

## **Consultation Paper** **CP26/23\*\*\***

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# Consumer Duty – scope and proportionality

**June 2026**

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Or in writing to:

Consumer Duty Policy Team  
Financial Conduct Authority  
12 Endeavour Square  
London E20 1JN

**Email:**

[cp26-23@fca.org.uk](mailto:cp26-23@fca.org.uk)

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## Chapter 1

# Summary

### Why we are consulting

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- 1.1** The Consumer Duty (the Duty) was designed to set high and consistent standards of consumer protection across retail financial services, using an outcomes-based approach that requires firms to put consumers' needs first. Since its introduction, we have seen a positive impact on firm conduct and consumer confidence. We are actively using the Duty to drive better outcomes, including in easy access savings rates, which have delivered an estimated £4 billion per annum in additional interest to consumers. The Duty has also given us an opportunity to revisit elements of our wider rulebook, removing prescriptive standards, and resisting new ones, to focus on the Duty's outcomes.
- 1.2** The focus of the Duty is to achieve good outcomes for retail consumers. The Duty represented a clear shift in our approach, setting high expectations across distribution chains involving retail customers, from product and service origination through to distribution and post-sale activities, even where they do not have a direct relationship with the retail customer. Elements of this existed in some sectors but not all, and this was a major harmonising step.
- 1.3** Our core objective of delivering good outcomes for retail customers remains unchanged and continues to underpin our approach to retail markets. However, since implementation, we have seen evidence that in some areas the Duty is being applied more widely, and more intensively, than intended – particularly in wholesale markets and complex distribution chains. This has, in some cases, led to unnecessary cost, complexity and uncertainty, without clear benefits for retail consumers.
- 1.4** In our response to the Chancellor following the 2025 Mansion House speech, we committed to address concerns about the application of the Duty to firms primarily engaged in wholesale activity. This consultation paper sets out our proposals to fulfil that commitment. Our proposals focus on clarifying where the Duty applies – and where it doesn't – and ensuring it is applied proportionately, rather than narrowing its scope in a way that would undermine its core purpose.
- 1.5** Wholesale markets are typically comprised of sophisticated counterparties who are well placed to negotiate and manage risks, without the asymmetries the Duty was designed to address. The vast majority of wholesale market activity does not have a material impact on retail outcomes and is rightly outside the Duty's scope. Wholesale markets have their own standards and expectations, and the Duty is not intended to apply to relationships between counterparties where there is no clear link to retail outcomes.
- 1.6** Nonetheless, we have seen some wholesale firms apply the Duty in a wider and more extensive way than we intended. This may be driven by a desire to ensure compliance with expectations that are set at a high level. This will have led to cost and uncertainty

for these firms. We want to give greater clarity and confidence to these firms, enabling them to determine where the Duty does not apply, and to apply it in a more proportionate way where it does.

- 1.7** Supporting a competitive and internationally attractive UK financial services sector is a priority for us. London is ranked second only to New York among the world's leading financial centres, and the UK has a leading position in global wholesale markets. We have world-leading derivatives, debt issuance, foreign exchange and commodity trading sectors as well as being the largest asset management hub in Europe and second largest in the world, with UK asset managers managing £4.5 trillion on behalf of overseas clients.
- 1.8** We want regulation to support wholesale markets by being clear, proportionate and predictable, helping to drive investment, innovation and growth. As part of our broader programme of reform, we are applying a general philosophy of replacing prescriptions with outcomes and replacing pre-emptive checks with disclosures. We believe that high standards can be achieved through market discipline, transparency and management of conflicts of interest; allowing a much more a more proportionate regime.
- 1.9** The Duty is designed to ensure good outcomes for retail customers across the whole distribution chain. This supports trust in financial services markets, which is fundamental to their long-term commercial success. Some stakeholders have argued that wholesale firms should be excluded from the Duty, either because of the nature of their business or because they do not have a direct relationship with retail customers.
- 1.10** Our view remains that placing responsibility on distributors alone would risk undermining confidence and accountability across the distribution chain and could lead to unintended consequences. We have heard that information flows across distribution chains are one of the most challenging parts of the Duty. We do not think that this issue would be resolved by holding the distributor to account for the entire value chain.
- 1.11** However, we want to ensure that application of the Duty is proportionate to a firm's role and responsibilities in the distribution chain. We think there can be more reliance among parties in a chain and less duplication. Our focus is on outcomes, not process. We want to ensure that the Duty is only applied where it is relevant and proportionate, while maintaining a high standard of protection for retail consumers.
- 1.12** We are consulting on a targeted package of changes to our rules and non-Handbook guidance which:
- Remove business with non-UK customers from the Duty's scope, reducing unnecessary friction for internationally active firms and supporting the UK's role as a leading global exporter of financial services.
  - Make it clearer where the Duty applies and where it doesn't, including through worked examples.
  - Clarify when and how firms can rely on each other when they work together in distribution chains, and how they can apply the Duty more proportionately.
  - Explain the interaction between the Duty and other product governance rules.

- 1.13** We are also proposing to make a number of technical corrections and clarifications to our current rules and guidance so that they accurately reflect our original policy intent.
- 1.14** These proposals are designed to:
- Address concerns the Duty applies in areas it was not designed to apply, and captures firms with limited impact on customer outcomes.
  - Give firms and their Boards greater confidence about when the Duty does – and does not – apply.
  - Support a more proportionate approach focused on the particular role and activities a firm has in the distribution chain.
  - Reduce unnecessary cost and complexity, including for wholesale and cross-border activity, while maintaining robust protection for retail customers where there are risks of harm.
- 1.15** Parliament, through the Financial Services Act 2021, required us to consult on a duty of care. This led us to introduce the Duty, which came into force in July 2023. The Duty remains a central part of our approach, setting high standards for retail markets and enabling us to intervene when we identify harm, without setting new rules. Our proposals will ensure that it is applied in a more targeted and proportionate way.
- 1.16** These proposals are consistent with our outcomes-focused approach to supervising and enforcing the Duty, which is based on the principle of proportionality. We will take swift and assertive action against the most serious breaches where there is harm – or risk of harm – to consumers. We will prioritise cases of serious and impactful non-compliance with the Duty over technical elements with little potential to harm end-customers.
- 1.17** The implementation of the Duty was a major exercise for UK financial services. Nearly three years on, it is delivering positive change and enabling firms to innovate around an outcomes-based framework. As confidence in the regime grows, its value should continue to increase. We are committed to ongoing evaluation of how the Duty operates in practice and to making targeted refinements, where appropriate. This consultation is a further step in providing clarity and supporting proportionate application.

## Outcome we are seeking

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- 1.18** Our proposals are intended to ensure that the Duty continues to operate in a way that is:
- Targeted – applying where there is a clear risk of harm to retail consumers.
  - Proportionate – reflecting firms' roles and responsibilities and their ability to influence outcomes.
  - Predictable – giving firms and boards confidence about how the rules apply.
- 1.19** In particular, we want to give firms clarity that:
- The Duty does not apply to wholesale activities that are clearly outside its scope.

- Where a firm's role in a distribution chain is limited or indirect, the Duty should be applied in a proportionate manner.
- Firms are not required to duplicate or 'gold-plate' requirements.

**1.20** We also expect Boards and senior management to focus on where the Duty is most relevant to their role and activities. We have seen some board packs that look disproportionate; if firms think that they provide little value they should question their approach.

**1.21** These proposals support our statutory objectives including consumer protection, promoting effective competition and the international competitiveness and growth of the UK financial services sector.

## Who this applies to

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**1.22** This consultation is likely to interest regulated firms subject to the Duty and particularly those that:

- have a role early in the distribution chain, including those in the wholesale sector
- work with other firms to manufacture a retail product or service
- are part of a complex distribution chain
- conduct retail business for retail customers outside the UK.

**1.23** Our proposals may also interest:

- Consumer groups and individual consumers
- Industry groups and trade bodies
- Industry experts and commentators
- Policy makers and other regulatory bodies
- Academics and think tanks

## What we want to change

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**1.24** These proposals clarify the scope and application of the Duty to ensure firms better understand how it applies, reduce uncertainty – and support effective functioning of wholesale markets – including firms' willingness to participate and compete internationally – while maintaining appropriate protection for retail customers.

### Who the Duty applies to:

**1.25** In Chapter 2, we are proposing to limit the Duty to retail market business where the retail customer is usually resident in the UK, with some specific exclusions where business has a clear UK connection.

- 1.26** In Chapter 3, we are proposing to amend the scope of the Duty to be clearer about when it applies and when it does not. This includes:
- which activities are within scope and which are out of scope of the Duty, and
  - which firms are carrying on distribution chain activities, including where more than one firm is involved in the manufacture of a retail product or service.

### How the Duty applies:

- 1.27** In Chapter 4, we are proposing changes to help firms understand how they can apply the Duty more proportionately, by:
- outlining a reasonable approach to allocation of responsibility when working with other firms
  - explaining that how firms support customers in vulnerable circumstances will depend on their role and activities in the distribution chain, with examples on how these expectations apply
  - making targeted adjustments to Duty obligations in areas such as information-gathering, outcomes monitoring, and board reporting, including by being clearer that firms should focus on the activities they are responsible for.
- 1.28** In Chapter 5, we explain our proposals around how the Duty interacts with product governance requirements in Chapter 3 of the Product Intervention and Product Governance Sourcebook (PROD) and disclosure requirements under the Consumer Composite Investments (CCIs) regime. This is particularly relevant for wholesale firms that manufacture retail investment products.

### Technical clarifications

- 1.29** In addition, we are proposing some technical corrections and clarifications to the drafting in our current rules and guidance to ensure they accurately reflect our original policy intent. These changes are set out in Chapter 6.
- 1.30** We invite feedback on whether our proposals strike the right balance in delivering appropriate levels of consumer protection while making the application of the Duty more proportionate.

### Non-Handbook Guidance

- 1.31** In Appendix 3, we are consulting on proposed revisions and updates to the existing non-Handbook guidance for firms on the Consumer Duty. This currently appears in FG22/5: Final non-Handbook Guidance for firms on the Consumer Duty. Changes and new additions are underlined. When this updated non-Handbook guidance is issued it will replace FG22/5.

## Who we spoke to

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- 1.32** We have engaged extensively with firms and trade associations in asset management and wholesale banking, and with insurance firms as part of our work on Simplifying the Insurance Rules. We have also engaged with some firms in other sectors, such as payments to understand their perspectives. This has allowed us to better understand firms' concerns and target our proposals accordingly.
- 1.33** We also engaged with the PRA and with our statutory panels on our proposals. Our panels were generally supportive of our aims. A consistent theme of feedback was the need for worked examples to help firms understand our expectations. We have therefore developed examples to illustrate how we see our key policy proposals working in practice.
- 1.34** Our Financial Services Consumer Panel discussed oversight across complex distribution chains, highlighting the need for clear accountability when issues arise, so consumers know who to approach for redress. The changes we are proposing will help to clarify responsibilities across the distribution chain, which should make it clearer who is responsible for addressing consumer harm when things do go wrong.

## Measuring success

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- 1.35** The proposals in this paper are designed to reduce unnecessary costs and complexity for firms – particularly where the Duty has been applied more widely than intended – while maintaining an appropriate degree of consumer protection and giving firms the confidence to apply the Duty in a reasonable and proportionate way.
- 1.36** We will assess the impact of our proposals against these two key objectives. First, we will examine whether firms are applying the Duty in a more targeted and proportionate way, including in wholesale markets and across distribution chains, drawing on supervisory engagement, firm and trade body feedback, and evidence on changes in firms' practices.
- 1.37** Second, we will monitor whether this increased clarity and proportionality is achieved without detriment to retail consumer outcomes. This will include analysis of complaints data, supervisory intelligence and other outcome indicators to identify whether there is any evidence of increased harm or deterioration in outcomes.
- 1.38** This approach is consistent with our existing framework for measuring the success of the Duty, which focuses on firms' ability to evidence and deliver good outcomes for consumers. We have also committed to undertake a post implementation review of the Duty to assess how firms have implemented it in practice, including whether it is operating more proportionately, delivering the intended benefits, and whether any unintended consequences arise.

## Environmental, social & governance considerations

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- 1.39** In developing this Consultation Paper, we have considered the environmental, social and governance (ESG) implications of our proposals and our duty under ss. 1B(5) and s.3B(1) (c) of FSMA to have regard to contributing towards the Secretary of State achieving compliance with the net-zero emissions target under section 1 of the Climate Change Act 2008 and environmental targets under s. 5 of the Environment Act 2021. Overall, we do not consider that the proposals are relevant to contributing to those targets. We will keep this issue under review during the course of the consultation period and when considering whether to make the final rules. In the meantime, we welcome your input to this consultation on this.

## Equality and diversity considerations

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- 1.40** We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper. Overall, we do not consider that the proposals materially impact any of the groups with protected characteristics under the Equality Act 2010 (in Northern Ireland, the Equality Act is not enacted but other anti discrimination legislation applies). We welcome your feedback on our assessment.

## Next steps

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- 1.41** We are seeking views on our proposals in this consultation. In particular, we would welcome feedback on:
- Where firms consider the Duty is currently being applied more widely than intended.
  - How far these proposals provide clarity and confidence.
  - Whether these proposals strike the right balance between proportionality and consumer protection.
- 1.42** We are seeking views on our proposals. Please send us your comments by **Friday 18 September 2026** by using one of the methods in the 'How to respond' section.
- 1.43** We expect to publish the policy statement summarising responses and to make any new rules in Q1 2027.

## Chapter 2

# The scope of the Duty: firms with customers outside the UK

- 2.1** In this chapter, we are proposing to limit the application of the Duty to firms conducting retail market business where the customer is in the UK. In general, we aren't at this stage proposing similar changes across the FCA Handbook where other rules apply to business outside the UK. However, we are consulting separately, in [CP26/22](#), on changes to the scope of conduct rules in the insurance sector, where we have observed particular issues.

## Application of the Duty for non-UK business

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- 2.2** The Duty currently applies to cross-border retail business where FCA sectoral conduct of business rules apply. Whether our sectoral conduct rules apply outside the UK generally depends on the risks and structure of that sector. For example:
- mortgage activity is subject to rules in the Mortgage Conduct of Business Sourcebook (MCOB) which only applies to UK business – so the Duty only applies to UK mortgage business.
  - investment activities are subject to rules in the Conduct of Business Sourcebook (COBS), which can apply when provided cross-border by UK firms – so the Duty can apply to this cross-border business.
- 2.3** As a result, firms serving overseas retail customers can face overlapping UK and local regulatory requirements, increasing complexity, cost and challenges in monitoring consumer outcomes. Stakeholder feedback has consistently highlighted these issues, prompting us to consider changes.

## Proposed changes

- 2.4** We are proposing to limit the Duty to retail market business where the retail customer is usually resident in the UK, based on the customer's residential address or, where the customer is not an individual, the place of establishment. This would reduce regulatory overlap for cross-border activity.
- 2.5** In summary, where a firm deals with retail customers outside the UK, the proposed rules would result in the following position:
- The Duty won't apply to a firm conducting business wholly for customers outside the UK.
  - Some products or services will be intended both for sale to customers in the UK and to those who are not. In such cases, we propose that firms must only comply with Duty requirements in relation to customers usually resident in the UK.

- UK firms may still choose to apply Duty processes more broadly, but the proposed rules don't require them to, for example, design products to take account of specific needs, characteristics and objectives of customers outside the UK, to test non-UK customers' understanding of disclosure material, or to monitor outcomes for customers outside the UK.

**2.6** We recognise that firms play different roles in the manufacture and distribution of products and services, and that their ability to identify the location of end retail customers will vary accordingly.

- **Manufacturers:** These firms are responsible for designing and operating products or services, and for identifying a target market, which may include or exclude customers usually resident in the UK. We propose that, where products or services are designed only for distribution outside the UK, this is reflected in distribution strategies to guard against distribution to UK retail customers.
- **Distributors:** These firms often have more direct engagement with the end retail customer and greater visibility of the customer's identity and circumstances, including their usual residence. We expect that these firms should know the customer's address and propose that, unless there is any reason to believe otherwise, firms use this to determine whether the customer is usually resident in the UK.

**2.7** Where a firm finds that products or services, that weren't intended for retail customers in the UK, have been distributed in the UK, we propose that it must review, and potentially amend, its distribution strategy to guard against future sales in the UK. We also propose that, where a distributor becomes aware that it has distributed a product to customers in the UK, when it wasn't intended for UK distribution, it must review the transactions under the cross-cutting rules, and where harm has been identified, take appropriate steps to mitigate the situation and prevent any further harm.

