a claim;
    - (f) make a *complaint*; or
    - (g) cancel a contract, agreement or arrangement or otherwise terminate their relationship with the *firm*.
- 2A.6.3 G For the purposes of *PRIN 2A.6.2R(4)*:
- (1) unreasonable barriers are those which are likely to cause *retail customers* to take unreasonable additional steps to progress their objectives, including:
    - (a) steps which are:
      - (i) unreasonably onerous or time consuming;
      - (ii) complex for a *retail customer* to carry out; or
      - (iii) difficult for a *retail customer* to understand; and

- (b) asking *retail customers* for unnecessary information or evidence;
  - (2) where a firm has included appropriate friction in its customer journeys to comply with *PRIN 2A.6.2R(3)*, this would not amount to an unreasonable barrier; and
  - (3) unreasonable additional costs includes where *retail customers* incur unreasonable exit fees or other charges, delays, distress or inconvenience.
- 2A.6.4 G A *firm* would be unlikely to meet its obligations in *PRIN 2A.6.2R* if its support to *retail customers* causes or would be likely to cause:
- (1) prospective *retail customers* to be prioritised over existing *retail customers*;
  - (2) unreasonable delays when *retail customers* attempt to engage with the *firm*, including disproportionately longer call waiting times to cancel or make changes to an existing *product* than to purchase a new *product*; or
  - (3) unreasonable delays to:
    - (a) any payments due to *retail customers* after they have been agreed;
    - (b) the *firm* requesting necessary information or evidence from *retail customers*; or
    - (c) the *firm* processing information or evidence received from *retail customers*.

#### Dealing with representatives

- 2A.6.5 R (1) Where a *person* is authorised by a *retail customer* or by law to assist in the conduct of the *retail customer's* affairs (such as a power of attorney), the *firm* must provide the same level of support to that *person* that they would have provided to the *retail customer*.
- (2) *PRIN 2A.6.5R(1)* does not apply where the *person* assisting in the conduct of the *retail customer's* affairs is also a *firm*.

#### Dealing with requests from other firms

- 2A.6.6 R A *firm* must deal with reasonable requests from another *firm* in an effective way and in good time to enable the other *firm* to support *retail customers*.

### 2A.7 General

Expected standards under Principle 12 and *PRIN 2A*

- 2A.7.1 R *Principle 12* and the obligations in *PRIN 2A* must be interpreted in accordance with the standard that could reasonably be expected of a prudent *firm*:
- (1) carrying on the same activity in relation to the same *product*; and
  - (2) taking appropriate account of the needs and characteristics of *retail customers* based on the needs and characteristics of *retail customers* in the relevant target market or of individual *retail customers* as the context requires.
- 2A.7.2 G What is reasonable depends on all the relevant circumstances, including:
- (1) the nature of the *product* being offered or provided, in particular:
    - (a) the risk of harm to *retail customers*. For example, if a *product* is higher risk, *firms* should take additional care to ensure it meets *retail customers*' needs, characteristics and objectives and is targeted appropriately;
    - (b) the *product*'s relative complexity. *Retail customers* may find it more difficult to assess the features, suitability or value offered by more complicated *products*. Long-term products where the outcome is not easy to predict, or non-standard charging structures, or other features which may not be easy for *retail customers* to understand may require greater care from a *firm* to promote, monitor and support consumer understanding;
    - (c) the costs, fees and charges involved with the *product*;
    - (d) the relative utility to *retail customers* of the *product* as a whole and of specific features, options, or services within the *product*, if subject to separate fees or charges;
  - (2) the characteristics of the *retail customer* or *retail customers* including (to the extent that a *firm* either knows about or should reasonably have known about them), in particular:
    - (a) their reasonable expectations in relation to the *product*; and
    - (b) their resources, degree of financial capability or sophistication, characteristics of vulnerability and corporate structure (where relevant).
  - (3) the *firm*'s role in relation to the *product*, including:
    - (a) the *firm*'s relationship with the *retail customer*. Acting reasonably does not require a *firm* to assume a fiduciary duty or require an advisory service where it does not already exist;

- (b) whether the *firm* has provided or will provide advice to the *retail customer*. What is reasonable may be different where advice is being provided;
- (c) the *firm's* role in the *product's* distribution chain, in particular its role in determining or materially influencing outcomes for *retail customers* in relation to the *product*;
- (d) the stage in the *firm's* relationship with the *retail customer*. There will be times when *retail customers* are particularly exposed to harm, for example when they fall into arrears or are considering long-term investment decisions. The actions a *firm* needs to take to be acting reasonably in such circumstances may be greater than when a *retail customer* is making decisions which carry a lesser risk of adverse outcomes.

2A.7.3 G Acting in a way that could reasonably be expected of a prudent *firm* requires more than adopting a single solution that is reasonable. It includes (among other things) considering whether the preferred solution provides good outcomes for all *retail customers* affected or only some; and if only some, why it does not work for all, and how best to identify additional actions which might mitigate the outcome for those adversely affected.

#### Protected characteristics and characteristics of vulnerability

2A.7.4 G In relation to the needs and characteristics of *retail customers*, a *firm* should, among other things:

- (1) pay appropriate regard to the nature and scale of characteristics of vulnerability that exist in any relevant *target market*;
- (2) pay appropriate regard to the impact of characteristics of vulnerability on the needs of *retail customers* in any relevant *target market*;
- (3) when dealing with a particular *retail customer* pay appropriate regard to the needs and characteristics of that *retail customer*, such as characteristics of vulnerability;
- (4) assist frontline staff to understand how to actively identify information that could indicate vulnerability and, where relevant, seek information from *retail customers* with characteristics of vulnerability that will allow staff to respond to their needs; and
- (5) set up systems and processes in a way that supports and enables *retail customers* with characteristics of vulnerability to disclose their needs.