### ***Interaction with CP26/22 for non-investment insurance contracts***

**2.8** In CP26/22 we are proposing to make similar changes to the insurance rules (in the Insurance Conduct of Business Sourcebook (ICOBS) and PROD 4). Under the proposals, these rules would only apply where customers are habitually resident in the UK or where the insured risk (the property being insured) is in the UK. This reflects how insurance markets typically work: with customers buying cover where the insured property is based, even if they live elsewhere.

**2.9** We are proposing that application of the Duty for non-investment insurance products would follow the approach set out in CP26/22. This would streamline our proposed approach for firms in this market across the Duty, ICOBS and PROD 4.

### ***Interaction with the FCA's wider Handbook***

**2.10** The proposals in this consultation relate only to the application of the Duty. Where other, sectoral rules or regulations apply to UK firms conducting business for customers outside the UK, they will continue to do so.

**2.11** The Duty sets a high standard of consumer protection. While appropriate where firms are dealing with UK customers, applying the Duty for business conducted for non-UK customers risks interfering with the chosen approach to consumer protection in other jurisdictions and creating unnecessary barriers for UK firms looking to compete abroad. We don't consider this to be generally the case where other sectoral rules apply to non-UK business.

**Question 1:** How could we avoid additional costs for firms where sectoral rules have a different territorial scope to the Duty in the future?

**Question 2:** Do you agree with our proposal to limit the Duty's territorial scope in relation to the usual residence of retail customers? Do you have any comments on our approach to defining the usual residence of retail customers?

**Question 3:** Are there other requirements we should consider to avoid the risk that products or services intended only for sale outside the UK, and so not subject to the Duty, are sold to customers usually resident in the UK?

## Specific approaches and exclusions

### *Crown servants posted overseas*

**2.12** The Duty would still apply where firms conduct business for crown servants, including UK armed forces personnel and civil servants posted overseas, and their dependents, with a British Forces Post Office address. The address is legally considered a UK address, and we consider it is important for the Duty to apply to firms conducting business for these customers wherever they are posted.

### *Specific exclusions for products and services targeted at customers who aren't usually resident in the UK*

**2.13** There are certain market sectors where we think the Duty should still apply protections for retail customers who are not usually resident in the UK, as the business has a clear UK connection (such as in relation to the UK tax regime). As a result, the business may less clearly be subject to regulation overseas. They are:

- **Pre-paid UK funeral plans:** Some firms in the UK sell pre-paid funeral plans for UK funerals to customers living outside the UK. Where these products meet the criteria to be classed as UK pre-paid funeral plans, we propose that the Duty still apply.
- **Regulated or ancillary activities relating to UK pensions:** We propose to continue to apply the Duty where UK firms conduct activities, including providing advice or arranging transactions, for UK pensions to customers who aren't usually resident in the UK. For example, this would include pension transfer advice and activities relating to Qualifying Recognised Overseas Pension Schemes (QROPS).

**Question 4:** Do you agree with our proposals to continue to apply the Duty to some business where customers are usually resident outside of the UK?

**Question 5:** Are there any other consumers, products or services where the Duty should still apply outside the UK?

## Consequential updates to the non-Handbook guidance

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**2.14** We have proposed changes to Chapter 2 of the non-Handbook guidance to reflect the rule changes proposed in this chapter.

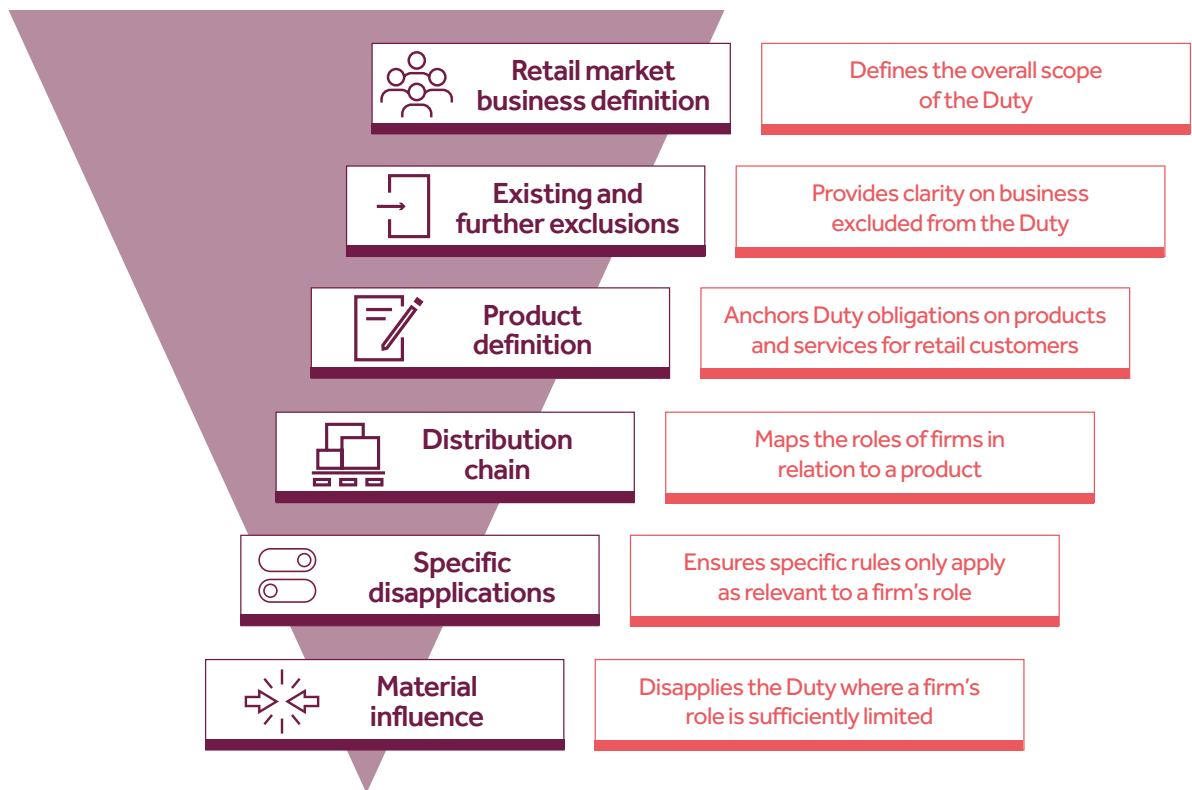
**Question 6:** Do you have any comments on our proposed changes to the 'Application outside the UK' section of Chapter 2 of the non-Handbook guidance?

## Chapter 3

# The scope of the Duty: activities subject to the Duty

- 3.1** In this chapter, we discuss proposals to give firms more certainty on the scope of the Duty and whether their activities fall within it, particularly for firms that are remote from retail customers. This chapter proposes:
- Clarifications and amendments to concepts that anchor the scope of Duty rules, including 'retail market business' and 'material influence'.
  - Rule changes to address a specific challenge in how firms identify whether they are subject to the Duty where they work alongside other firms to create or deliver a retail product or service.
  - Clarifications to our expectations where firms don't have a role in relation to one or more of the four sets of Duty outcome rules.
  - Further exclusions from the Duty for certain activities we believe should not be subject to its requirements.
- 3.2** Taken together, our proposals aim to bring more certainty for firms and more clearly define activities outside the Duty's scope. We consider that this strikes the right balance between applying the Duty to firms playing important roles in the retail market and limiting its application where firms have a more remote role. Our intention is that they draw a clear line reducing the scope of the Duty, rather than bringing further firms into its remit.
- 3.3** We intend the concepts discussed in this chapter to work together to help firms understand how the Duty applies, and particularly where more wholesale activities fall completely out of scope of the Duty. As many of these changes relate to technical elements of the Duty's application provisions, they should be read alongside the draft Handbook text (Appendix 2) and the proposed changes to the non-Handbook guidance (Appendix 3).

**Figure 1: How concepts in this chapter work together to provide more certainty on the scope of the Duty**



## Determining whether a firm is conducting business subject to the Duty

- 3.4** Firms must consider several factors to understand whether they are subject to the Duty. For some firms, like those solely responsible for manufacturing or distributing retail products or services, this is likely to be straightforward. But other firms may have a role short of this or could be involved in more complex arrangements with multiple firms. As a result, they may find it more difficult to determine whether the Duty applies. For example, this can be challenging for firms that are primarily active in wholesale markets but provide services to retail-facing firms, and whose role might not be sufficiently clear under the current Duty rules.
- 3.5** We propose to amend core elements of the Duty's application provisions to provide more clarity and help address these issues. We are proposing changes to provide clarity over:
- *Retail market business*: the current scope of the Duty is partly set by reference to whether a firm conducts retail market business and partly by other concepts, including those described below. Having to consider a range of factors can make it difficult for firms to determine whether the Duty applies to a given activity.

- *Products and services subject to the Duty*: the current definition is complex and can leave uncertainty about what sort of products are within the scope of retail market business. We are proposing a simplified definition, leveraging the proposed new definition for retail market business and the clearer list of excluded business.
- *Distribution chain*: the Duty applies to firms in a distribution chain for retail products and services. At present, 'distribution chain' is an undefined term in the Handbook, which can contribute to uncertainty whether a firm is part of a distribution chain and therefore subject to the Duty.
- *Material influence*: the Duty applies to the extent a firm can determine or materially influence retail customer outcomes. While it is generally clear when a firm's role means it can determine retail customer outcomes, many firms have said it can be difficult to assess whether their role amounts to having a material influence over retail customer outcomes.

**3.6** Some firms have challenged us on the room for interpretation in the Duty's application rules. Through the proposals outlined below, we aim to clarify how firms should make these judgements. However, we have not eliminated the need for judgement. The Duty is intended to apply across the full range of financial services reaching retail customers, and to ensure it captures those firms whose role is impactful on outcomes for the retail customers at the end of the distribution chain. It is important that our rules retain a degree of flexibility in their application so that they can remain relevant as business models develop and change in the future.

## Proposed changes

### *Presentation of the application provisions in the Handbook*

**3.7** We are proposing to simplify the presentation of the Duty's application provisions. At present, they appear in various areas of the Handbook, including PRIN 2A.1, PRIN 3 and the Glossary (such as for retail market business and for product). We are proposing to bring together all relevant provisions relating to the Duty's scope under a new chapter, PRIN 3A.

**3.8** The application provisions will appear in a new layout with no other intention than to provide greater certainty and take activities out of scope in the ways described in this consultation.

**Question 7:** **Do you have any comments on the proposed application provisions and whether they will help with understanding the scope of the Duty?**

### *Retail market business*

**3.9** We propose to clarify the retail market business definition by moving it from the Glossary into our rules where we can more clearly set out the activities within scope. This will form part of the new application provisions discussed above.

- 3.10** The current definition covers regulated activities, payment services, issuing electronic money, and ancillary or connected activities. This will remain unchanged.
- 3.11** Our proposals carry forward the existing scope but in a way that helps to provide greater certainty about application of the Duty. The new definition includes:
- activities relating to:
    - the manufacture or distribution of a retail product or service
    - setting the price of a retail product or service
    - preparing or communicating information, including promotions, for a retail product or service
    - the provision of pre- or post-sale consumer support for a retail product or service, and
  - certain specified activities which don't fall clearly within the above activities because there is no product being provided to the retail customer, but where there is a clear connection to products sold to retail customers. This includes, for example, firms approving financial promotions and firms providing credit references or debt collection services.
- 3.12** The current definition of retail market business includes several exclusions from the Duty, which we propose to expand and relocate to a new section in the rules, as set out later in this chapter.

**Question 8:** Do you have any comments on the proposed approach to defining 'retail market business'?

### ***Products and services subject to the Duty***

- 3.13** We are proposing to simplify the current product definition. At present, this definition includes products and services provided directly to retail customers, and certain services provided by one firm to another. Other proposals in this chapter, including in relation to retail market business and the distribution chain, will address the latter point. The proposed approach aims to support our work to simplify the application provisions for the Duty.

**Question 9:** Do you have any comments on our proposed changes to the 'product' definition?

### ***Responsibilities of firms in a distribution chain***

- 3.14** We are proposing to clarify which arrangements would bring a firm into a distribution chain for the purposes of the Duty. These relate to activities undertaken as part of retail market business, including where a firm provides business-to-business services to enable another firm to undertake its own retail market business.

- 3.15** We also propose to clarify that distribution chains can include multiple firms performing different roles. These roles may exist at different stages of the customer journey. In some cases, some firms may perform more than one role in relation to the same product.
- 3.16** The responsibilities of firms in a distribution chain will depend on their role in relation to the product.
- 3.17** Taken together, our new and amended rules are intended to provide a more consistent, accessible framework to support firms, particularly those whose role is more limited or indirect, in determining whether the Duty applies to what they do.
- 3.18** One important consideration relates to how the Duty applies to firms with a more limited role in the distribution chain. Our expectation is that, in many cases, firms subject to the Duty would have responsibilities under all the outcome rules. However, we recognise that some firms might not conduct activities that require them to comply with rules under one or more of the four sets of outcomes rules.
- 3.19** We propose to amend the rules to clarify that firms don't need to comply with rules under one or more of the four outcomes in PRIN 2A.3 to 2A.6 if they don't conduct a particular role, process or step that is the subject of these rules. For instance, if a firm has no role in preparing or issuing communications, it doesn't need to comply with obligations relating to the consumer understanding outcome.

**Question 10:** Do you agree with the changes we are proposing to clarify the scope and obligations for firms in a distribution chain?

**Question 11:** Do you agree with our proposed approach to clarifying application where a firm is subject to the Duty but doesn't have a role in relation to one or more of the four Duty outcomes?

### ***Material influence***

- 3.20** We are proposing further clarifications to the scope of the Duty in relation to the concept of material influence.
- 3.21** The Duty doesn't apply to firms with a limited or remote role, such that they are unable to determine or influence outcomes for retail customers in relation to a product or service. Where a firm carries on retail market business and in respect of which no specific exclusion applies, but where it doesn't have any material influence over retail customer outcomes, it wouldn't be subject to the Duty.
- 3.22** In addition, our proposals include rules that disapply specific provisions where they are not relevant to a firm's activities, and that impose limited obligations in relation to secondary manufacturers (further detail is set out in the section below).

- 3.23** Our proposed clarifications around the proportionate and reasonable interpretation of Duty obligations move away from the material influence concept and focus more on the firm's role and the extent of its involvement with a retail product or service. We think this provides a clearer framework for firms.

**Question 12: Do you agree with our proposals for updating our rules on material influence?**

## Firms working together to manufacture products

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- 3.24** Where more than one firm has a role in the manufacture of a retail product or service, the Duty requires them to work together to agree and document their respective roles and responsibilities. Firms have asked us to clarify our expectations here.
- 3.25** We have, in particular, been asked to clarify our expectations under the Duty where a firm outsources activities linked to product manufacture to another authorised firm.

### Proposed changes

- 3.26** We published a [statement](#) in December 2025 to address questions about our expectations under the Duty where firms work together to manufacture a retail product or service. We are proposing to make several changes to the rules, building on that statement.
- 3.27** We have received feedback that use of the term 'co-manufacturing' isn't always clear, as it doesn't match industry use in some parts of the market. We propose to remove references to 'co-manufacturing' from our Duty rules and guidance. Instead, the rules would focus on what happens when more than one firm contributes to the manufacture of a product or service.
- 3.28** Where there is more than one manufacturer in this way, firms would be either a principal or secondary manufacturer. Firms with substantive control over the design or operation of the product or service would be classed as the principal manufacturer and other firms as secondary manufacturers.
- 3.29** Our proposed rules set out indicative factors for where a firm would be considered to have substantive control. These include, for example, a firm with the power, right or ability to make decisions about core aspects of a product's design, operation, distribution strategy, or value proposition for end retail customers.
- 3.30** Under the proposed rules, the principal manufacturer(s) must ensure that the contribution of all manufacturers is set out in a written agreement that outlines firms' respective roles and responsibilities under the relevant Duty rules. Firms should make sure the nature of their relationships with other firms, and therefore their respective responsibilities, are clear and reflect the reality of the arrangements. We wouldn't expect this agreement necessarily to be in a separate document and other, wider agreements between the firms could be used to meet the requirement.

**3.31** Our intention is to focus the more detailed obligations in our rules on firms with a more central role in the design or operation of a product or service.

**3.32** We are proposing that a secondary manufacturer would not be subject to all the rules under the products and services outcome or the price and value outcome. Instead, the firm would need to comply with more limited obligations, to:

- Consider the impact of the firm's contribution on the manufacture of the product or service and on its price and value.
- Ensure that its contribution doesn't create material risks, for example that a product causes foreseeable harm to retail customers.

#### **Example – firms manufacturing a model portfolio service**

An authorised firm, Firm A, is a wealth manager which builds a model portfolio service (MPS) to be distributed by financial advisers to retail investors. A second authorised firm, Firm B, manages an authorised fund available to retail investors via various investment platforms.

Firm A chooses to include the authorised fund managed by Firm B in the MPS. Firm A does so independently of Firm B's input, and without any arrangement between the firms in relation to the design or operation of the MPS.

Firm A exercises substantive control over the key features of the MPS, including its target market, asset allocation and charging structure. As a result, Firm A is subject to the Duty as the principal manufacturer of the MPS.

Because Firm A has included Firm B's fund in the MPS without Firm B's input, Firm B does not meet the conditions to be seen as a secondary manufacturer of the MPS. As a result, Firm B does not have any activities relating specifically to the MPS. However, Firm B remains subject to product governance and assessment of value rules in its role as manufacturer of the authorised fund.

A third authorised firm, Firm C, manages a fund that is made available to Firm A and where Firm C acts as a contributing manufacturer. Unlike Firm B, it has a role providing input to Firm A on the overall structure of the MPS and how the fund is used within the portfolio.

While Firm C does not exercise substantive control over the MPS as a whole, its contribution to the design or operation of the MPS meets the conditions for it to be a secondary manufacturer. Firm C would be subject to relevant obligations, such as ensuring that its contribution doesn't create a material risk that the product causes foreseeable harm to retail customers.

### **Example – firms contributing to the manufacture of a retail structured product**

Firm A, a manufacturer of retail structured products, contracts with Firm B to develop a custom option to be used within it. The option is tailored specifically to form part of Firm A's retail structured product.

Firm A has substantive control over the retail structured product, and the option is created to its specification. It is subject to the Duty as the principal manufacturer of the structured product.

Firm B doesn't have substantive control over the structured product, but in creating the option, it contributes to the design and operation of the product. Firm B is not considered a principal manufacturer of the structured product but instead is a secondary manufacturer.

It must, for example, avoid causing harm to retail customers and provide fair value in the design of the option. We would expect it to work closely with Firm A, such as by providing accurate and timely information as requested by Firm A. This information could, for instance, enable Firm A to understand the option's value and how it would behave under a range of potential market conditions. This would support Firm A meeting its own responsibilities under the Duty.

**3.33** We recognise that our proposed approach to 'substantive control' in defining a principal manufacturer for Duty purposes may have implications for firms subject to other requirements in PROD and Product Disclosure Sourcebook (DISC). Whilst we are not consulting on changes to the approach under PROD and DISC at this stage, we are interested in stakeholders' views on this interaction. We do not expect these proposals to impact firms subject to PROD 4.

**3.34** The concept of manufacturer written agreements appears in PROD, and we are proposing to clarify it within the Duty rules. We are aware that many firms will have large numbers of existing agreements with other firms that could fall within scope of this proposed approach, and that revisiting these agreements would impose costs, particularly in the short term. We invite feedback on how the proposals, if taken forward, could best be introduced to minimise the burden on firms. For example, we could consider whether a longer implementation period is appropriate, or whether the rules should only apply to new agreements or those that are materially amended in the future.

**Question 13:** Do you have any comments on our proposed approach to classifying which firms are manufacturers for the purposes of the Duty?

**Question 14:** Should we consider making similar changes to the rules in DISC and PROD?

**Question 15:** Do you have any comments on how the new approach to classifying manufacturers should apply to existing products and services?

## **Outsourcing arrangements**

- 3.35** Outsourcing arrangements can be complex, and responsibility for different activities can vary depending on the contracts between the parties and the allocation of responsibilities in practice.
- 3.36** Where a firm outsources activities to an outsourced service provider that is also an authorised firm, both firms should assess their respective responsibilities under the Duty. In doing so, firms should focus on the substance of what they do, rather than the contractual structure of the outsourcing arrangement. Each firm is responsible for ensuring compliance with Duty obligations in relation to its own role and activities for the product or service.
- 3.37** A firm that outsources an activity retains responsibility and liability for the outcomes received by its retail customers. Under the Duty, it remains accountable for how it undertakes outsourcing and monitors the outsourced activities, including in relation to compliance with relevant Duty rules.
- 3.38** In most cases, we would expect a firm outsourcing manufacturing activities to be the principal, or only, manufacturer for the purposes of the Duty. This reflects that outsourced service providers typically don't exercise substantive control over the design or operation of the product or service.
- 3.39** We are also proposing some further non-Handbook guidance on this and similar business models.
- 3.40** Our proposals aim to apply the Duty's rules proportionately and to avoid duplication of effort among firms, while still ensuring that the Duty sets appropriate consumer protection standards.

**Question 16:** **Do you have any comments about our proposed approach under the Duty to outsourcing arrangements in relation to the manufacture of a product or service?**

## **Additional exclusions for activities falling out of Duty scope**

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- 3.41** To provide more certainty for firms, we are proposing to exclude certain activities from the scope of the Duty. These exclusions are, however, non-exhaustive. Concepts explained elsewhere in this chapter separately may mean that firms are not captured in Duty scope. Other Principles and rules would still apply.
- 3.42** We propose that the following activities would be excluded from the Duty on the basis that they wouldn't involve retail market business activities:
- **Merchant acquiring:** In the payments sector, merchant acquirers generally provide services to merchants. As such their primary activities are generally outside the scope of the Duty unless their merchant client meets the definition of a retail customer for the payments sector.

- **Market making:** Market making activity is undertaken in wholesale financial markets to provide liquidity and support orderly trading. It does not involve manufacturing, distributing, or delivering products or services to retail customers.
- **Provision of ESG ratings:** In [CP25/34](#), we consulted on a position that the Duty wouldn't apply to ESG rating activity as this is typically a wholesale activity and there is limited direct use of ESG ratings by retail customers. Therefore, the wider Duty rules have limited relevance. We propose to reflect this position in the list of activities to which the Duty doesn't apply. However, we will align our final approach with the final rules for ESG ratings providers, which will be published in Q4 2026.
- **Acting as an indirect access provider:** Where a firm's role is limited to providing another firm sponsored access to the UK interbank retail payment systems, such as Bankers' Automated Clearing System (BACS) and Faster Payment Service (FPS), it would be acting in an infrastructural and facilitative role, and wouldn't be subject to the Duty.
- **Provision of derivatives etc used in a third-party's retail product or service:** A firm wouldn't be conducting retail market business when its role is limited to providing certain products or services that act as components in a third-party's retail product or service. We are proposing a number of specific exclusions.
  - We propose an exclusion to avoid a suggestion that firms are captured by the Duty where their instruments are independently incorporated into retail products.
  - In other situations, we also see an opportunity for to clarify the boundary of firms' responsibilities, for example where certain instruments are supplied to the product manufacturer on general commercial terms and without tailoring to the retail product or service, and where a firm is providing investments to a fund manager. While these components are embedded into the retail offering, we consider the connection sufficiently remote for the activity to fall out of scope of the Duty.
  - We also propose to exclude financing arrangements and market information services provided to another firm to assist in the operation of a retail product or service.

**3.43** We propose excluding the following activities from the Duty where firms don't engage directly with retail customers in relation to the activity.

- **Safeguarding of funds for payment services or e-money activity:** Where a credit institution's role is limited to providing an account to a Payment Institution (PI), an Electronic Money Institution (EMI), or a Credit Union that issues e-money, in which relevant funds are held in accordance with safeguarding requirements, this would be part of the infrastructure sitting behind the product or service and wouldn't be subject to the Duty.
- **Acting as a third-party custodian:** While such custodians perform a key function in protecting consumers, core custody services are generally understood to be remote from retail customers and custodians don't directly shape the retail-facing structure or features of the product or service. Activities such as settlement, record-keeping and income processing may have less direct impact on retail customer outcomes and are subject to other FCA rules. However, there can be differences in the contractual arrangements between custodians and each client

firm, so the Duty might be relevant if a firm engages directly with retail customers. For example, if a firm has arranged for a third-party custodian to safeguard and administer investments, but as part of that arrangement the third-party custodian has a relationship with the underlying client, then the Duty would apply to the third-party custodian.

- **Acting as a depositary:** Depositaries play a critical role in investor protection when overseeing the activities of fund managers, safekeeping fund assets, and monitoring cashflow. But they are not involved in determining the retail-facing product features, so we propose the Duty would not generally apply to them. There are, however, contexts where we propose the Duty should continue to apply to secure appropriate consumer protections. These relate to circumstances where the depositary takes on additional responsibilities, or a more active role, in relation to an investment fund. Examples of this include the role of depositaries in fund suspension, and in the appointment, replacement, or retirement framework for fund managers, where they are also subject to rules in the applicable FCA sourcebooks. As discussed in the [2026 Regulatory Priorities Report for Wholesale Buy Side](#), we are conducting further supervisory work with depositaries this year and will take our findings from that work into account. We would welcome respondents' views on this element of the proposed exclusions.
- **Supporting defined benefit pension scheme trustees with respect to scheme members:** These firms typically provide services within arrangements determined by the trustees, who remain responsible for investment decisions and the provision of members' benefits. However, where the trustees are themselves retail customers of an FCA-regulated firm, the Duty would apply to any regulated or ancillary activity undertaken for the trustees.

**3.44** Our proposed amendments would clearly take the Society of Lloyd's out of scope of the Duty. At present, the Duty applies to managing agents operating in the Lloyd's market and, in limited circumstances, it may apply to activities by the Society in its oversight of those firms. We consider it would be more proportionate and consistent with our wider approach if the Duty applies only to managing agents conducting business for retail customers and not to Lloyd's itself.

**3.45** In addition, our proposed new exclusions would replace, with greater clarity, any disapplication of the Duty that previously applied in PRIN 3.2.8R. This is discussed further in Chapter 6.

#### **Example – payments**

A payment or e-money institution provides retail customers with payment services, such as card payments or e-money wallets. It designs the product and, in some cases, distributes it through agents or other firms. In this scenario, the payment or e-money institution is conducting retail market business and has a material influence over retail customer outcomes.

To meet its safeguarding obligations, the payment or e-money institution holds customer funds in a safeguarding account with a credit institution. Where the credit institution's role is limited to the provision of the safeguarding account, it falls outside the scope of the Duty.

Other firms may form part of the distribution chain. For example, agents or distributors acting on behalf of the issuer, payment initiation service providers, or account providers executing payments may all fall within scope depending on the extent of their role and influence.

Where a regulated firm distributes payment services via an intermediary which falls outside the FCA regulatory perimeter, the regulated firm retains responsibility under the Payment Services Regulations (PSRs) and Electronic Money Regulations (EMRs) for ensuring the unregulated firm delivers good outcomes to retail customers.

**Question 17:** Do you agree with our proposed exclusions for activities that fall out of scope of the Duty? Should we make any changes to them, either to broaden them or to limit their availability for certain activities (and, if so, why)?

**Question 18:** Are there any other activities where we should consider exclusions on a similar basis?

## Consequential updates to the non-Handbook guidance

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**3.46** We have proposed changes to Chapters 2 and 6 of the non-Handbook guidance to reflect the proposed rule changes in this chapter.

**Question 19:** Do you have any comments on our proposed changes to Chapters 2 and 6 of the non-Handbook guidance?

## Chapter 4

# Proportionate application of the Duty

- 4.1** This chapter sets out our proposed targeted changes to Duty rules and guidance to support firms to apply them in a way which is reasonable and proportionate. It focuses on how the Duty applies where firms are in scope, particularly as part of longer distribution chains.
- 4.2** Our existing rules and guidance set out that the Duty should be interpreted reasonably based on the circumstances, including a firm's role in the distribution chain. We have sought to support firms in applying the Duty proportionately, for example through our [good and poor practice publications](#).
- 4.3** Drawing from engagement with firms since the Duty came into force, our proposals aim to provide greater clarity, reduce unnecessary burden, and help firms focus their resources on the areas most likely to improve customer outcomes.

## Firms' roles and responsibilities across the distribution chain

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- 4.4** Some firms have expressed concerns they are expected to take responsibility for other firms' activities in the distribution chain, and 'police' their ongoing compliance with the Duty. We have also heard concerns that our rules can be read as requiring firms to notify us whenever they disagree with another firm's approach.
- 4.5** Our existing non-Handbook guidance on the Duty explains that unless other regulatory requirements or contracts require it, firms are responsible only for their own activities and do not need to oversee the compliance of other firms in the distribution chain. It then sets out the types of scenarios where firms will need to consider actions by others, including:
- When this is required by regulation or contracts, such as where: firms outsource activities to third parties, Principal firms oversee the actions of appointed representatives, and payments and e-money firms are responsible for the actions of their agents and distributors.
  - When carrying out appropriate due diligence to decide if to work with another firm in a distribution chain.
- 4.6** Our existing rules require firms to notify us if they become aware that another firm in the distribution chain is not, or may not, be complying with the Duty.

## Proposed changes

### *Responsibilities*

- 4.7** To give firms further comfort and the confidence to apply the Duty in a proportionate way, we propose to make clear in our rules that firms are only responsible for ensuring compliance in respect of their own role and activities, and are not expected or required to oversee the compliance of other firms in their distribution chain, unless other regulation or contracts require this.

### *Due diligence*

- 4.8** We have also made small additions to our Handbook and non-Handbook guidance, to clarify that firms can take a proportionate approach to due diligence they carry out when deciding whether to work with another firm in a distribution chain.

### *Reliance*

- 4.9** We also propose to clarify in our rules that where a firm's compliance with the Duty depends on information provided by, or actions carried out by, another firm in the distribution chain, the firm may reasonably rely on that information and on representations made by that other firm about the actions it has taken. The Duty does not supersede existing rules that permit reliance on other regulated firms. In particular, where Handbook provisions, such as COBS 2.4, allow a firm to rely on information, assessments or recommendations provided by another firm subject to equivalent regulatory requirements, that reliance remains compatible with meeting their expectations under the Duty.
- 4.10** However, firms are expected to act in good faith and not rely on information where it would be unreasonable in the circumstances, for example where information comes to their attention which clearly indicates that other firms involved in the distribution chain for the same product or service may be causing consumer harm.
- 4.11** For example, a firm's monitoring activity and management information may indicate an issue that requires further investigation to understand the root cause and who in the chain is best placed to address it. Where there is a trend of complaints about a product, further analysis may be needed to understand if the root cause is an issue with the product – for the manufacturer to address – or an issue with the way it is being sold – which a distributor needs to address, or a mix of both. In such cases, we expect firms to work together constructively to support good outcomes for retail customers. Firms should consider what reasonable steps they can take to address an issue caused by another firm in the chain, including raising concerns with the relevant party.
- 4.12** We intend to add the examples below to our non-Handbook guidance to illustrate how reasonable reliance on other firms in the distribution chain may work in practice.

### **Example – Reasonable reliance across the retail distribution chain**

Firm A is an authorised firm which acts as a discretionary investment manager. Firm A provides an 'off-the-shelf' multi-client managed model portfolio service (MPS) to an authorised financial adviser, Firm B.

Firm B provides financial advice to retail investors and makes recommendations on which MPS, if any, is suitable for individual investors.

Firm A complies with the relevant rules, including:

- providing product information, including details on the target market, risk profile and the fair value assessment to Firm B
- producing disclosures and supporting materials, which are shared with Firm B
- monitoring the MPS and checking it is functioning as intended
- advising Firm B on any material changes to the MPS

Firm B also complies with the relevant rules, including:

- ensuring it understands the MPS, its features and target market
- conducting suitability assessments for each retail investor
- recommending an appropriate model portfolio (if any)
- considering the impact of its charges and service on the value of the MPS
- sharing relevant information upstream to Firm A
- ensuring its clients understand the features and risks of the MPS

In this arrangement, Firm B reasonably relies on Firm A for the design of the MPS, including the accuracy of its risk rating, target market and disclosures. Firm A, in turn, reasonably relies on Firm B to assess the suitability of the MPS for each client and to ensure that recommendations reflect the client's objectives, financial situation and risk tolerance.