- 2A.7.5 G (1) *Firms* should be aware that groups of *retail customers* with specific protected characteristics may have, or be more likely to have, characteristics of vulnerability, for example older customers. In addition, where health is a driver of vulnerability it will likely have substantial overlap with the protected characteristic of ‘disability’ under the Equality Act 2010. *Firms* should be mindful of this when considering whether they are compliant with *Principle 12* and *PRIN 2A* and their obligations under the Equality Act 2010 or equivalent legislation.
- (2) *Firms* should keep themselves apprised of any evidence that may emerge that *retail customers* with specific protected characteristics are more likely to have characteristics of vulnerability. *Firms* should take account of any such evidence when considering whether they are compliant with *Principle 12* and *PRIN 2A* and their obligations under the Equality Act 2010 or equivalent legislation.

## 2A.8 Governance and culture

### Governance, strategy and policies

- 2A.8.1 R A *firm* must:
- (1) ensure that *Principle 12* and the obligations in this chapter are reflected in their strategies, governance, leadership and people policies, including incentives at all levels; and
- (2) ensure that *retail customer* outcomes are a central focus of:
- (a) the *firm’s* risk control arrangements under *SYSC*; and
- (b) the *firm’s* internal audit function.

### Staff incentives

- 2A.8.2 G A *firm* should not use staff incentives, performance management or remuneration structures in a way that conflicts with their obligations under *Principle 12* and *PRIN 2A*. *Firms* should be aware that these structures are capable of causing harm to *retail customers* and should design their structures in a way that is consistent with ensuring good outcomes for *retail customers*.

### Governing body report

- 2A.8.3 R A *firm* must prepare a report for its governing body setting out the results of its monitoring under *PRIN 2A.9* and any actions required as a result of the monitoring.
- 2A.8.4 R At least annually, the governing body of a *firm* must:

- (1) review and approve the *firm's* report on the outcomes being received by *retail customers*;
  - (2) confirm whether it is satisfied that the *firm* is complying with its obligations under *Principle 12* and *PRIN 2A*; and
  - (3) assess whether the *firm's* future business strategy is consistent with its obligations under *Principle 12* and *PRIN 2A*.
- 2A.8.5 R When approving the *firm's* report under *PRIN 2A.8.4R(1)*, the governing body of the *firm* must also agree:
- (1) any action required to address any identified risk that *retail customers* may not receive good outcomes;
  - (2) any action required to address any identified instance where *retail customers* have not received good outcomes; and
  - (3) any amendments to the *firm's* business strategy to ensure that it remains consistent with meeting the *firm's* obligations under *Principle 12* and *PRIN 2A*.

## 2A.9 Monitoring of consumer outcomes

### General

- 2A.9.1 R This section sets out the general obligation on *firms* to monitor under *Principle 12* and *PRIN 2A* the outcomes that *retail customers* are experiencing from their *products*.
- 2A.9.2 G The purpose of the monitoring obligation is to enable *firms* to identify whether there are any risks that they are not meeting the requirements of the cross-cutting obligations and the *retail customer* outcomes, and consequently they are not acting to deliver good outcomes for *retail customers*.
- 2A.9.3 G The frequency of monitoring, and the nature of the information a *firm* must collect to effectively monitor the outcomes received by *retail customers* depends on the type of *firm* and its role in the distribution chain, the nature of the *product*, and the *target market*.
- 2A.9.4 G
- (1) The monitoring obligation applies proportionately to a *firm's* role in the distribution chain. Where a *firm* does not have direct contact with *retail customers* it should monitor the outcomes of the service it provides, having regard to any information it has about the outcomes experienced by *retail customers* at the end of the distribution chain.
  - (2) A *firm* that does not have direct contact with *retail customers* should act reasonably to obtain information about the outcomes experienced by *retail customers* of the *products* the *firm* has distributed.

- 2A.9.5 G To the extent that a *firm* is also required to carry out specific monitoring or reviews under any of the outcomes in *PRIN 2A.3* to *PRIN 2A.6*, the specific monitoring or reviews form part of the general monitoring required by this section and *firms* may utilise the information gathered through these processes in preparing the report required under *PRIN 2A.8.3R*.
- 2A.9.6 G In relation to *retail customer* communications, *PRIN 2A.5.10R* to *PRIN 2A.5.14R* set out specific requirements on the testing and monitoring of communications.
- 2A.9.7 G Where a *firm's* compliance with any other *rules* replaces their requirement to comply with provisions of *PRIN 2A*, or tends to show compliance with provisions of *PRIN 2A*, the *firm* may use any monitoring or reviews it carries out under those other *rules* in complying with its monitoring obligations under this section.

#### Requirement to monitor retail customer outcomes

- 2A.9.8 R A *firm* must regularly monitor the outcomes *retail customers* receive from:
- (1) the *products* the *firm manufactures* or *distributes*;
  - (2) the communications the *firm* has with *retail customers*; and
  - (3) the customer support the *firm* provides to *retail customers*.
- 2A.9.9 R The monitoring carried out by a *firm* must enable it to determine at least:
- (1) whether *retail customers* are being, or have been, sold *products* that have been designed to meet their needs, characteristics and objectives;
  - (2) whether the *products* that *retail customers* purchase provide fair value and appropriate action has been taken to address *products* identified as not providing fair value;
  - (3) whether *retail customers* are equipped with the right information to make effective, timely and properly informed decisions; and
  - (4) whether *retail customers* receive the support they need.
- 2A.9.10 R The *firm's* monitoring must also enable it to identify:
- (1) whether the *firm* is complying with *Principle 12* and the cross-cutting obligations in *PRIN 2A.2*;
  - (2) whether for any *product* the *firm manufactures* or *distributes*, any group of *retail customers* is experiencing different outcomes compared to another group of *retail customers* of the same *product*; and

- (3) whether any *retail customers* have suffered harm as a result of the *firm's* acts or omissions.