If Firm B identifies any significant issues relevant to Firm A through its direct interactions with retail investors, Firm B reports these promptly to Firm A. For example, if investors provide consistent feedback to Firm B that part of a disclosure document is too complex to understand, Firm B informs Firm A so that changes can be made to the document.

Both firms can continue to rely on the information provided by the other party to meet their obligations under the Duty.

### ***Notifying the FCA***

- 4.13** We are also proposing changes to clarify in our rules and non-Handbook guidance that firms should only notify the FCA in respect of material concerns about the conduct of another firm in its distribution chain. A firm which has identified the concern may, where reasonable, first raise it with the other firm and seek clarification or comfort, before contacting the FCA.

## **Updates to the non-Handbook guidance**

- 4.14** We propose to introduce a new chapter in the non-Handbook guidance on firms' roles and responsibilities in distribution chains. Subject to feedback from stakeholders, this chapter would bring together and consolidate the new guidance proposed and existing guidance in this area.
- 4.15** The new chapter is intended to support firms in applying the Duty in a reasonable and proportionate way when working with other firms. It would provide further clarity on how responsibilities may be allocated in practice and how firms can rely on each other appropriately, taking account of their role and the nature of their activities.

**Question 20: Do you agree with our proposals to clarify firms' roles and responsibilities across the distribution chain? If not, please explain why, and any other options we should consider.**

## **Customer vulnerability**

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- 4.16** Some firms, especially those that do not directly interact with retail customers, have queried the extent of their responsibilities in relation to identifying and supporting customers in vulnerable circumstances. They have asked for further clarity on how responsibilities are allocated across distribution chains in this area.
- 4.17** Under the Duty, firms are expected to consider the nature and scale of characteristics of vulnerability that exist in the relevant target market, and its impact on customers' needs.
- 4.18** The Duty does not prescribe how responsibilities for identifying and responding to customer vulnerability should be allocated across the distribution chain. Instead, firms' obligations apply based on what is reasonable in the circumstances, focusing on the outcomes that may result from their actions. For instance, when a firm is designing a product or service, it should consider whether the product or service has features that could risk harm for any group of customers, such as those with characteristics of vulnerability. When a firm is dealing directly with a particular customer, it should pay appropriate regard to the needs and characteristics of that customer.

## **Proposed changes**

- 4.19** In response to firms' concerns, we propose clarifications to our rules and non-Handbook guidance to reflect that firms may act differently to support customers in vulnerable circumstances depending on their role in the distribution chain, their activities and the risk of harm to consumers.
- 4.20** We propose to add non-Handbook guidance to explain that manufacturers further removed from end customers should consider risks arising from their own activities – such as product design, target market assessments and distribution arrangements – taking steps to mitigate the risk of harm to customers, including those in vulnerable circumstances, where appropriate. Firms closer to the consumer, such as distributors, have more direct responsibilities for identifying and responding appropriately to

customers' needs, for example by taking reasonable steps to ensure that individual customers are able to understand product features and by responding flexibly to their support needs.

- 4.21** We always expect manufacturers to consider if the product or service design could lead to additional harms for customers with characteristics of vulnerability. However, manufacturers can take a proportionate, risk-based approach in the case of products without features that present additional risks of harm to customers, such as a simple tracker fund. In practice, this might mean manufacturers only need to ensure disclosures support consumer understanding of the product and there are processes in place to identify any issues that do arise.
- 4.22** Where a manufacturer reasonably concludes product features do not present particular risks to consumers in the target market, including consumers in vulnerable circumstances, good outcomes are likely to be secured by distributors that deal directly with the end customer. For example, by ensuring the product is offered, explained, and can be accessed, in a way that meets the needs of customers, including those in vulnerable circumstances.
- 4.23** Alternatively, for more complex products with features that could cause harm to customers in vulnerable circumstances, or target markets with a high concentration of potentially vulnerable groups, manufacturers will need to do more to mitigate the risk of harm. This includes, when designing product features and through their monitoring and product reviews, considering actions such as revisiting product design, target market assessment or distribution arrangements where necessary to prevent harming customers in vulnerable circumstances.
- 4.24** Where distributors become aware of harm, or potential harm caused by an activity for which a manufacturer is responsible – for instance, if there is significant feedback about product features – they should provide relevant, proportionate feedback to the manufacturer, so it can act on the information where appropriate.
- 4.25** Firms can reasonably rely on others in the distribution chain who interact with customers directly to identify customers in vulnerable circumstances and provide support. However, they should not ignore evidence of poor outcomes for customers in vulnerable circumstances, where those outcomes could be caused by their own activities or factors within their control. Where information reasonably available to a firm indicates a foreseeable harm, we expect that firm to act in good faith and take appropriate action, including escalating issues to other parties in the chain where they are better placed to address the cause of harm. This is in line with our broader proposals in relation to reasonable reliance set out in 4.9 to 4.12.

### **Example – investment funds**

#### ***Scenario 1: simple tracker fund***

*A low-cost tracker fund is designed to replicate the performance of a widely recognised market index. The fund has straightforward investment objectives and is distributed through financial advisers and platforms.*

Given the simple nature of the fund, we expect outcomes monitoring and governance to be proportionate to firms' roles and the risk of foreseeable harm.

The **fund manager** considers if any product features pose particular risks to customers in vulnerable circumstances. The fund operates in a simple way, with no unusual features, and units can be redeemed quickly and without penalty. The fund tracks the market and money invested can decrease as well as increase, particularly over the short term. So, the fund manager recognises this means it may not meet the needs of some customers, including those with low financial resilience who cannot afford short term losses and may need to maximise funds available to them at short notice. The fund manager therefore makes sure product disclosures support customers' understanding of how the fund operates and equips customers, including those in vulnerable circumstances, to make effective decisions on if it's the right product for them.

The **adviser** has processes in place to identify individual customers in vulnerable circumstances and provide additional support to them at appropriate points of the customer journey. Similarly, the **platform provider** assesses if customers in vulnerable circumstances (such as those with lower financial capability) can understand key information and risks displayed on its platform (including that the value of investments can go up and down). As distributors, both firms monitor outcomes for customers in vulnerable circumstances, such as complaints, and make improvements to the way they support customers where appropriate.

### **Scenario 2: complex investment fund**

*A complex, actively managed fund uses leverage, which some customers may find difficult to understand. The fund is manufactured by an asset manager, made available on an investment platform and recommended to customers by financial advisers.*

Given the product's complexity, we would typically expect more active outcomes monitoring and timely escalation where information indicates a material risk of harm.

In its target market assessment, the **fund manager** identifies an increased risk of harm for customers with low financial capability or resilience, because leverage can amplify losses. It therefore monitors for trends and indicators of systemic misunderstanding of the product or harm for this group – seeking information from the platform provider and advisers as appropriate – to understand whether it should take any reasonable steps within its role. These may include reviewing the target market, amending product communications, or making changes to distribution arrangements, such as limiting distribution to advised channels.

The **adviser** assesses whether individual customers' circumstances affect their risk tolerance and capacity for loss, to determine whether the fund is suitable. Where appropriate, it provides additional support during the customer journey – such as by proactively checking that customers understand key risks – or recommends an alternative product that better meets the customer's needs.

Where the adviser identifies material risks through its customer interactions, it escalates proportionate feedback to other relevant firms in the distribution chain.

### Example – consumer credit

*A lender manufactures a short-term unsecured credit product aimed at customers with limited access to mainstream credit. The product, which is distributed exclusively through a third-party credit broker, may carry a heightened risk of harm to some consumers in vulnerable circumstances where credit is taken out or rolled over.*

Given the likelihood of vulnerability in the target market (for example low financial resilience), we would typically expect more detailed and regular monitoring, involving appropriate information-sharing by both firms to support timely action where information indicates a material risk of harm.

The **lender** uses outcomes monitoring (including information it receives from the broker, where relevant) to identify whether product features may be leading to poor outcomes for particular groups of customers. For example, monitoring may show that customers with low financial resilience are more likely to roll over the credit, incur repeated late payment fees or default charges, resulting in the total cost of credit rising quickly. Where the lender considers that its charging structure is contributing to these outcomes, it should take reasonable steps within its role to address this (for example removing or adjusting charges, introducing earlier intervention triggers, engaging with the broker on changes to the customer journey and communications for these customers).

The **credit broker**, as the initial firm interacting with customers, is also well placed to consider how it can support customers in a way that meet their needs.

For example, it may identify customers in vulnerable circumstances where it sees indicators such as repeated applications for credit within a short period. Where appropriate, it provides additional support, such as offering extra time or different channels to complete key steps, explaining costs and risks in plain language, discussing alternatives and signposting customers in financial difficulty to free, independent debt advice.

It asks the lender to share where a loan application is declined and any cancellations or withdrawals that take place within a short period, so it can look for signs that the products are not being distributed consistently with their designed target markets, or other concerns relating to the Duty outcomes and cross-cutting obligations.

It provides relevant information and feedback to the lender to help the lender provide support to vulnerable customers introduced by the broker, and to support the lender's review of product design, charges, disclosures or distribution arrangements.

**Question 21: Do you agree with our proposals to better reflect how firms support for consumers in vulnerable circumstances will differ depending on their role in distribution chains? If not, please explain why, and any other options we should consider.**

## Obtaining information from other firms to meet obligations under the Duty

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- 4.26** Firms operating across distribution chains have told us that our expectations around information gathering under the Duty can be difficult to put into practice. Firms have highlighted challenges in understanding what information is genuinely necessary to assess whether they are meeting their Duty obligations. In some cases, this is leading to firms gathering large amounts of information they do not use, as well as issues with inconsistent data formats and variable quality of responses.
- 4.27** We recognise concerns about the exchange of extensive datasets that add limited insight into how firms impact customer outcomes, and how this can be resource intensive and costly for firms.
- 4.28** Firms working together across distribution chains, by collecting and sharing information that enables them to understand whether products and processes are working well for consumers and address any issues, is a key component of the Duty. We are therefore not proposing to switch off information gathering expectations.
- 4.29** Equally, we do not want to mandate a prescribed dataset across all markets, as this could limit firms' ability to innovate and develop their capabilities, including in response to new technology, and to benefit from the Duty's flexible outcomes-based approach. However, we recognise that in some sectors, trade body developed templates have promoted consistency and supported firms in meeting their Duty obligations.
- 4.30** Our expectations relating to outcomes monitoring under the Duty are proportionate based on a firm's role in the distribution chain, and our non-Handbook guidance includes some examples of a reasonable approach to information gathering in different circumstances. However, we think there is more we can do to support firms in this area, and better articulate what a reasonable, proportionate approach to information gathering and sharing involves in practice.

### Proposed changes

- 4.31** In response to concerns raised, we propose to introduce a rule to support firms in taking a more proportionate and practical approach when gathering and sharing information with other firms in a distribution chain. This is intended to help firms focus on gathering information that is genuinely useful for assessing customer outcomes, rather than exchanging large volumes of data or seeking comprehensive information in all cases. In doing so, we aim to give firms greater confidence that a targeted, judgement led approach to information gathering is appropriate under the Duty.

**4.32** We are proposing to amend our monitoring rules to ensure they are focused on a firm's role and activities in the distribution chain.

**4.33** We also propose to add to our non-Handbook guidance to support firms in taking a proportionate approach to gathering information and monitoring expectations under the Duty, including by explaining:

- We understand that firms will not always have access to complete information, especially where they operate in complex distribution chains.
- Firms should focus on gathering useful information they can reasonably access that helps them understand whether the activities they are responsible for are supporting good retail customer outcomes, or whether they may need to act to address issues.
- Firms are not expected to collect data that does not meaningfully help them to understand how they influence retail customer outcomes.
- If firms have existing data from other sources that provides all the information they need, they don't need to gather more information.
- Firms should generally focus on themes and trends at target market level, rather than individual customers or cases.
- A firm's approach will depend on its role and the risk of harm it presents to retail customers. For example, a proportionate approach could mean gathering less information to monitor an established product with well understood risks and benefits to customers, but doing more to monitor for risks and any potential harms that could be caused by a product new to market.
- In some cases, targeted, qualitative or risk-based monitoring approaches may be more appropriate, for example, where a firm is more remote from retail customers, or has limited ability to act on more granular data.
- A reasonable approach such as targeted information or qualitative focus groups with key partners can be proportionate, rather than a need for extensive surveys issued widely.
- Industry developed information sharing templates can help firms to meet monitoring expectations under the Duty.

**4.34** We are planning further work to build our evidence base and assess how information gathering and sharing is working in practice and whether it is leading to positive changes that benefit consumers. As part of this, we will consider whether there are further insights we can share, such as examples of good practice, to inform firms' approaches.

**Question 22:** **Do you agree with our proposals to better reflect a reasonable approach to information gathering and sharing to monitor outcomes under the Duty? If not, please explain why, and any other options we should consider.**

## Board or governing body reporting

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- 4.35** Some firms that have raised concerns that meeting Duty governance expectations has led to overly detailed, process-driven board reporting, including the production of standalone Duty reporting packs that duplicate existing governance information. Firms have told us they would welcome greater clarity on board reporting expectations under the Duty, particularly where they are further removed from retail customers.
- 4.36** When introducing the Duty, we recognised that its benefits 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 engagement and oversight. Most respondents to our second consultation on the Duty welcomed our proposals to require board oversight of the Duty through an annual report. Consumer organisations argued strongly this needed to be meaningful and not just a tick-box exercise. In December 2024, we published good and poor practice following our [review of firms' Duty board reports](#). Board reporting is also used as part of our ongoing supervisory work to monitor firms' Duty compliance in the absence of new regular reporting requirements in our Duty rules.
- 4.37** It has never been our intention for Duty related board reporting to be onerous or take up a disproportionate amount of boards' time. In our [Duty Policy Statement](#), we stated that firms are best placed to decide how to communicate the necessary information to their board, and that this requirement is intended to apply proportionately, as we recognise that the level and complexity of the report may vary between firms.
- 4.38** Firms' board reporting should focus on their role in delivering good outcomes for retail customers where the Duty applies – not ongoing technical assessments of whether the Duty could apply. If a firm only does a limited amount of business which is in-scope of the Duty, their Duty related board reporting should be correspondingly limited. We are proposing further changes to support firms in taking a proportionate approach in this area.

### Proposed changes

- 4.39** We propose targeted amendments to our rules that aim to clarify that the extent of a firm's reporting is to be commensurate with their role and activities in the distribution chain, and that they do not need to produce a stand-alone Consumer Duty board report.
- 4.40** We also propose to supplement our non-Handbook guidance to support firms in taking a proportionate approach by:
- Clarifying the extent and depth of a firm's board reporting will depend on the extent of its retail market business, its role in the distribution chain, its size and capabilities, and the risk of harm the activities it is responsible for presents to retail customers. Reporting should focus on the key insights, actions and risks relevant to the firm's activities.
  - Acknowledging that where firms have a more limited role in the manufacture and distribution of products and services to retail customers, we would expect their board reporting to reflect this, with a more streamlined assessment focused on the impact of their role and activities on consumer outcomes.

- Explaining that firms do not need to cover Duty obligations that are not relevant to their role in their board reporting, such as customer communications and support where these are provided by other firms in the distribution chain.
- A firm's Duty related board reporting can be incorporated into other board reporting and governance structures. We do not want a stand-alone report to simply duplicate other board reporting a firm carries out to a different cycle, creating costs without benefits. We also recognise a stand-alone Duty board report may be disproportionate for very small firms where a report might otherwise be produced and approved by the same person.

**4.41** Regardless of a firm's size or approach, we continue to expect firms to demonstrate how their governance supports good outcomes for retail customers where the Duty applies.

**4.42** Boards (or equivalent governing bodies) should receive clear reporting to assess whether the firm is delivering good outcomes in line with the Duty and to provide opportunity for effective challenge.

**4.43** Proportionate Duty related board reporting should continue to take place at least annually to support board assurance about ongoing compliance with the Duty where it applies, combined with clear channels for timely escalation of material issues outside usual reporting cycles.

**4.44** Frequency of reporting should be reasonable and proportionate to the firm's activities in scope of the Duty, the nature and complexity of its products and services, its role in the distribution chain, and foreseeable harm to consumers.

**4.45** In our supervisory work, we will take a proportionate approach, focusing on whether firms' governance and monitoring are effective at delivering good outcomes for retail customers in practice, where the Duty applies.

**4.46** We propose to include the following example in our updated non-Handbook guidance to show how a proportionate approach to board reporting could work in practice.

#### **Example – good practice**

Firm A's activities in scope of the Duty are limited to providing information about products and services to retail-facing distributors to support sales to retail customers. It uses existing reporting structures to provide a brief annual update to its board on how this activity is working in practice, summarising feedback from key distributors, and areas where information has been supplemented to help ensure end retail customers who are purchasing products get the information they need to make effective decisions. This enables the firm's board to oversee that it is acting to deliver good outcomes for retail customers in a proportionate way where the Duty applies to activities it is responsible for.

Firm B manufactures and distributes a wide range of products and services exclusively to retail customers. The Duty therefore applies broadly to its business and a considerable amount of its usual board reporting and governance covers issues where the Duty has relevance. The firm decides to consolidate this reporting into an annual Duty report for its board to allow for a more holistic assessment of how its activities and business strategy are consistent with Duty expectations.

**Question 23:** Do you agree with our proposals to clarify our expectation that board or governing body reporting should be proportionate to the firm's circumstances, including its actual role in influencing retail customer outcomes? If not, please explain why, and any other options we should consider.

## Chapter 5

# The Duty's interaction with other product governance and disclosure requirements for retail investment products

- 5.1** This chapter focuses on how the Duty interacts with other rules that apply to firms' manufacture of retail investment products, including wholesale firms, whose products are distributed by other firms. These other rules include product governance requirements in PROD 3 and disclosure requirements under the CCI regime.
- 5.2** We know that firms primarily active in wholesale markets generally don't interact directly with retail customers, and instead distribute their retail investment products through third parties. This chapter explains how we propose to clarify our expectations of firms in these circumstances, including how the Duty should be applied proportionately, consistent with the approach in Chapter 4.

## Interaction with PROD 3 requirements

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- 5.3** Where a product or service falls within PROD 3 (for financial instruments and structured deposits), firms must comply with those rules rather than the Duty's products and services outcome (PRIN 2A.3).
- 5.4** We explained in [FG22/5](#) that in certain circumstances, meeting existing obligations will be enough to demonstrate compliance with the products and services or the price and value outcome rules. Consistent with this approach, the products and services outcome rule does not apply where firms are subject to PROD 3. By contrast, we do not consider that PROD 3 fully addresses the price and value outcome rule in PRIN 2A.4. The Duty's price and value outcome requires firms to act proactively to prevent foreseeable harm and ensure fair value to retail customers.
- 5.5** However, we recognise that some firms have already been implementing PROD 3 in a more expansive way, such that their approach in practice overlaps to a greater degree with the expectations under PRIN 2A.4.
- 5.6** The current position might have contributed to firms taking overly cautious or duplicative approaches, and feedback from [July 2024 Call for Input](#) indicates the interaction between PROD and the Duty is overly complex. We therefore propose clarifying this relationship in our non-Handbook guidance, and are seeking views on whether areas or activities of PROD 3 could be streamlined with greater reliance on the Duty.

## Proposed changes

- 5.7** We have carefully considered the feedback we have heard from firms, but we are not proposing changes to the current framework at this stage.
- 5.8** While we recognise that there are areas of interaction between the Duty's price and value outcome and PROD 3, we consider that the overall framework remains appropriate. In many cases, firms can rely on existing arrangements to meet both sets of requirements.
- 5.9** Our existing rules and guidance already provide a sufficient basis for firms to understand how to apply the Duty alongside PROD 3 in a proportionate way. However, we accept firms may be adopting more complex or duplicative approaches than necessary when operationalising these frameworks together. We therefore propose targeted updates to our non-Handbook guidance to help firms understand how the regimes interact. This would include:
- clarifying the application of the Duty to wholesale markets, including our expectations for firms whose role is limited to product manufacture, supported by an illustrative example, as set out below (paragraph 5.24).
  - clarifying how the Duty's price and value outcome interacts with PROD 3, including how firms may rely on existing PROD 3 arrangements to support them in meeting the Duty's price and value outcome. For example, where those arrangements already consider whether a product's costs are reasonable relative to the benefits to its target market, we do not expect firms to establish separate processes to meet the Duty.
- 5.10** As set out in Chapter 4, we propose to clarify that firms are only responsible for ensuring compliance in respect of their own role and activities. This will include clarifying that firms are not expected or required to oversee the compliance of other firms in the distribution chain, unless other regulation or contracts require this. We are also introducing a rule to support firms in taking a more proportionate and practical approach when gathering or sharing information with other firms in a distribution chain. These proposed clarifications should provide greater certainty for wholesale firms whose role is limited to product manufacture.
- 5.11** We consider that these targeted changes, together with the proposed rule changes explained in Chapter 4, will help firms apply the Duty proportionately and reduce unnecessary burden.

**Question 24:** Are there specific areas where further clarification would help firms avoid unnecessary duplication in practice? If so, what form of additional guidance can we give firms to improve the clarity of our expectations?

## **Streamlining the Duty and PROD 3 requirements**

- 5.12** Some respondents to our Call for Input questioned whether PROD 3 could be merged with the Duty. We have therefore considered whether broader changes, including removal of PROD 3, could help reduce unnecessary burden on firms. However, our view is that PROD 3 continues to serve an important role in relation to scope, cross-border application and legal certainty in the application of product governance requirements. Given the complexity in these areas, removing or disapplying it could give rise to unintended consequences.
- 5.13** Any future changes to streamline or disapply elements of PROD 3 would involve careful consideration of a range of technically complex factors. These factors do not operate in isolation, and changes in one area may have knock-on effects elsewhere, including for firms operating across multiple jurisdictions. For example:
- the Duty's territorial scope, noting that PROD 3 requirements currently apply to products manufactured in the UK for non-UK customers. PROD 3 will continue to be the baseline framework for product governance in cross-jurisdictional contexts
  - the availability of a private right of action, which applies under PROD 3 but not under the Duty
  - the types of business that may fall in scope of the Duty, as PROD 3 applies to some non-retail business which currently fall outside the Duty's scope
  - potential gaps for firms with an international presence, given PROD 3 is aligned with EU MiFID frameworks
  - the extent to which removing more prescriptive PROD 3 requirements would shift reliance onto firms' judgement in how they apply the Duty
- 5.14** These considerations illustrate that changes in this area are likely to be complex, where efforts to simplify the framework may in practice introduce additional complexity or uncertainty for firms. For this reason, we are not proposing rule changes at this stage. While we aren't consulting at present, we welcome views on whether there are specific areas where simplifying PROD 3 requirements further and relying on the Duty more may be beneficial.

**Question 25:** **Do you consider that there are specific areas or activities where you consider we should disapply the PROD 3 product governance rules and rely instead on the standards set by the Duty? If so, what are these areas, and what would be the impact on firms' processes, costs and customer outcomes?**

## **Interaction with the CCI regime**

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- 5.15** The CCI regime replaces the Packaged Retail and Insurance-based Investment Products (PRIIPs), Undertakings for Collective Investment in Transferable Securities (UCITS), and the Key Investor Information (KII) regimes. It introduces a more outcome-focused approach to product information in line with the Duty.

- 5.16** We set out in [FG22/5](#) that firms must continue to comply with any applicable legislative and regulatory disclosure requirements. Where those regimes provide a framework or template for disclosures but give firms discretion over the content or presentation of information, we expect firms to follow the high-level rules and guidance under the consumer understanding outcome.
- 5.17** Some wholesale firms have also told us that the Duty's consumer understanding outcome (PRIN 2A.5) overlaps with disclosure regimes such as the CCI regime, and have asked for greater clarity on what additional steps they need to take to demonstrate compliance with the Duty. We explain our proposals for clarifying this interaction in this section.

### Proposed changes

- 5.18** The CCI regime has been designed in light of the Duty, and the existing framework already accommodates their interaction. However, recognising firms' feedback, we propose targeted changes to our non-Handbook guidance to support more consistent application.
- 5.19** We propose to update our non-Handbook guidance to clarify that, where a firm's role is limited to the manufacture of a retail product or service and it complies with applicable disclosure requirements (such as the CCI regime), this will generally be the primary means by which it supports the consumer understanding outcome.
- 5.20** We also propose to clarify that firms should not assume that they are required to take additional or duplicative steps solely as a result of being subject to both regimes. For example, under the CCI regime, manufacturers are responsible for designing and preparing a consumer-friendly product summary. This would typically be the primary way such firms are able to support consumer understanding, unless they opt to create additional marketing materials.
- 5.21** Where firms exercise discretion and judgement over the design, presentation and content of disclosures, CCI rules require them to use judgment to consider the relevant standards of the Duty. For example, [FG22/5](#) explains how firms can equip retail customers to make effective decisions, by adopting good practices that enhance the clarity of communications such as breaking up of key information, and making them engaging, relevant, simple and well timed.
- 5.22** While CCI rules can help firms meet aspects of the consumer understanding outcome, the Duty requirements remain broader than the disclosure requirements. The CCI regime doesn't set out the full range of steps firms may take to support consumer understanding. For example, the CCI regime doesn't mandate firms to test communications, which is a Duty requirement, where appropriate.
- 5.23** As set out in Chapter 4, we propose that firms should focus on the activities or factors within their control. Manufacturers are only responsible for what they can influence. Unless other regulation or contracts require it, they aren't responsible for the consumer communications from distributor firms to customers. However, where appropriate, manufacturers should consider and act on feedback provided from distributors where this identifies issues with materials prepared by manufacturers.

**Question 26: Do our proposed changes to the non-Handbook guidance provide sufficient clarity for firms? If not, what further clarification is needed to help firms reduce unnecessary duplication or uncertainty in practice?**

**5.24** The following example illustrates how firms primarily active in wholesale markets can apply the Duty in a proportionate way under our proposals, including the changes set out in Chapters 2, 3 and 4. It clarifies the role and responsibilities of such firms, and how they can build on existing PROD 3 and CCI arrangements when meeting their Duty obligations. As described in paragraph 5.9, we propose to include this example in our non-Handbook guidance.

**Example – application of the Duty to an investment bank manufacturing retail structured products for distribution by third parties**

An investment bank manufactures retail structured products for distribution by independent third-party firms to retail customers. The bank doesn't have direct contact with these customers. A significant proportion of these products are sold to customers outside the UK and fall outside the scope of the Duty. The Duty applies only to the products intended for selling to customers who are usually resident in the UK.

***The products and services outcome***

The bank is subject to PROD 3 product governance requirements, and the Duty's products and services outcome (PRIN 2A.3) doesn't apply where PROD 3 applies.

The bank is responsible for designing the product and ensuring it meets the needs of its identified target market in accordance with PROD 3. This includes assessing and identifying the target market for the product, as well as ensuring that it is distributed appropriately.

***The price and value outcome***

The Duty's price and value outcome (PRIN 2A.4) imposes manufacturer obligations on the bank to consider whether the product, including its payoff structure, is likely to deliver fair value and whether it could give rise to foreseeable harm. The cross-cutting rules, including the requirement to act in good faith, are also relevant.

In designing the product, the bank considers whether:

- The benefits of the product are reasonable relative to its costs.
- The product structure could lead to poor outcomes for certain customer groups.
- It is acting in good faith in its design and governance decisions.

The bank uses its existing PROD 3 product governance and review processes to support compliance with the Duty's requirements. PROD 3 already requires manufacturers to undertake regular product reviews, including assessing whether products continue to meet the needs of the target market and taking action where appropriate. These arrangements help the bank to monitor whether the product continues to provide fair value over time.

### ***The consumer understanding outcome***

The bank is subject to the CCI regime in preparing a product summary, which helps the firm meet the Duty's consumer understanding outcome (PRIN 2A.5).

The bank is responsible for designing and preparing the product summary, distributed via third parties, for retail customers. It needs to ensure that the product summary and any additional product communication meet the information needs of, and are likely to be understood by, retail customers. Where appropriate, the bank must test that the communications support good outcomes.

The bank also needs to provide distributors with clear and comprehensive information about the product, its intended value and its target market. This information should enable distributors to assess whether the product is appropriate for their customers, and distribute it in a way that is consistent with providing fair value.

The Duty doesn't make the bank responsible for activities outside its role, for example reviewing the additional communications designed by third-party distributors for retail customers.

### ***The consumer support outcome***

The bank does not interact directly with retail customers and does not design or operate customer support channels. It also does not have an influence on how retail customers receive ongoing support, such as through responding to queries, providing assistance or resolving issues.

However, under the Duty's consumer support outcome (PRIN 2A.6), it is responsible for dealing with reasonable requests from another firm in an effective way and in good time to enable that firm to support retail customers. And, if it ever did provide support directly to a retail customer, for example if it dealt with a complaint, it would need to comply with the requirements.

### ***Monitoring requirements***

The bank is subject to PROD 3 requirements to monitor and review its product on a regular basis. The Duty also requires firms to monitor whether customers are receiving good outcomes.

On an ongoing basis, the bank relies on its existing PROD 3 product governance, review and oversight arrangements to obtain information from its distributors. It uses this information to assess whether the product continues to meet the needs of the target market and deliver fair value, including any indicators of distribution outside the target market or potential risks of harm.

The bank is not expected to collect granular or customer-level data, track individual customer outcomes, or assess distributors' compliance in order to meet its manufacturer obligations under the Duty.

Where the information indicates a potential issue, for example where there are indicators that the product is being distributed outside the target market, the bank considers whether this may give rise to a material risk of harm and undertakes further root-cause analysis.

In doing so, the bank considers whether the issue relates to activities within its control, such as whether the target market definition or the information it has provided to distributors is sufficiently clear and complete, or whether it arises from how distributors are applying their own sales process.

- Where the issue relates to matters within the bank's control, the bank considers whether action is needed, for example by revisiting aspects of its target market or disclosures.
- Where the issue instead relates to the actions of distributors, such as deficiencies in their sale processes or training, the bank considers whether any changes to its distribution strategy are appropriate, within the scope of its role. Acting in good faith, the bank provides feedback to distributors on the issues identified. However, it does not oversee distributors' compliance processes, and distributors remain responsible for implementing any improvements. If concerns persist, the bank may consider whether it would be appropriate to terminate the distribution arrangement, recognising that it would generally be expected only where other reasonable steps have not been effective.

Where the information reviewed does not indicate a material risk of harm and instead reflects a difference in judgement as to how distributors apply their obligations, the bank continues to rely on distributors' assessments and controls in good faith and does not take further action or escalation.

### ***Reporting requirements***

The bank uses existing PROD 3 reporting and governance arrangements, considered through a Duty lens, to provide an aggregate report to the Board (or equivalent governing bodies) for review and approval. This is typically covered annually, confirming that products are operating as intended and supporting good outcomes for retail customers.

## Chapter 6

# Technical clarifications

- 6.1** In this chapter we set out a number of technical clarifications intended to correct or clarify drafting in our Duty rules and propose related revisions to our non-Handbook guidance. These changes aim to provide clarity where existing drafting has created ambiguity or does not clearly reflect our original policy intent. We believe it is important to make these changes to support firms in understanding what is expected of them.
- 6.2** These clarifications are in 3 categories:
- the application of the Duty
  - outdated references
  - minor revisions

## The application of the Duty

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- 6.3** This section sets out clarifications on how the Duty applies in practice, particularly where aspects of the existing drafting has created uncertainty about scope or responsibilities.

### Application of the Duty where an exemption applies in a sectoral sourcebook

- 6.4** As set out in [PS22/9](#), the Duty does not apply to activities where an exclusion exists in our sectoral rules. However, the drafting of a particular rule (PRIN 3.2.8R) has created ambiguity about how the Duty applies in practice, appearing to tie the Duty's application too closely to the coverage of sector-specific rules.
- 6.5** This has created uncertainty about whether, in some circumstances, the Duty would continue to apply if sectoral rules were amended, simplified or removed. This is a particular concern given our work on simplifying the Handbook which can involve removing rules that duplicate the Duty.
- 6.6** This does not reflect our original policy intent and risks undermining clarity and confidence in how the Duty operates across the Handbook. We [previously consulted \(CP22/26\)](#) on a different change to PRIN 3.2.8R in 2022 but decided not to take this forward. We now propose to delete PRIN 3.2.8R. It will be replaced by our proposals to make amendments and clarifications to the scope and application of the Duty, particularly in relation to certain activities in specific sectors (see Chapter 3). We will continue to consider whether further rules are required in this regard.
- 6.7** We believe it is an important clarification to make as it ensures that the Duty continues to apply as we intend, particularly as we simplify the Handbook and reduce reliance on new sectoral rules.