#### Action required of firms

- 2A.9.11 R A *firm* must have in place processes to identify the root causes of any failure to deliver the outcomes listed in *PRIN 2A.9.9R* for *retail customers*.
- 2A.9.12 R Where a *firm* identifies that:
- (1) *retail customers* are not receiving the outcomes listed in *PRIN 2A.9.9R*, or there is a risk that *retail customers* will not receive these outcomes;
  - (2) any group of *retail customers* for a *product* are receiving worse outcomes than another group of *retail customers* for the same *product*;
  - (3) the *firm* is not complying with *Principle 12* and the cross-cutting obligations in *PRIN 2A.2*,
- it must take appropriate action to address the situation.
- 2A.9.13 G *PRIN 2A.9.12R* does not require a *firm* to take action to remove the effects of risks inherent in a *product* that the *firm* reasonably believed the *retail customer* understood and accepted.
- 2A.9.14 G *Firms* should have regard to *PRIN 2A.10* in considering what may be appropriate action under *PRIN 2A.9.12R*.

#### Record keeping

- 2A.9.15 G *SYSC 3* and *SYSC 9* contain high level requirements in relation to record keeping. *Firms* will need to decide, in line with these requirements, what records they need to keep in relation to their obligations under *Principle 12*, the cross-cutting obligations and the consumer outcomes.

#### Obligation to notify the FCA

- 2A.9.16 G *Firms* are reminded of their obligations under *Principle 11* to inform the *FCA* of anything relating to the *firm* of which the *FCA* would reasonably expect notice.
- 2A.9.17 R A *firm* in a distribution chain must notify the *FCA* if it becomes aware that any other *firm* in that distribution chain is not or may not be complying with *Principle 12* or *PRIN 2A*.

## 2A.10 Redress or other appropriate action

### Purpose

- 2A.10.1 G The purpose of this section is to set out the conduct required of *firms* where they identify foreseeable harm has been caused to *retail customers*.

Appropriate action

- 2A.10.2 R Where a *firm* is considering what action may be appropriate under *PRIN* 2A.2.5R:

- (1) if a *complaint* or *MiFID complaint* has been received a *firm* shall follow the *rules* in *DISP* as applicable;
- (2) if no *complaint* or *MiFID complaint* has been received the following *rules* and *guidance* apply with the modifications set out below:

- (a) *DISP* 1.1A.20R as if it read:

Once foreseeable harm has been identified by a *MiFID investment firm*, the *firm* must:

- (1) investigate the circumstances which led to the foreseeable harm competently, diligently and impartially, obtaining additional information as necessary;
- (2) assess fairly, consistently and promptly:
  - (a) the subject matter of the foreseeable harm;
  - (b) [does not apply]
  - (c) what remedial action or redress (or both) may be appropriate;
  - (d) if appropriate, whether it has reasonable grounds to be satisfied that another *firm* may be solely or jointly responsible for causing the foreseeable harm;
- (3) comply promptly with any offer of remedial action or redress accepted by the *retail customer*.

- (b) *DISP* 1.1A.21G as if it read:

Factors that may be relevant in the assessment of the foreseeable harm under *DISP* 1.1A.20R(2) include the following:

- (1) all the evidence available and the particular circumstances of the foreseeable harm;
- (2) similarities with complaints received by the *firm* and with other instances in which foreseeable harm has been caused without a complaint;

- (3) relevant guidance published by the *FCA*, other relevant regulators, the *Financial Ombudsman Service* or former schemes; and
- (4) appropriate analysis of decisions by the *Financial Ombudsman Service* concerning *complaints* which were similar in their fact pattern or outcomes to the circumstances which led to the foreseeable harm in question.

(c) *DISP* 1.4.1R as if it read:

Once foreseeable harm has been identified by a *firm*, it must:

- (1) investigate the circumstances which led to the foreseeable harm competently, diligently and impartially, obtaining additional information as necessary;
- (2) assess fairly, consistently and promptly:
  - (a) the subject matter of the foreseeable harm;
  - (b) [does not apply]
  - (c) what remedial action or redress (or both) may be appropriate;
  - (d) if appropriate, whether it has reasonable grounds to be satisfied that another *firm* may be solely or jointly responsible for causing the foreseeable harm;

taking into account all relevant factors.

- (3) offer redress or remedial action when it decides this is appropriate;
- (4) explain to the *retail customer* promptly and in a way that is fair, clear and not misleading that harm has been identified, its assessment of the harm, its decision as to what action is appropriate and the fact that the *retail customer* has a right to make a *complaint* if it is not satisfied with that decision;
- (5) comply promptly with any offer of remedial action or redress accepted by the *retail customer*.

(d) *DISP* 1.4.2G as if it read:

Factors that may be relevant in the assessment of the foreseeable harm under *DISP* 1.4.1R(2) include the following:

- (1) all the evidence available and the particular circumstances of the foreseeable harm;
- (2) similarities with *complaints* received by the *firm* and with other instances in which foreseeable harm has been caused without a *complaint*;
- (3) relevant guidance published by the *FCA*, other relevant regulators, the *Financial Ombudsman Service* or former schemes; and
- (4) appropriate analysis of decisions by the *Financial Ombudsman Service* concerning *complaints* which were similar in their fact pattern or outcomes to the circumstances which led to the foreseeable harm in question (the procedures for which are described in *DISP* 1.3.2AG).

- 2A.10.3 R A *firm*, *MiFID investment firm* or *third country investment firm* which identifies that it has caused *retail customers* foreseeable harm but which does not have a *client* relationship with that customer or the means to contact them shall take all reasonable steps to notify a customer of the matters in *DISP* 1.4.1R as modified by *PRIN* 2A.10.2R(2).
- 2A.10.4 G Reasonable steps for the purposes of 2A.10.3R might include (among other things) contacting the *distributor* of the relevant *product* and asking whether information can be passed on to the *retail customer*.
- 2A.10.5 R Where a *firm*, *MiFID investment firm* or *third country investment firm* identifies that a *retail customer* has been caused harm but concludes that another *firm* in the distribution chain was the sole or joint cause of that harm, it shall promptly notify that other *firm* and provide appropriate information about the harm caused.

## 2A.11 Sale and purchase of product books

- 2A.11.1 R This section applies where:
- (1) a *firm* has purchased or purchases a *product* book from another *firm*; and
  - (2) a *firm* sells a *product* book.
- 2A.11.2 R (1) Where the *product* book was purchased before 31 July 2023, the *firm* must comply with *Principle* 12 and *PRIN* 2A.
- (2) Unless:
- (a) the *firm* was a co-manufacturer of the *product*; or

- (b) the *firm* has significantly adapted the *product* on or after 31 July 2023,

the requirement in (1) to comply with *PRIN 2A.3* and *PRIN 2A.4* is a requirement on the *firm* to use its best endeavours to comply with the applicable *rules* in those chapters.

- 2A.11.3 G A *firm* that is required to apply *PRIN 2A.3* or *2A.4* to a *product* book on a ‘best endeavours’ basis should continue to have regard to the *RPPD* and should read references in the *RPPD* to *Principles 6* and *7* as referring to *Principle 12*.
- 2A.11.4 R
- (1) This *rule* applies where a *product* book is sold for the first time after 31 July 2023.
  - (2) The *firm* selling the *product* book must provide relevant information to the purchasing *firm* to enable the purchasing *firm* to comply with *Principle 12* and *PRIN 2A* from the date of purchase.
  - (3) A *firm* which purchases a *product* book after 31 July 2023 must carry out sufficient due diligence to ensure they understand in particular:
    - (a) whether any group or groups of *retail customers* of the *product* have characteristics of vulnerability or as a group have in common a specific protected characteristic in the same form (for example customers of the same sex or race);
    - (b) the outcome of the selling *firm*’s product approval process for the *product* book and the outcome of any *product* reviews carried out by the selling *firm* under *PRIN 2A.3*;
    - (c) the benefits the *product* is intended to provide and the costs the *retail customer* pays for the *product*; and
    - (d) the basis on which the *product* has been assessed as providing fair value under *PRIN 2A.4*.
  - (4) The due diligence conducted by the purchasing *firm* must be sufficient to enable the purchasing *firm* to comply with *Principle 12* and *PRIN 2A* in respect of the *product* book.
- 2A.11.5 R Where a *firm* purchases a *product* book after 31 July 2023 and the first sale of that *product* book took place before 31 July 2023, the *firm* must apply *PRIN 2A.11.2R*.

Amend the following as shown.

### **3 Rules about application**

#### **3.1 Who?**

...

3.1.6 R A *firm* will not be subject to a *Principle* or PRIN 2A to the extent that it would be contrary to the requirements of an *EU* measure passed or made before *IP completion day*, to the extent that those requirements continue to have effect after *IP completion day* under the *EUWA*.

3.1.7 G PRIN 4 provides specific guidance on the application of the *Principles* and PRIN 2A for *MiFID business*.

3.1.8 R The *Principles* will not apply to the extent that they purport to impose an obligation which is inconsistent with requirements which implemented the *Payment Services Directive*, the *Consumer Credit Directive* or the *Electronic Money Directive*. For example, there may be circumstances in which *Principle 6 12* and PRIN 2A may be limited by the conduct of business obligations derived from the *Payment Services Directive* and the *Electronic Money Directive* and applicable to *payment service providers* and *electronic money issuers* (see Parts 6 and 7 of the *Payment Services Regulations* and Part 5 of the *Electronic Money Regulations*) or derived from the *Consumer Credit Directive* (see, for example, the information requirements in the *Consumer Credit (Disclosure of Information) Regulations 2010 (SI 2010/1013)*).

...

3.1.10 R Only *Principles* 1, 2, 3, 7, 9, and 11, 12 and PRIN 2A, and to the extent that Principle 12 and PRIN 2A do not apply Principle 7, apply to a *TP UCITS qualifier* and a *TP AIFM qualifier*, and only with respect to the activities in *PRIN 3.2.2R* (*Communication and approval of financial promotions*).

...

3.1.12 R Principle 12 and PRIN 2A only apply where a *client* is a *retail customer*, or there is *distribution chain* which involves a *retail customer*.

3.1.13 R Principle 12 and PRIN 2A apply to:

- (1) a *TP firm*; and
- (2) a *Gibraltar-based firm*.

## 3.2 What?

3.2.1A R PRIN (other than Principle 12 and PRIN 2A) applies with respect to the carrying on of:

- (1) *regulated activities*;
- (2) activities that constitute *dealing in investments as principal*, disregarding the exclusion in *article 15* of the *Regulated Activities Order* (*Absence of holding out* etc);

- (3) *ancillary activities in relation to designated investment business, home finance activity, credit-related regulated activity, insurance distribution activity and accepting deposits; and*
- (4) *activities directly arising from insurance risk transformation.*

...

Principle 12 and PRIN 2A: additional application provisions

- 3.2.6 **R** *Principle 12 and PRIN 2A apply to a firm's retail market business only, including in respect of existing products and closed products.*
- 3.2.7 **R** *Where a firm's retail market business involves operating in a distribution chain, Principle 12 and PRIN 2A apply only to the extent that the person is responsible in the course of that retail market business for determining or materially influencing retail customer outcomes.*
- 3.2.8 **R** *Subject to PRIN 3.2.7R, Principle 12 and PRIN 2A do not apply to activities to the extent that those activities are not included in a rule which sets out the scope of protections offered to retail customers by COBS, ICOBS, MCOB, BCOBS, CMC OB, FPCOB, PROD or CONC.*
- 3.2.9 **G** *Where an activity is carried on within the scope of an exemption in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 it is not an activity to which Principle 12 and PRIN 2A apply.*

Interaction between Principle 12 and Principles 6 and 7

- 3.2.10 **R** *Principles 6 and 7 do not apply to a firm's activities to the extent that Principle 12 and PRIN 2A apply.*
- 3.2.11 **G** *Activities to which Principles 6 and 7 rather than Principle 12 and PRIN 2A may apply include, for example, services provided to professional clients.*
- 3.2.12 **G** *Principle 12 and PRIN 2A have a broader application than Principles 6 and 7, for example they apply to firms in the distribution chain for whom the retail customer may not be a client.*

...