## Application of the Duty to non-retail financial instruments

- 6.8** The scope the Duty is focused on retail market business. There is an exclusion for certain activities linked to financial instruments designed primarily for wholesale investors (i.e. for financial instruments where the minimum investment is £50,000). Where this exclusion applies, firms do not need to consider whether their activities determine or materially influence retail customer outcomes as they are already out of scope of the Duty. However, we are concerned that the current wording might be interpreted as excluding certain retail activity that it was not intended to capture. For example, where firms are selling investment funds to retail customers via a platform and the minimum investment is aggregated in order to reach the £50,000 threshold.
- 6.9** We propose to restate the exclusion in a rule and amend the exclusion to make clear that it applies per investment and per end investor, so it cannot be relied on where investments are aggregated to reach the £50,000 threshold. This aligns with other amendments to the scope of the Duty we are proposing (see Chapter 3). This will provide a clear carve-out of distribution arrangements that are genuinely limited to wholesale market activities, whilst ensuring that retail activities remain within the scope of the Duty.
- 6.10** We previously consulted (CP22/26) on the exclusion and proposed to remove it in relation to investment funds but didn't take this forward following engagement with industry. Our current proposal is different to the change we previously consulted on. We propose to maintain our current approach, that draws a clear line beyond which a product is considered to not amount to retail market business and is not subject to the retail market protection of the Duty. We understand that many firms rely on the exemption and specific rules apply to retail clients where the minimum investment is £50,000. We want to be clear that we are maintaining the £50,000 threshold and our position is that these financial instruments are still excluded, as the Duty focuses on retail market business.

## Interaction with Collective Investment Schemes Sourcebook (COLL) and PROD

- 6.11** We currently use different language to describe a similar concept in two places in FG22/5:
- In the price and value chapter we note that firms that meet value rules in PROD 4 for non-investment insurance and COLL 6.6, COLL 8.5 or COLL 15.7 for asset management will meet the price and value outcome in PRIN 2A.4.
  - However, in the products and services chapter, we say that if a firm's products or services are subject to PROD 3 and PROD 4 and PROD 7, then PRIN 2A.3 does not apply to the firm for that product or service.
- 6.12** This could create confusion as the language seems inconsistent. To address this, we propose to amend the language used. We propose that the revised guidance in the price and value chapter reflects that PRIN 2A.4 does not apply to non-investment insurance firms and for firms that are subject to the other listed value rules in COLL 6.6, COLL 8.5, and COLL 15.7. We still expect firms to consider if they meet all other aspects of the Duty.

## Retail customer scope and client categorisation

- 6.13** The Duty is relevant to client categorisation. A firm that seeks to circumvent consumer protection requirements by encouraging a retail customer to seek categorisation as a professional client would generally breach relevant obligations under the Duty. The current guidance in FG22/5 touches on this at paragraph 2.10.
- 6.14** In December 2025, we published a consultation on proposed changes to client categorisation rules (CP25/36) that may lead to changes to the Duty non-Handbook guidance on this. As those proposals have not yet been finalised, we have not included the existing text in our revised guidance. Instead, we will clarify our expectations through our client categorisation work.

## The Gibraltar Authorisation Regime

- 6.15** We currently have wording in FG22/5 that notes that a legislative framework, the Gibraltar Authorisation Regime, will be established to enable UK market access for Gibraltar-based financial services firms if they intend to carry on approved activities in the UK. FG22/5 set out our initial view of how the Duty could take account of this framework once introduced. We are not carrying this across into the new guidance as the framework is under development and this issue will be resolved in a separate workstream.

## Outdated references in FG22/5

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- 6.16** This section covers references in our non-Handbook guidance that are outdated and no longer reflect our position.

## Board champion references

- 6.17** We said that we expect firms to have a champion at Board (or equivalent governing body) level to support the Chair and CEO in raising the Duty regularly in all relevant discussions, and challenging the firm's governing body/management on how it is embedding the Duty and focusing on consumer outcomes. In February 2025, we recognised that the Duty should be well-embedded in firms' management discussions, processes, and policies – and we wanted to provide firms with greater flexibility in their ongoing governance arrangements. We therefore consider that firms should no longer be expected to have a Duty champion, although they can retain the role should they wish to do so. Our rules continue to require firms to ensure that their obligations under the Duty are reflected in their strategies, governance, leadership and people policies, including incentives at all levels. Firms also need to ensure that retail customer outcomes remain central to their risk control arrangements and internal audit function.
- 6.18** We propose that the revised guidance will have updated board champion references to reflect our new position and not include the outdated references in FG22/5.

## Minor revisions

- 6.19** We are proposing to make a number of revisions to improve the current rule drafting so that it more clearly reflects our intended policy position. We consider these revisions to be minor, with little or no impact on the overall operation of the rules. However, they are intended to support easier interpretation of how the rules are intended to operate.

### Minor revisions as part of technical clarifications

Provision	Current wording	Proposed amendment
2A.1.10G	(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.	Clarify in paragraph (3) that 'supporting customers' refers to the outcome relating to 'consumer support'.
2A.1.17G	(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.	Clarify the wording as it originally focused on application at the time the Duty was first implemented.
2A.3.6R	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.	Remove the reference to the 'target market' to clarify that firms do not need to consider the target market for closed products.
2A.4.1R	For the purposes of this outcome: ...	Clarify that the explanation of value in this rule applies to PRIN 2A.4.
2A.4.2R	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.	Change the references in the plural to the singular to better align with language elsewhere in the Handbook.

Provision	Current wording	Proposed amendment
2A.4.36R	(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.	Clarify that firms must comply with PRIN 2A.4.25R where they cannot adequately explain why it disagrees with a value for money assessment conducted under COBS 19.5.
2A.5.3R	(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.	Adjust the language to clarify that firms must ensure communications meet the conditions in this rule.
2A.3.29G(2), 2A.4.18R(3) 2A.4.32R(2), 2A.4.34R(1), 2A.4.36R(5), 2A.11.3G, 2A.11.5R	These provisions state that firms are required to 'apply' various rules.	Replace with 'comply with' to align with language used in other Handbook rules.
<b>FG22/5 Guidance</b>		
Paragraph 5.47	Neither this cross-cutting rule, nor the Duty overall, require firms to go beyond what is reasonably expected by customers in the delivery of their service.  It does not require firms to carry out regulated activities outside of their scope of service and/or permissions (for example it does not require firms without advice permissions to provide advice).	Revised guidance will instead include 'firms without investment advice permissions to make a personal recommendation'.

**Question 27:** Do you agree with our proposed approach to making the technical clarifications in this chapter?

**Question 28:** Do you agree with our proposal to clarify that the exclusion in relation to instruments where the minimum investment is £50,000 applies per investment and per end investor?

**Question 29:** Are there any other minor or technical changes that would help improve the clarity or operation of the Duty?

## Annex 1

# Questions in this paper

## Chapter 2

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- Question 1:** How could we avoid additional costs for firms where sectoral rules have a different territorial scope to the Duty in the future?
- Question 2:** Do you agree with our proposal to limit the Duty's territorial scope in relation to the usual residence of retail customers? Do you have any comments on our approach to defining the usual residence of retail customers?
- Question 3:** Are there other requirements we should consider to avoid the risk that products or services intended only for sale outside the UK, and so not subject to the Duty, are sold to customers usually resident in the UK?
- Question 4:** Do you agree with our proposals to continue to apply the Duty to some business where customers are usually resident outside of the UK?
- Question 5:** Are there any other consumers, products or services where the Duty should still apply outside the UK?
- Question 6:** Do you have any comments on our proposed changes to the 'Application outside the UK' section of Chapter 2 of the non-Handbook guidance?

## Chapter 3

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- Question 7:** Do you have any comments on the proposed application provisions and whether they will help with understanding the scope of the Duty?
- Question 8:** Do you have any comments on the proposed approach to defining 'retail market business'?
- Question 9:** Do you have any comments on our proposed changes to the 'product' definition?
- Question 10:** Do you agree with the changes we are proposing to clarify the scope and obligations for firms in a distribution chain?

- Question 11:** Do you agree with our proposed approach to clarifying application where a firm is subject to the Duty but doesn't have a role in relation to one or more of the four Duty outcomes?
- Question 12:** Do you agree with our proposals for updating our rules on material influence?
- Question 13:** Do you have any comments on our proposed approach to classifying which firms are manufacturers for the purposes of the Duty?
- Question 14:** Should we consider making similar changes to the rules in DISC and PROD?
- Question 15:** Do you have any comments on how the new approach to classifying manufacturers should apply to existing products and services?
- Question 16:** Do you have any comments about our proposed approach under the Duty to outsourcing arrangements in relation to the manufacture of a product or service?
- Question 17:** Do you agree with our proposed exclusions for activities that fall out of scope of the Duty? Should we make any changes to them, either to broaden them or to limit their availability for certain activities (and, if so, why)?
- Question 18:** Are there any other activities where we should consider exclusions on a similar basis?
- Question 19:** Do you have any comments on our proposed changes to Chapters 2 and 6 of the non-Handbook guidance?

## Chapter 4

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- Question 20:** Do you agree with our proposals to clarify firms' roles and responsibilities across the distribution chain? If not, please explain why, and any other options we should consider.
- Question 21:** Do you agree with our proposals to better reflect how firms support for consumers in vulnerable circumstances will differ depending on their role in distribution chains? If not, please explain why, and any other options we should consider.
- Question 22:** Do you agree with our proposals to better reflect a reasonable approach to information gathering and sharing to monitor outcomes under the Duty? If not, please explain why, and any other options we should consider.

**Question 23:** Do you agree with our proposals to clarify our expectation that board or governing body reporting should be proportionate to the firm's circumstances, including its actual role in influencing retail customer outcomes? If not, please explain why, and any other options we should consider.

## Chapter 5

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**Question 24:** Are there specific areas where further clarification would help firms avoid unnecessary duplication in practice? If so, what form of additional guidance can we give firms to improve the clarity of our expectations?

**Question 25:** Do you consider that there are specific areas or activities where you consider we should disapply the PROD 3 product governance rules and rely instead on the standards set by the Duty? If so, what are these areas, and what would be the impact on firms' processes, costs and customer outcomes?

**Question 26:** Do our proposed changes to the non-Handbook guidance provide sufficient clarity for firms? If not, what further clarification is needed to help firms reduce unnecessary duplication or uncertainty in practice?

## Chapter 6

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**Question 27:** Do you agree with our proposed approach to making the technical clarifications in this chapter?

**Question 28:** Do you agree with our proposal to clarify that the exclusion in relation to instruments where the minimum investment is £50,000 applies per investment and per end investor?

**Question 29:** Are there any other minor or technical changes that would help improve the clarity or operation of the Duty?

## Annex 2

# Cost benefit analysis

## Executive Summary

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1. This Annex sets out our assessment of the costs and benefits of the proposed changes to the scope and application of the Consumer Duty (the Duty). This analysis applies a rebalancing risk approach, explicitly assessing the trade-offs between risks of harm and expected benefits. Rather than seeking to eliminate all risks, we consider whether a more proportionate level of risk-taking could deliver improved outcomes, while ensuring that any resulting harm remains within tolerable limits.
2. The Duty sets the standard of care that firms should give to customers in retail financial markets. It introduced a framework of rules and guidance setting out the consumer outcomes we expect of firms, with the aim of raising general standards across all retail financial services markets.
3. In the [2025 Mansion House speech](#), the Chancellor asked the FCA to address concerns about the application of the Duty to wholesale firms. In our [September 2025 response to the Chancellor](#), we committed to consult on changes to the Duty in the first half of 2026 to:
  - Remove business with non-UK customers from the Duty's scope.
  - Make it clearer where the Duty applies and draw a clearer line where it does not, including in relation to business-to-business activities.
  - Make clear when and how firms can rely on each other when they work together in distribution chains, such as when designing and selling structured products.
  - Consider if there is a case for further exemptions from elements of the Duty where firms are subject to other regulatory obligations.
4. In taking forward these commitments, we are proposing the following changes to the scope and application of the Duty:
  - First, we propose to disapply the Duty where firms conduct business for customers outside the UK, while retaining its application where there remains a clear risk of harm to UK-connected consumers. See Chapter 2, "[The scope of the Duty: firms with customers outside the UK](#)", for details.
  - Second, we propose to provide greater certainty for firms on the scope of the Duty, particularly in multi-firm distribution arrangements and for firms that are remote from retail customers. See Chapter 3, "[The scope of the Duty: activities subject to the Duty](#)", for details.

- Third, we propose targeted changes to support more proportionate application of the Duty by firms, including in relation to customer vulnerability, information-sharing between firms, outcomes monitoring, and board reporting. See Chapter 4, "*Proportionate application of the Duty*", for details.
  - Fourth, we clarify our expectations of firms where the Duty interacts with other rules that apply to the manufacture of retail investment products, including how the Duty should be applied proportionately. See Chapter 5, "*The Duty's interaction with other product governance and disclosure requirements for retail investment products*", for details.
  - Finally, we are proposing several technical clarifications intended to correct or clarify drafting in our Duty rules and guidance. See Chapter 6, "*Technical clarifications*", for details.
- 5.** We consider the changes proposed in this package to be material without fundamentally changing how the Duty operates. Taken together, these changes aim to give firms the confidence to act proportionately, which should lead to benefits in the form of a reduction in compliance costs being passed on to consumers, whilst continuing to ensure that appropriate levels of consumer protection remain in place.
- 6.** We expect the proposed changes to be net beneficial, achieved without a material impact on consumer protections. In familiarising themselves with the proposed changes and implementing any changes as a result, we estimate total one-off costs of our proposals to firms to be between £35.6m and £106.0m, depending on assumptions on costs of staff training, IT projects, and change management projects. Our central cost estimate is £92.1m. Individual firm costs will vary according to their size.
- 7.** We expect these proposed changes to be net beneficial, reflecting a rebalancing of the current approach to risk-taking. These changes are intended to improve the certainty and proportionality of the Duty, while maintaining its core objective of delivering good outcomes for retail customers. The proposed changes will also support the FCA's secondary objective to facilitate the international competitiveness and growth of the UK economy, by making the UK an attractive place to locate business, without compromising on the high standards of protections that UK consumers enjoy. We consider that these changes are consistent with a more proportionate regulatory approach, where risks of harm remain within tolerable levels and are mitigated through existing safeguards.

## Introduction

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- 8.** FSMA, as amended by the Financial Services Act 2012, requires the FCA to publish a cost benefit analysis (CBA) of our proposed changes to the scope and application of the Duty. The CBA is defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed changes are made'. If, in our opinion, the costs or benefits cannot be reasonably estimated, or it is not reasonably practicable to produce an estimate, then under s.138I (8), we must include a statement of our opinion and an explanation of what we see as likely costs and benefits arising from the proposed policy.

- 9.** The proposed changes the CBA aims to assess are detailed in chapters 2 to 6 of this consultation paper, and will manifest in the relevant parts of the FCA Handbook (PRIN 2A, PRIN 3, and a newly proposed PRIN 3A) and non-Handbook guidance (FG22/5). See Appendices 2 and 3 for details.
- 10.** Although it is not practicable to reasonably quantify many of the anticipated impacts of our proposals, we have described in this CBA the costs and benefits that we expect to arise, provided monetary values where it is reasonably practicable to do so. In making our assessment, we have drawn on:
- Our experience of the issues with the scope and application of the Duty that we are aiming to address, and the potential scale of those issues,
  - The modelling of costs and benefits of past interventions that we have applied more broadly using our Standardised Costs Model, and
  - Our engagement with firm and consumer representative bodies, in relation to these proposals, since the [2025 Mansion House speech](#).
- 11.** As part of our consultation, we would welcome feedback on this CBA, including the baseline and assumptions we have used, and any additional information which may inform our assessment of the costs and benefits.

## The Market

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- 12.** The proposed changes encompass amendments to PRIN 2A (The Consumer Duty), as well as amendments that apply to specific sectors of the UK financial market. The Duty applies to the regulated activities and ancillary activities of all firms authorised under the Financial Services and Markets Act 2000 (FSMA), payment services under the PSRs, EMRs, and connected activities to those services in respect of products and services for prospective and actual retail customers.
- 13.** The Duty applies to products and services offered to 'retail customers'. The retail customer definition aligns broadly with the scope of our Handbook.
- 14.** Where we already regulated and applied protections to the provision of financial services to small and medium enterprises (SMEs), the Duty applies to firms dealing with them, in line with the approach in existing sourcebooks.