### 3.3 Where?

- 3.3.1 **R** Territorial application of the Principles

Principle	Territorial application
...	...
<i>Principles 6, 7, 8, 9<sub>2</sub> and 10</i>	<i>Principle 8, in a prudential context, applies with respect to activities wherever they are carried on; otherwise these Principles apply with respect to</i>

	activities carried on from an establishment maintained by the <i>firm</i> (or its appointed representative) in the <i>United Kingdom</i> , or in respect of <i>regulated claims management activities</i> , apply with respect to activity carried on in <i>Great Britain</i> , even if the establishment from which it is carried on is not located in the <i>UK</i> (see <i>PERG 2.4A</i> ), unless another applicable <i>rule</i> or <i>onshored regulation</i> which is relevant to the activity has a wider territorial scope, in which case the <i>Principle</i> applies with that wider scope in relation to the activity described in that <i>rule</i> or <i>onshored regulation</i> .
<i>Principle 11</i>	applies with respect to activities wherever they are carried on.
<u><i>Principle 12 and PRIN 2A</i></u>	<u>apply with respect to activities carried on with <i>retail customers</i> located in the <i>United Kingdom</i> unless another applicable <i>rule</i> or <i>onshored regulation</i> which is relevant to the activity has a different territorial scope, in which case <i>Principle 12</i> and <i>PRIN 2A</i> apply with that scope in relation to the activity described in that <i>rule</i> or <i>onshored legislation</i>.</u>

...

### 3.4 General

...

#### Guarantors etc

- 3.4.3A R (1) Paragraph (2) applies in relation to an *individual* who:
- (a) has provided, or is to provide, a guarantee or an indemnity (or both) in relation to a *regulated credit agreement*, a *regulated consumer hire agreement* or a *P2P agreement*; and
  - (b) is not the *borrower* or the *hirer*.
- (2) If the *individual* is not a *customer*, they are to be treated as if they were a *customer* for the purposes of *Principles 6* and *7* and as if they were a *retail customer* for the purposes of *Principle 12* and *PRIN 2A*.
- (3) For the purposes of this *rule*, a guarantee does not include a *legal or equitable mortgage* or a *pledge*.

...

## 4 Principles: MiFID business

## 4.1 Principles: MiFID business

- 4.1.1 G *PRIN 3.1.6R* gives effect to the provisions of the *EUWA* concerning the continuing application of the principle of the supremacy of *EU* law. It ensures that the *Principles* and *PRIN 2A* do not impose obligations upon *firms* which are inconsistent with a relevant *EU* measure. If a *Principle* or *PRIN 2A* does purport to impose such an obligation *PRIN 3.1.6R* disapplies that *Principle* or provision of *PRIN 2A*, but only to the extent necessary to ensure compatibility with the relevant *EU* measure. This disapplication has practical effect only for certain matters covered by *MiFID*, which are explained in this section.

Where?

- 4.1.2 G Under *PRIN 3.3.1R*, the territorial application of a number of *Principles* and *PRIN 2A* to a *UK MiFID investment firm* is extended to the extent that another applicable *rule* or *onshored regulation* which is relevant to an activity has a wider territorial scope.

...

What?

- 4.1.4 G (1) ...
- (2) Under *PRIN 3.1.6R*, these disapplications may affect *Principles 1, 2, 6, and 9, 12 and PRIN 2A*. *PRIN 3.1.6R* applies only to the extent that the application of a *Principle* or *PRIN 2A* would be contrary to the *UK's* obligations under a relevant *EU* measure in respect of a particular transaction or matter. In line with *MiFID*, these limitations relating to *eligible counterparty business* and transactions under the rules of a *multilateral trading facility* or on a *regulated market* only apply in relation to a *firm's* conduct of business obligations to its clients derived from *MiFID*. They do not limit the application of those *Principles* or *PRIN 2A* in relation to other matters, such as client asset protections, systems and controls, prudential requirements and market integrity. Further information about these limitations is contained in *COBS 1 Annex 1*.
- (3) *Principles 3, 4, 5, 7, 8, 10 and 11* are not limited in this way.

...

## TP 1 Transitional provisions

### TP 1.1

	Material to which the transitional provision applies		Transitional Provision	Transitional Provision: dates in force	Handbook provision: coming into force
1.	<i>PRIN 1 Annex 1R 1.2(2)</i>	R	A <i>firm</i> need not comply with <i>PRIN 1 Annex 1R 1.2(2)</i> in relation to an <i>eligible counterparty</i> if the <i>client</i> was correctly categorised as a <i>market counterparty</i> on 31 October 2007 and the <i>firm</i> complied with <i>COB 4.1.12R(2)</i> (Large intermediate customer classified as market counterparty).	From 1 November 2007 indefinitely	1 November 2007
<u>2.</u>	<u><i>Principle 12 and PRIN 2A</i></u>	R	<u><i>Principle 12 and PRIN 2A apply in relation to ancillary activities or other connected activities in accordance with PRIN 3.2 where those activities are carried on after 31 July 2023 regardless of whether the underlying activities were carried on before or after 31 July 2023.</i></u>	<u>From 31 July 2023 indefinitely</u>	<u>31 July 2023</u>
<u>3.</u>	<u><i>Principle 12 and PRIN 2A</i></u>	G	<u>An example of how <i>PRIN TP 1.1</i> paragraph 2 applies is that a <i>firm</i> which has <i>accepted a deposit</i> prior to 31 July 2023 would be subject to <i>Principle 12 and PRIN 2A</i> in respect of customer services or other <i>ancillary activities</i> related to that deposit carried on after 31 July 2023.</u>	<u>From 31 July 2023 indefinitely</u>	<u>31 July 2023</u>

	Material to which the transitional provision applies		Transitional Provision	Transitional Provision: dates in force	Handbook provision: coming into force
<u>4</u>	<u>Principle 12, PRIN 2A</u>	R	<u>Except to the extent specified in PRIN TP5 and TP6, the provisions listed in column 2 only apply to a closed product from 31 July 2024.</u>	<u>From 31 July 2023 indefinitely</u>	<u>31 July 2023</u>
<u>5</u>	<u>PRIN 2A.3 and PRIN 2A.4</u>	R	<u>A manufacturer of a closed product must review the closed product by 31 July 2024 and ensure it meets the requirements of PRIN 2A.3 and PRIN 2A.4, including taking any appropriate mitigating action required by those rules.</u>	<u>From 31 July 2023 to 31 July 2024</u>	<u>31 July 2023</u>
<u>6</u>	<u>PRIN 2A.11.4R</u>	R	<p><u>Where a firm proposes to sell a book of closed products between 31 July 2023 and 30 July 2024 inclusive:</u></p> <p>(1) <u>the purchasing firm will only be required to comply with Principle 12 and PRIN 2A from 31 July 2024;</u></p> <p>(2) <u>the selling firm is not required to provide the information specified in PRIN 2A.11.4R(3)(b) and (d); and</u></p> <p><u>(3) the selling firm must provide relevant information to enable the purchasing firm to comply with the</u></p>	<u>From 31 July 2023 to 31 July 2024</u>	<u>31 July 2023</u>

	Material to which the transitional provision applies		Transitional Provision	Transitional Provision: dates in force	Handbook provision: coming into force
			<u>obligations that will apply to it from 31 July 2024.</u>		
<u>7</u>	<u>PRIN 2A.8.3R-2A.8.5R and PRIN 2A.9</u>	<u>G</u>	<u>Where a <i>firm</i> has both <i>existing</i> and <i>closed products</i> the first annual report compiled by the <i>firm</i> under <u>PRIN 2A.8.3R-2A.8.5R</u> using its monitoring under <u>PRIN 2A.9</u> need only refer to the <i>firm's</i> new and <i>existing products</i>.</u>	<u>From 31 July 2023 indefinitely</u>	<u>31 July 2023</u>

## Annex C

## Amendments to the Code of Conduct sourcebook (COCON)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

## 1 Application and purpose

### 1.1 Application

...

To whom does it apply?

...

1.1.3 R *Rules 1 to ~~5~~ 6 in COCON 2.1 apply to all conduct rules staff.*

...

1.1.5 G ...

1.1.5A R The conduct of a member of the *conduct rules staff* of a *firm* is not within the scope of *Rule 6* in *COCON 2.1* (You must act to deliver good outcomes for retail customers):

(1) unless the corresponding *COCON firm activities* of the *firm* are within the scope of *PRIN 3.1* (Who?) so far as it applies to *Principle 12*; and

(2) except to the extent that *Principle 12* applies to that *firm* under *PRIN 3.1*.

To what conduct does it apply?

1.1.5B R (1) The restrictions of the scope of *COCON* in *COCON 1.1.7AR* to *COCON 1.1.7ER* (when they apply) are in addition to those in *COCON 1.1.6R* to *COCON 1.1.7R*.

(2) The restrictions of the scope of *COCON* in *COCON 1.1.7AR* to *COCON 1.1.7ER* (when they apply) are cumulative.

1.1.5C G (1) The effect of *COCON 1.1.5BR(1)* is that conduct that is within the scope of *COCON 1.1.7AR* to *COCON 1.1.7ER* but outside the scope of *COCON 1.1.6R* to *COCON 1.1.7R* is outside the scope of *COCON* and vice versa.

(2) The effect of *COCON 1.1.5BR(2)* is that conduct of a member of the *conduct rules staff* of a *firm*:

- (a) is outside the scope of COCON even if it is excluded by only one of the rules in COCON 1.1.7AR to COCON 1.1.7ER; and
- (b) is outside the scope of:
  - (i) Rule 4 in COCON 2.1 (You must pay due regard to the interests of customers and treat them fairly) even if the only rule excluding it is COCON 1.1.7ER; and
  - (ii) Rule 6 in COCON 2.1 (You must act to deliver good outcomes for retail customers) even if the only rule excluding it is COCON 1.1.7CR.

...

1.1.7 R ...

1.1.7-A R (1) The term “COCON firm activities” means (in relation to conduct of P in relation to Firm A) the corresponding activities of Firm A as referred to in COCON 1.1.6R to COCON 1.1.7R (To what conduct does it apply?).

(2) A person is a member of the conduct rules staff of Firm A if they meet the description of P in relation to that firm in COCON 1.1.6R to COCON 1.1.7R.

(3) The terms “P” and “Firm A” have the same meaning as they do in COCON 1.1.6R to COCON 1.1.7R.

1.1.7A R ...

(3) ...

(4) This rule does not apply to Rule 6 in COCON 2.1 (You must act to deliver good outcomes for retail customers).

1.1.7B R ...

1.1.7C R The conduct of a member of the conduct rules staff of a firm is not within the scope of Rule 6 in COCON 2.1 (You must act to deliver good outcomes for retail customers) unless the corresponding COCON firm activities of the firm are within the scope of PRIN 3.2 (What?) so far as it applies to Principle 12.

1.1.7D G The effect of COCON 1.1.7C is that a person’s conduct is not within the scope of Rule 6 in COCON 2.1 if the related activities of the firm fall outside the scope of Principle 12. If Principle 12 applies, Rule 6 in COCON 2.1 only applies if the conduct is also within the scope of the other relevant COCON application rules (although one of the COCON application rules (COCON 1.1.7AR) does not apply to Rule 6).

1.1.7E R To the extent that Rule 6 in COCON 2.1 (You must act to deliver good outcomes for retail customers) applies to the conduct of a person, Rule 4 in

COCON 2.1 (You must pay due regard to the interests of customers and treat them fairly) does not apply to that conduct of that person.

1.1.8 G (1) More than one of ~~COCON 1.1.6R to COCON 1.1.7BR~~ COCON 1.1.7ER may apply to the same individual performing several roles.

...

...

Where does it apply?

1.1.8B R The restrictions of the scope of COCON in COCON 1.1.9R to COCON 1.1.10R on the one hand and COCON 1.1.11C on the other are cumulative.

...

1.1.11B G ...