## Firms

- 15.** As of 2026, there are approximately 36,000 directly regulated financial services firms to whom the Duty applies. Of these, approximately 35,000 are in retail sectors, though some of these firms are unlikely to be directly engaged in the manufacture, provision, sale, or ongoing administration of retail products or services.
- 16.** Table 1 below displays the number of regulated firms in each sector of the UK financial market, by sector, using estimates derived from internal FCA data.

**Table 1: Number of firms to whom the Duty applies, by sector**

<b>General Insurance &amp; Protection</b>	<b>4,405</b>
Lloyd's and London Market Intermediaries (inc Managing General Agents)	350
Lloyd's Managing Agents and London Market (Re) Insurers (inc P & I Clubs)	216
Personal and Commercial Lines Insurance Intermediaries	3,560
Personal and Commercial Lines Insurers (inc EEA Insurers)	266
Price Comparison websites	13
<b>Investment Management</b>	<b>2,597</b>
Asset Management & Alternatives	2534
Custody and Fund Services	63
<b>Pensions &amp; Retirement Income</b>	<b>186</b>
Funeral Plans (Providers and Intermediaries)	31
Life Insurance	155
<b>Retail Banking</b>	<b>1,520</b>
Building Societies	55
Lifetime Mortgage Providers	30
Mortgage Third Party Administrators	36
Non-Bank Lenders	97
Payment Services Firm	1
Payments	1,179
Retail Bank	122
<b>Retail Investments</b>	<b>5,246</b>
Advisers and Intermediaries	4,632
Crowdfunders (Investment)	26
Peer-to-Peer lending platforms	41
Platforms	69
SIPP Operators	61
Wealth Management	417
<b>Retail Lending</b>	<b>20,657</b>
Claims Management	344
Credit Brokers	14,582
Credit reference agencies and providers of credit information services	39
Credit Unions	348
Debt Advice Firms	716
Debt purchasers, debt collectors and debt administrators	177
High Cost Lenders	508
Mainstream Consumer Credit Lenders	136
Mortgage Intermediaries	2,044
Motor Finance Providers	315
Retail Finance Providers	1,448

<b>Wholesale Financial Markets</b>	<b>1,157</b>
Benchmarks	20
Contracts for Differences (CFD) Providers	92
Corporate Finance Firms	428
Credit Rating Agencies (CRAs)	13
DRSP	3
Exchanges	31
Multilateral Trading Facilities and Organised Trading Facilities	38
Principal Trading Firms	58
Trade Repositories	1
Wholesale (Other)	3
Wholesale Bank	188
Wholesale Brokers	282

## Consumers

- 17.** Approximately 36,000 firms are in scope of the Duty, serving a large share of UK consumers across a broad range of financial products and services. To illustrate the scale of the market affected, we draw on the Financial Lives Survey (FLS) (2024), which shows the extent to which UK adults hold and use products and services within the scope of the Duty.
- 18.** According to the FLS 2024, a survey of UK adults and their use of financial products and services, almost all adults in the UK regularly interact with financial products and services within the scope of the Duty. For instance, assuming the overall adult (18+) population was 55,022,253 in 2024 (ONS, Mid-2024 estimate of the population for the UK):
- 52.5m people (95%) hold a day-to-day bank account
  - 39.1m people (71%) have at least one savings product (i.e. savings account, ISA, bonds)
  - 19.3m people (35%) hold an investment product (excluding real investments or property)
  - 41.2m people (75%) have a private pension, of which
    - 58% hold at least one in accumulation
    - 24% hold at least one in decumulation
  - 16m people (29%) have a mortgage on the property they live in
  - 43.5m people (79%) hold a regulated credit agreement or loan
  - 47.3m people (86%) have purchased a general insurance or protection product.

- 19.** The survey underlines the importance of financial services to consumers in the UK, and of the Duty which sets a high standard of consumer protection across financial services. The Duty is particularly important for consumers in vulnerable circumstances (26.4m adults (48%) have characteristics of vulnerability (FLS, 2024)), such as those with low financial resilience (14.3m of these 26.4m vulnerable consumers (FLS 2024)), who may be at greater risk of harm when things go wrong.

## Problem and rationale for intervention

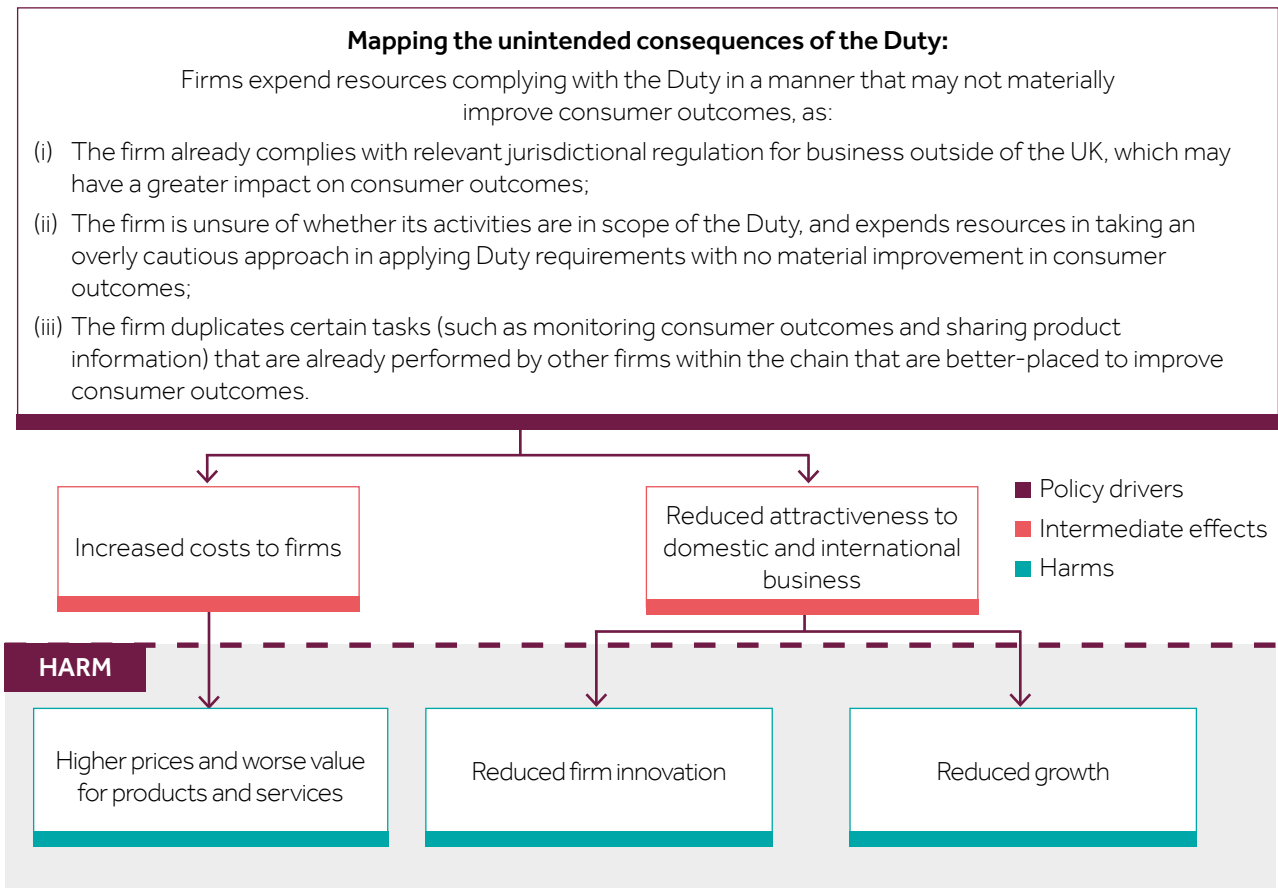
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- 20.** The Duty was introduced to raise standards of conduct across retail financial markets by requiring firms to act to deliver good outcomes for retail customers, reflecting longstanding concerns about information asymmetries, behavioural biases and weak incentives for firms to prioritise consumer outcomes. The Duty was designed to operate as a cross-cutting and outcomes-focused regime, complementing and, in some areas, going beyond sector-specific rules.
- 21.** Since its implementation, we have monitored how the Duty operates in practice and engaged extensively with stakeholders. Through this engagement, we have identified several issues relating to the scope and application of the Duty. These issues do not call into question the fundamental rationale for the Duty, but suggest that, in certain areas, the current framework may not be as proportionate as intended, leading to disproportionate complexity and additional costs for firms. We have identified three areas in which this is most evident:
- Firms have told us that where they provide products or services to customers outside the UK, they are often required to comply with both the Duty and the regulatory regimes of the customer's jurisdiction. This can result in firms needing to operate across multiple frameworks which pursue similar consumer protection objectives in different ways, contributing to duplication and increased compliance costs without necessarily improving outcomes for consumers. These issues are most pronounced for firms with significant cross-border activities, where the interaction between UK and non-UK regimes is more complex.
  - We have also identified concerns about the clarity of the current scope of the Duty, particularly in relation to firms operating within distribution chains. Firms have explained that it is often difficult to determine whether they are in scope of the Duty, particularly where their role is more remote from the retail customer. This can create ongoing costs associated with assessing and evidencing whether the Duty applies and may encourage firms to take a cautious approach by applying Duty requirements more widely than originally intended.
  - Where the Duty does apply, some firms have raised concerns that certain requirements – such as outcomes monitoring, information sharing and governance processes – may be disproportionate to the role they play in the distribution chain, particularly where they do not have a direct relationship with the end customer. Some firms have expressed concern about task duplication, and the extent to which

they are expected to monitor or 'police' other firms in the chain. In these cases, the burden of compliance may be high relative to the firm's ability to influence consumer outcomes, which can lead to inefficiencies and the risk of excessive or "gold-plated" compliance activity without necessarily improving consumer outcomes.

- 22.** Taken together, these factors suggest that, in some contexts, the application of the Duty may give rise to unintended consequences, including increased operational complexity and duplication with other regulatory regimes, contributing to inefficiencies and increased costs, potentially reducing international competitiveness for UK firms. They may also affect how firms implement the Duty in practice, with uncertainty or perceived risk leading to more conservative or resource-intensive approaches than originally intended.
- 23.** Our evidence for these issues is primarily based on ongoing engagement with firms, trade bodies and statutory panels, as well as feedback received through previous calls for input and consultation processes. This feedback has been consistent across a range of sectors and business models and aligns with our internal supervisory and policy analysis.
- 24.** Taken together, this suggests that in some areas, the current application of the Duty means that some firms may be more risk-averse than necessary, leading to disproportionate costs relative to the incremental reduction in harm and indicating scope for a more proportionate rebalancing of risk. If left unresolved, there is a risk of increased costs for firms (with minimal associated benefits to consumers) and decreased attractiveness of the UK financial market for both domestic and overseas investors. This in turn could contribute to consumer harm through increased prices (relative to what they might be otherwise), reduced innovation, and the potential for reduced growth of the UK economy. See Figure 2 below for a mapping of this current application of the Duty.

**Figure 2: Mapping the unintended consequences of the Duty**



## Options

25. Table 2 below presents a summary of the alternative options we considered to address the above challenges. For each option we note their potential benefits as well as our reasons for ultimately not proceeding with them in each case.

**Table 2: Alternative options considered for each of the core policy proposal chapters**

Proposed approach and alternative option	Explanation of alternative option and potential benefits	Reasons for not utilising alternative option
<p>Chapter 2:  <i>Proposed approach: limit the Duty's territorial scope to business for retail customers usually resident in the UK</i>  <i>Alternative option: define the Duty's territorial scope using alternative consumer or activity-based indicators</i></p>	<ul style="list-style-type: none"> <li>• Territorial scope defined using alternative customer or activity-based indicators, including:               <ul style="list-style-type: none"> <li>• UK citizenship (applying the Duty to UK nationals regardless of location);</li> <li>• location of activity or customer at onboarding/transaction; or</li> <li>• tax residency of the customer.</li> </ul> </li> <li>• Could provide clear or administratively familiar reference points for firms (e.g. nationality, transaction location, or tax status), often aligned with data already collected for operational, legal, or reporting purposes.</li> <li>• May offer conceptual simplicity in certain contexts, particularly where:               <ul style="list-style-type: none"> <li>• citizenship provides a stable identifier; or</li> <li>• location-based triggers can be tied to discrete events or activities.</li> </ul> </li> <li>• Could, in some cases, support continuity of protection for UK-linked consumers overseas (e.g. under a citizenship-based approach) or align with existing regulatory or tax reporting frameworks.</li> </ul>	<ul style="list-style-type: none"> <li>• All approaches risk reintroducing overlap with non-UK regimes, requiring firms to comply with multiple consumer protection frameworks and undermining the objective of reducing duplication and complexity.</li> <li>• These indicators do not consistently reflect where customers are based or where the risk of harm arises, reducing proportionality and weakening alignment with the Duty's outcomes-focused framework.</li> <li>• Significant practical and operational challenges:               <ul style="list-style-type: none"> <li>• customer location at transaction may be transient or difficult to evidence,</li> <li>• tax residency may be complex, variable across jurisdictions, or multiple,</li> <li>• citizenship may diverge from where services are received.</li> </ul> </li> <li>• Risk of inconsistent application in cross-border and digital contexts, particularly for location-based approaches relying on point-in-time or activity-based concepts.</li> <li>• Overall, these approaches are less targeted and less proportionate than a habitual residence model and would be more likely to increase compliance burden without commensurate consumer benefit.</li> </ul>

Proposed approach and alternative option	Explanation of alternative option and potential benefits	Reasons for not utilising alternative option
<p><i>Chapters 2-5:</i>  <i>Proposed option:</i>  <i>changes to rules on the scope and application of the Duty</i></p> <p><i>Alternative option:</i>  <i>provide more guidance on our expectations on Duty compliance, without rule changes</i></p>	<ul style="list-style-type: none"> <li>• This could improve clarity and consistency in how firms apply the Duty without making significant changes to our rules.</li> </ul>	<ul style="list-style-type: none"> <li>• Firms have told us these issues cannot be addressed via guidance alone, and that only rule changes can sufficiently address their concerns.</li> <li>• Firms are concerned about breaching outcomes-focused rules and want greater regulatory certainty and clearer lines drawn.</li> <li>• Overall, further guidance without rule changes is unlikely to support our goal to provide firms with greater certainty while reducing unintended compliance burden in practice.</li> </ul>
<p><i>Chapter 3:</i>  <i>Proposed approach:</i>  <i>amend the scope of the Duty to be clearer about when it applies and when it does not, while retaining the concept of 'material influence'</i></p> <p><i>Alternative option:</i>  <i>removing the concept of 'material influence', to be replaced with a different concept</i></p>	<ul style="list-style-type: none"> <li>• Introduction of a more binary concept to underpin the scope of the Duty, such as applying the Duty to firms that have a decision-making role or substantive control within the distribution chain.</li> <li>• Directly addresses 'proving the negative' exercises and reduces repeated assessments by firms.</li> <li>• May improve consistency across firms' interpretation of scope.</li> </ul>	<ul style="list-style-type: none"> <li>• Firms have told us they have already established a working interpretation of 'material influence'. If we were to replace it with a different concept, this would incur potentially significant rescoping work for many firms.</li> <li>• A more binary test may encourage a 'tick-box' compliance approach, which is contrary to the Duty's outcome-based focus.</li> <li>• Overall, replacing 'material influence' with a different concept is unlikely to be effective in providing firms with greater confidence to act proportionately.</li> </ul>

Proposed approach and alternative option	Explanation of alternative option and potential benefits	Reasons for not utilising alternative option
<p>Chapter 5: <i>Proposed approach: clarifying the Duty's interaction with other product governance and disclosure requirements</i> <i>Alternative option: introducing exemptions or substituted compliance where the Duty has similar expectations with pre-existing sectoral regulations such as PROD</i></p>	<ul style="list-style-type: none"> <li>• Disapplication of certain PRIN 2A (The Consumer Duty) rules where some firms believe they are duplicative of pre-existing sectoral rules.</li> <li>• Provides firms with the greatest level of certainty in relation to expectations under PRIN 2A rules.</li> <li>• Reduces the need to manage what firms consider as duplicative requirements between the Duty and other sectoral rules.</li> </ul>	<ul style="list-style-type: none"> <li>• In practice, such disapplication would have an impact on the entire retail investment market, not just on wholesale firms. This could undermine consumer protection more broadly.</li> <li>• The FCA may lose an important mechanism for supervisory and enforcement action in certain sectors.</li> <li>• Overall, this could significantly undercut the Duty, and we remain of the view that the Duty sets higher standards than pre-existing sectoral rules.</li> </ul>

## Our proposed intervention

26. Our preferred proposals are a targeted package of changes to clarify and refine the scope and application of the Duty. These changes are intended to improve the proportionality and certainty of the regime, while maintaining its core objective of delivering good outcomes for retail customers.
27. The package focuses on three key areas:
- Narrowing the territorial application of the Duty to retail customers usually resident in the UK (See Chapter 2, "*The scope of the Duty: firms with customers outside the UK*", for details including specific approaches and exemptions).
  - Revisit several key terms to refocus the Duty on activities conducted for retail customers and to take certain activities out of scope by:
    - Defining the retail distribution chain to clarify which activities, including ancillary activities and services provided by one firm to another, are within scope and to clarify that certain more wholesale activities are out of scope of the Duty.
    - Providing more guidance to help firms understand when their influence over retail customer outcomes meets the threshold for the Duty to apply, and when it does not.
    - Clarify which firms are considered manufacturers, including where more than one firm is involved in the manufacture of a retail product or service.