1.1.11C R The conduct of a member of the *conduct rules staff* of a *firm* is not within the scope of *Rule 6* in *COCON 2.1 (You must act to deliver good outcomes for retail customers)* unless the corresponding *COCON firm activities of the firm* are within the scope of *PRIN 3.3 (Where?)* so far as it applies to *Principle 12*.

1.1.11D G The effect of *COCON 1.1.8BR* and *COCON 1.1.11CR* is that conduct of a member of a *firm's conduct rules staff* is only within the territorial scope of *Rule 6* in *COCON 2.1* if it is within the scope of *COCON 1.1.9R to COCON 1.1.10R* and the corresponding activity of their *firm* is within the territorial scope of *Principle 12* as set out in *PRIN 3.3*.

...

## 2 Individual conduct rules

### 2.1 Individual conduct rules

...

2.1.5 R ...

2.1.6 R *Rule 6: You must act to deliver good outcomes for retail customers.*

[Note: See COCON 2.4 for what this means]

...

Insert the following new section COCON 2.4, after COCON 2.3 (Firms: training and breaches). All of the text is new and is not underlined.

### 2.4 The Consumer Duty

## Application

- 2.4.1 R This section applies to *Rule 6* in *COCON 2.1* (You must act to deliver good outcomes for retail customers).
- 2.4.2 R In this section, the term “you” means a member of a *firm’s conduct rules staff*.

## Meaning of retail customer

- 2.4.3 R (1) This *rule* describes how the definition of *retail customer* applies for the purposes of *Rule 6*.
- (2) A *retail customer* means, in relation to a member of the *conduct rules staff* of a *firm*, a *retail customer* of that *firm* for the purposes of *PRIN*.
- 2.4.4 G A *person* may be a *retail customer* of a *firm* for the purposes of *Rule 6* even though that *person* is not a direct client of that *firm* and there is no direct relationship between them. This is in particular the effect of paragraphs (2)(f) and (2)(g) of the definition of *retail customer*.

## Obligations: Introduction

- 2.4.5 R (1) *COCON 2.4.6R* to *COCON 2.4.8R* exhaust what is required by *Rule 6*.
- (2) Any reference in the *Handbook* to the obligations on a member of a *firm’s conduct rules staff* under *Rule 6* is a reference to the requirements imposed by *COCON 2.4.6R* to *COCON 2.4.8R*.

## Obligations: Rules

- 2.4.6 R (1) You must act in good faith towards *retail customers*.
- (2) Acting in good faith is a standard of conduct characterised by honesty, fair and open dealing and acting consistently with the reasonable expectations of *retail customers*.
- 2.4.7 R You must avoid causing foreseeable harm to *retail customers*.
- 2.4.8 R You must enable and support *retail customers* to pursue their financial objectives.

## Reasonable application of Individual Conduct Rule 6

- 2.4.9 R The obligations in *Rule 6* must be interpreted in accordance with the standard that could reasonably be expected of a prudent *person* subject to *COCON* (as set out in *COCON 1* (Application)):
- (1) carrying on the same activity in relation to the same *product*; and

- (2) taking appropriate account of the needs and characteristics of *retail customers* based on the needs and characteristics of *retail customers* in the relevant target market or of individual *retail customers* as the context requires.

#### References to Principle 12

- 2.4.10 R Any reference in *COCON* to *Principle 12* must be read in accordance with *PRIN 2A.1.1R* and *PRIN 2A.1.2R* (Application) and *PRIN 2A.2.26R* (Interaction between Principle 12 and cross-cutting obligations).

Amend the following as shown.

## 4 Specific guidance on individual conduct rules

### 4.1 Specific guidance on individual conduct rules

...

- 4.1.18 G ...

Rule 6: You must act to deliver good outcomes for retail customers: Relevance of rules and guidance in PRIN

- 4.1.19 G The guidance in PRIN 2A.2 (Cross-cutting obligations) will also be helpful in interpreting COCON 2.4.6R to COCON 2.4.8R and thus Rule 6.

- 4.1.20 G (1) The rules in PRIN 2A.2, insofar as not mirrored in COCON, will also be helpful in interpreting COCON 2.4.6R to COCON 2.4.8R and thus Rule 6.

(2) So for example, in line with PRIN 2A.2.9R, in COCON 2.4.7R:

- (a) foreseeable harm may be caused by both act and omission;
- (b) if the relationship of the firm for which the relevant member of its conduct rules staff works with a retail customer is through its role in a distribution chain, foreseeable harm may be caused even where another firm in that chain also contributes to the harm; and
- (c) foreseeable harm may be caused even where another person working for the firm is also responsible for or contributes to the harm.

- 4.1.21 G The outcomes rules in PRIN 2A.3 to PRIN 2A.6 are also useful in defining what is required by Rule 6. However, the outcomes rules do not exhaust Principle 12 and PRIN 2A.2 and so those rules are not a comprehensive guide to Rule 6.

- 4.1.22 G A reasonableness requirement applies to *Rule 6* (see *COCON 2.4.9R*). The *guidance* in *PRIN 2A.7* (General) on the corresponding *PRIN rule* will also be helpful in interpreting *COCON 2.4.9R*.
- 4.1.23 G *PRIN 2A* applies to the whole of the *firm*. Particularly for junior staff, this may mean that it sometimes imposes requirements or sets out expectations that are beyond the scope of the job of a member of a *firm's conduct rules staff*, thereby limiting its use as a guide to what is required under *Rule 6*. However, even when that is the case, it may still be useful as a guide to what a member of a *firm's conduct rules staff* should try to help their *firm* achieve within the scope of their job.

Rule 6: You must act to deliver good outcomes for retail customers: Relationship with Rule 4

- 4.1.24 G In general terms, *Rule 6* imposes a higher and more exacting standard of conduct in relation to a *firm's retail market business* relative to what *Rule 4* in *COCON 2.1* (You must pay due regard to the interests of customers and treat them fairly) would have otherwise required. *Rule 6* also has a broader application in relation to a *firm's retail market business* relative to *Rule 4*, with a greater focus on consumer protection outcomes for *retail customers*, including where those *retail customers* do not stand in a *client* relationship with that *firm* in the distribution chain.
- 4.1.25 G While the *guidance* on *Rule 4* in *COCON 2.1* will remain relevant to someone in considering their obligations under *Rule 6*, a *person* should also take due account of the inherent limits of *guidance* on *Rule 4* in light of the factors in *COCON 4.1.24G*.
- 4.1.26 G To the extent that the *guidance* on *Rule 4* in *COCON 2.1* says that behaviour would amount to a breach of *Rule 4* in the event that *Rule 4* had applied, that behaviour is likely to amount to a breach of *Rule 6*.
- 4.1.27 G Where a *person* is acting in accordance with *guidance* on *Rule 4*, that should not be relied on alone in considering how to comply with *Rule 6*. A *person* also needs to consider all their obligations not only under *COCON*, but under any other applicable law.

Rule 6: You must act to deliver good outcomes for retail customers: Scope

- 4.1.28 G *Rule 6* applies to all *conduct rules staff*, regardless of whether the *person* has direct contact or dealings with *retail customers*. *Persons* subject to the *rules* in *COCON* should consider how their actions (or their failure to act) can affect the interests of *retail customers* or result in *retail customers* not obtaining a good outcome.

Rule 6: You must act to deliver good outcomes for retail customers: Reasonable application

- 4.1.29 G *COCON 2.4.9R* says that *Rule 6* must be interpreted in accordance with the standard that could reasonably be expected of a prudent member of a *firm's*

conduct rules staff. Factors relevant to this standard (in addition to the factors referred to in the material referred to in COCON 4.1.22G) include:

- (1) their seniority;
- (2) the scope of their job and in particular the degree to which the responsibilities of the job are able to affect the outcomes experienced by retail customers;
- (3) their level of expertise and experience;
- (4) the expertise and experience that their firm reasonably expects them to have;
- (5) the expertise and experience that their firm should (under the regulatory system) ensure they have; and
- (6) the degree of discretion and judgment the person has in their job, including, for example, whether they are bound to a script or process when dealing with retail customers and how much discretion and judgment any such script or process leaves to them.

4.1.30 G Someone in a management position is likely to have a greater ability to influence the outcomes experienced by retail customers than someone who is not. As described in COCON 4.1.4G to COCON 4.1.8G (Acting with due skill, etc as a manager (rule 2)) and, in the case of an SMF manager, COCON 4.2 (Specific guidance on senior manager conduct rules), someone in a management position has a wide duty to understand, manage, control and oversee the business for which they are responsible. A manager should perform those duties with a view to ensuring that retail customers receive good outcomes.

4.1.31 G The ability of a manager of a business area to achieve good outcomes for retail customers is likely to reflect the ability of their business area to do so. So for example the head of a business area dealing with retail customers will have a correspondingly significant responsibility to ensure that those retail customers get good outcomes.

4.1.32 G Seniority may be relevant to the extent to which it is reasonable for a member of a firm's conduct rules staff to be expected to:

- (1) analyse how their area of responsibilities fits into the overall systems and processes of the firm for ensuring good outcomes for retail customers;
- (2) analyse the policies and procedures about retail customers the firm imposes on the person and on the part of the business in which they work; and
- (3) make suggestions for changes to those things.

- 4.1.33 G Seniority may also be relevant to the extent to which it is reasonable to expect a member of a *firm's conduct rules staff* to be concerned with policies and procedures about *retail customers* on a *firm-wide* basis and not just for their area of direct responsibility. This is particularly the case for *SMF managers* who are members of their *firm's governing body* or other senior management forums and for other members of a *firm's governing body*.
- 4.1.34 G On the other hand, the scope of the job of a junior staff member carrying out a back office function may not give much of an opportunity to take steps to ensure good outcomes for a *retail customer* on the sale of a *product*.
- 4.1.35 G A salesperson or a member of the customer support staff is likely to have a significant influence on the outcomes that a *retail customer* receives. This is the case even if they are junior or subject to a detailed set of procedures.

## 4.2 Specific guidance on senior manager conduct rules

...

SC4: You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice

...

4.2.30 G ...

- 4.2.31 G The fact that the *firm* for which an *SMF manager* works is under an obligation to report something to the *FCA* is relevant to the *SMF manager's* duties under SC4. So for example if the *firm* for which an *SMF manager* works is obliged by *PRIN 2A.9.17R* to notify the *FCA* that another *firm* is not or may not be complying with *Principle 12* or *PRIN 2A*, the *SMF manager* should:
- (1) ensure that the *firm* reports that to the *FCA* (or do so themselves) if the matter is within the scope of the *SMF manager's* responsibilities;  
or
  - (2) check whether the *firm* has notified the matter if the matter is outside the responsibilities of the *SMF manager* but the *SMF manager* is unable to assume that the *firm* has notified it.

...

**Annex D****Amendments to the General Provisions (GEN)**

In this Annex, underlining indicates new text.

**2 Interpreting the Handbook**

...

**2.2 Interpreting the Handbook**

...

Guidance applying while a firm has temporary permission

...

2.2.35A G A *TP firm* should refer to the provisions listed below, which identify the *rules* and *guidance* in their sourcebooks that came into force after *IP completion day* and in respect of which special provision has been made to apply them to *TP firms*.

*PRIN 3.1.13R*,

*COBS 1.1.1CR*,

...

...

## Annex E

### Amendments to the Product Intervention and Product Governance sourcebook (PROD)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 1 Product Intervention and Product Governance Sourcebook (PROD)

...

#### 1.3 Application of PROD 3

...

Other firms manufacturing or distributing financial instruments or structured deposits

- 1.3.2 R (1) Subject to (2) ~~Other~~ other firms which *manufacture* or *distribute financial instruments* or *structured deposits* should take account of *PROD 3* as if it were *guidance* on the *Principles* and other relevant *rules* and as if “should” appeared in *PROD 3* rules instead of “must”.
- (2) Paragraph (1) does not apply to a firm to the extent that it is required to comply with *Principle 12* (Consumer Duty) and *PRIN 2A* in relation to a *product*.