- Further work to clarify and expand on elements of our rules and guidance to encourage proportionate application of the Duty by firms:
  - Outline a reasonable approach to allocation of responsibility when working with other firms.
  - Explain that firms' approach to the treatment of customers in vulnerable circumstances may differ depending on their role in the distribution chain.
  - Make targeted adjustments to Duty expectations to support proportionate application and avoid gold-plating on areas such as risk-based outcomes monitoring and board reporting.

**28.** We also propose several technical clarifications intended to correct or clarify drafting in our Duty rules and guidance (See Chapter 6, "*Technical clarifications*", for details). These changes do not introduce new policy but instead aim to provide clarity where existing drafting has created ambiguity or does not reflect the FCA's policy intent when the Duty was introduced.

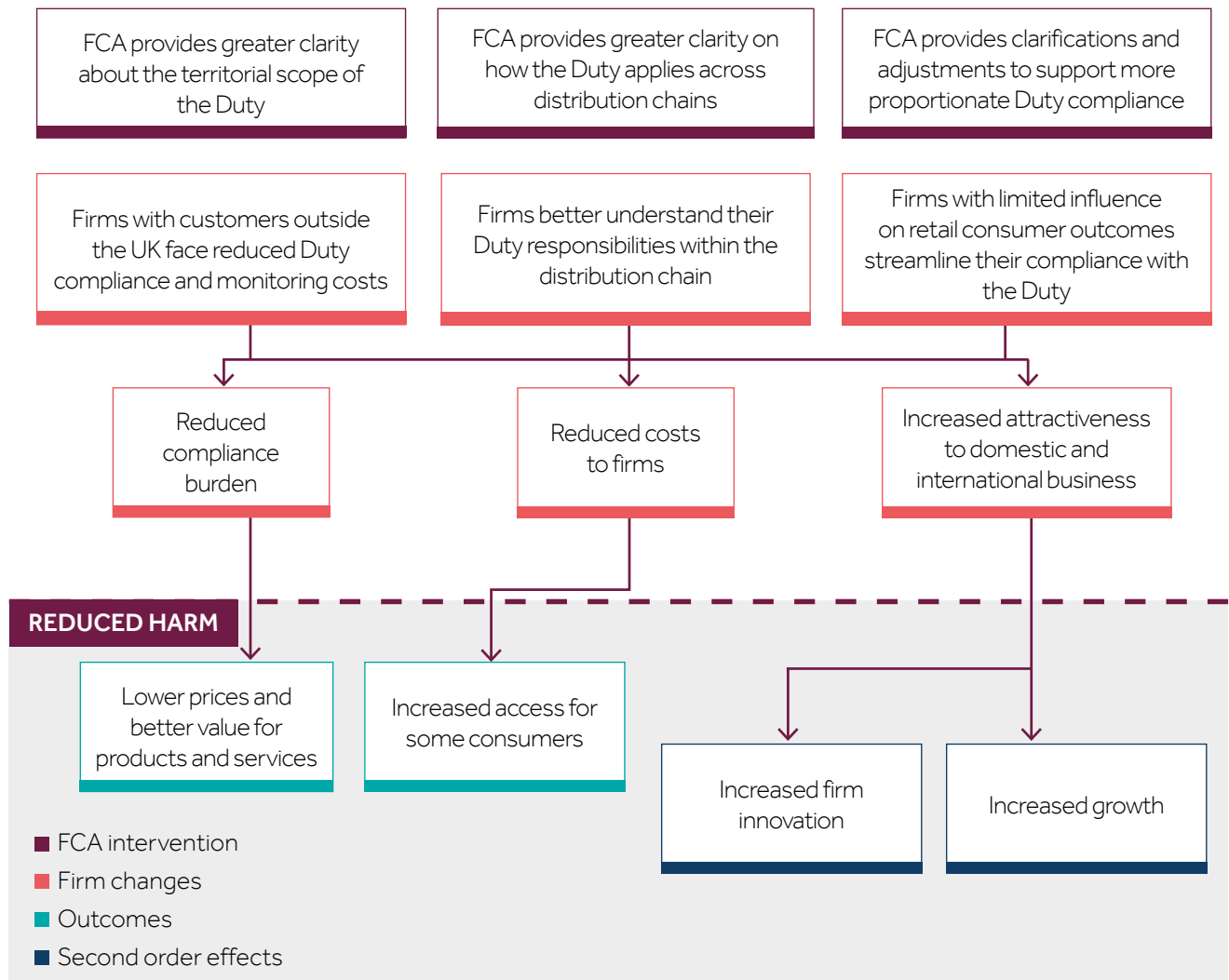
**29.** It is worth noting that many of the proposed changes have the greatest potential impact on firms primarily engaged in wholesale activity and those with retail customers outside of the UK, for whom the proposed changes may be most meaningful, when compared with other sectors such as retail banking and general insurance, for instance.

**30.** The proposed intervention rebalances the relationship between the risk of consumer harm and the proportionality of requirements for firms within the Duty, by clarifying the Duty's scope and enabling more proportionate application. This reduces unnecessary compliance activity, allowing firms to reallocate resources while keeping risks of harm within tolerable limits. In line with a rebalancing risk approach, we have considered whether the proposed changes could result in risks of harm exceeding tolerable levels. We consider this unlikely, for the following reasons:

- the core structure and objectives of the Duty remain unchanged;
- protections continue to apply where there is a clear risk of harm to UK consumers
- existing supervisory tools and regulatory frameworks act as mitigants to harm and appropriately levelled backstops.

**31.** See Figure 3 below for our theory of change underpinning the proposed changes to the scope and application of the Duty.

**Figure 3: Theory of change underpinning the proposed changes to the scope and application of the Duty**



## Baseline and key assumptions

### Baseline

32. The impacts of the proposals have been analysed against a baseline, or 'counterfactual' scenario, which describes what would happen in the absence of the proposed interventions. Without these proposed changes, we can expect firms to continue to apply the Duty as they have been up to this point, incurring their current costs.

### Key assumptions

33. For the CBA we make some key assumptions underpinning the analysis:
- We estimate the impact of our proposals over a 10-year appraisal period to acknowledge that costs and benefits continue past the year of implementation.

- We discount costs and benefits at 3.5% per year (in accordance with our CBA guidance) to determine the present value of the stream of costs and benefits expected in future years.
- Our proposals are designed to encourage a more proportionate application of the Duty's requirements by firms, and so their impact is dependent on how firms have implemented the Duty, and how they will react to the proposed changes. Therefore, we assume that firms will only make changes where they judge there to be a net benefit to them.
- The costs and benefits associated with firm actions arising from clarifications to existing policy are considered to already have been captured in the original CBA associated with the introduction of the Duty. This is because it reflects our original expectations of how the Duty should be applied, which were already incorporated into our initial assessment of costs and benefits. The costs and benefits from the proposed changes are new costs and benefits as we are changing our expectations when compared with the original Duty implementation.

## Summary of Impacts

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- 34.** Table 3 below details a summary of the total (direct and indirect) costs we expect firms to incur because of our proposals.
- 35.** The proposed changes to the scope and application of the Duty seek to encourage a more proportionate application of the Duty's requirements. Our proposals would clarify the scope and application of the Duty, to help firms understand when it applies and when it does not, and how they can apply it more proportionately. We expect some firms to make changes as a result of the proposals, but other firms may maintain their current approach, even if it goes further than the updated requirements. For instance, if a firm was to choose to continue to apply the Duty's protections to non-UK customers after the proposed changes in this area come into effect. As a result, there is some uncertainty in modelling the costs of implementation activity by firms. To reflect this uncertainty, we estimate firm costs under low, central and high scenarios, reflecting the varying levels of implementation activity firms may choose to take, in the form of staff training, IT projects, and change management projects.
- 36.** We identify benefits to firms from reduced compliance costs, however we do not estimate total benefits to firms. This is because the proposals are designed to encourage a more proportionate application of the Duty's requirements by firms, and so their impact is dependent on how firms have already implemented the Duty, and how they will react to the proposed changes. Firms will only realise benefits if it is net beneficial for them to make changes.
- 37.** We have estimated (present value) net direct cost to business, in Table 4 below. However as described above, it is uncertain the extent to which each firm will operationalise the proposed changes for their own benefit. Therefore, we treat any benefits firms realise as indirect, and do not include them in this estimate.

- 38.** For both the costs and benefits related to the proposed changes, different proposals are likely to impact certain sectors of the financial market more than on others, and so we do not expect the costs and benefits to accrue evenly to all firms across the market.
- 39.** Although we have not quantified total benefits, we consider the proposals likely to be net beneficial to firms as the one-off direct and indirect costs are expected to be outweighed by ongoing savings from lower compliance costs. We include break-even analysis at the end of the costs section to illustrate the scale of benefits required for the proposals to break even. Table 3 below presents a summary of estimated total firm costs, which include both direct and indirect costs (detailed in 'Costs' below).

**Table 3: Summary table of estimated total (direct and indirect) firm costs**

	Low estimate (£m)	Central estimate (£m)	High estimate (£m)
<b>Total firm costs</b>	35.6	92.1	106.0

- 40.** In Table 4 below, we have estimated present value direct costs to business, and the Equivalent Annual Net Direct Cost to Business (EANDCB).

**Table 4: Net direct costs to firms**

	Total (Present Value) Net Direct Cost to Business (10 yrs)	EANDCB
<b>Total net direct cost to business (costs to businesses – benefits to businesses)*</b>	£12.7m	£1.5m

\* As we have not quantified any benefits, these figures only include costs to firms

## Benefits

### Benefits to firms

- 41.** We expect firms to benefit through reduced compliance costs associated with the Duty. These benefits arise from reducing compliance activity that reflects a more proportionate response to the risk of harm. In this sense, the proposals are expected to increase net benefits, where reductions in unnecessary costs are achieved without a commensurate increase in harm. For example, firms will spend less time considering Duty obligations for non-UK customers, monitoring consumer outcomes beyond what is proportionate within the context of the proposed changes or proving that a particular activity is not within the scope of the Duty.
- 42.** As explained above, we are unable to precisely quantify this benefit. Instead, below we attempt to give indicative estimates to present a sense of scale.

43. In CP21/36, we estimated on-going compliance costs to firms for complying with the Duty using our Standardised Cost Model (SCM). This included costs associated with actions to deliver improvements under the products and services, price and value, consumer understanding and customer support outcomes as well as the monitoring of consumer outcomes under the Duty.
44. Both the modelling in CP21/36 and the modelling used for this consultation distinguishes costs and benefits accrued to firms based on firm size. Firms are categorised by size based on their annual fee paid to the FCA. Table 5 below provides current estimates for the number of 'small', 'medium', and 'large' financial services firms to whom the Duty applies.

**Table 5: Number of firms to whom the Duty applies, by size**

Firm size	Large	Medium	Small	Total firms
Number of firms	241	1,317	34,450	36,008

45. The CBA associated with CP21/36 estimated a low and high case for average (per firm) annual ongoing direct costs to firms, by firm size, as shown in Table 6 below. We have updated the estimates into 2026 prices.

**Table 6: Average (per firm) annual ongoing direct costs to firms (£'000)**

Average costs per firm (£'000)	Low case	High case
Large firms	29.2	57.3
Medium firms	20.3	39.7
Small firms	0.9	2.4

46. We can therefore treat these as indicative upper bound estimates of the ongoing cost savings for firms arising from a reduction in compliance activities associated with the Duty. We believe it is likely that firms would only realise benefits up to the low case at a maximum, and that ongoing savings will likely be lower than this in most cases, as firms will still incur Duty compliance costs associated with other activities not impacted by the changes proposed in this paper. Due to the nature of the proposed changes to the scope and application of the Duty, firms will make resultant changes to their processes only where doing so is net beneficial overall.

### Benefits to consumers

47. We expect the primary cost savings to be experienced by firms (see above). While we cannot be certain of the impact of these savings on consumers, it is possible that any reduction in compliance costs may be passed through to consumers to some degree, in the form of lower consumer prices under a more proportionate and rebalanced approach.

- 48.** It is worth noting that the extent to which any reduction in firms' compliance costs is passed through to consumers is uncertain. Evidence from the Payments Systems Regulator indicates that pass-through can be uneven, with larger or more sophisticated customers more likely to benefit. More broadly, economic literature finds that pass-through rates vary depending on market structure and demand conditions, and there is no general presumption that efficiency gains will be passed on in the absence of competitive pressure (Garrod et al., 2024).
- 49.** In addition, prices are often observed to rise more readily than they fall, so cost reductions are less likely to lead to price cuts than cost increases are likely to lead to price increases (Ritz, 2015; Heim, 2019). Taken together, this suggests that, while some pass-through is possible, the scale and distribution of benefits to consumers is uncertain and may be partial.

### **Wider benefits**

- 50.** These proposed changes are intended to improve the certainty and proportionality of the Duty, while maintaining its core objective of delivering good outcomes for retail customers. They will also support the FCA's secondary objective of facilitating the international competitiveness and growth of the UK economy by making the UK an attractive place to locate business, without compromising on the high standards of protections that UK consumers enjoy.
- 51.** We anticipate that reducing the scope of the Duty and clarifying its requirements and our expectations can reduce potential barriers to entry into certain markets and sectors, and increase the attractiveness of operating in those markets, given the proposals aim to provide both greater certainty over Duty requirements and reduced operational costs. This intervention could contribute to growth through increased investment and innovation from new entrants and incumbents. This may in turn benefit consumers through lower prices via reduced firm costs and increased competition in the market. These wider benefits are consistent with a rebalancing of risk that supports innovation and growth, where risks of harm remain within tolerable limits.
- 52.** The extent to which these effects translate into wider economic benefits is uncertain. Studies of OECD countries suggest that reducing entry barriers is associated with higher investment, particularly in more regulated sectors such as finance, although these effects can depend on the starting level of regulation (Alesina et. al, 2002).
- 53.** At the same time, evidence from past episodes of regulatory simplification suggest that benefits may not be evenly distributed, and may accrue more to larger or established firms (Tanndal & Waldenström, 2018). More generally, macro-level evidence finds a positive but variable relationship between a regulatory burden and growth, with effects often emerging gradually through higher investment and productivity rather than immediate increases in output (Katsoulacos et. al, 2011).

## Costs

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### Direct costs to firms

- 54.** We expect there to be direct costs to firms having to familiarise themselves with the changes to the Duty's scope and application described in this consultation paper, the final versions of which will be published in a policy statement following the consultation period.
- 55.** We use the FCA's Standardised Cost Model (SCM) to estimate the costs of familiarisation with these proposed changes and assume that all of the approximately 36,000 firms to whom the Duty applies will be potentially impacted by these changes to varying degrees.
- 56.** We estimate total familiarisation costs for firms associated with the proposed changes to be £12.7m in each of the cost scenarios we have modelled. That is, we assume that the total cost to all firms in familiarising themselves with the proposals described in this consultation to be £12.7m, regardless of the costs to firms associated with staff training, IT projects, or change management projects. See Table 7 below for a summary of these costs in each of the low, central, and high cost scenarios, calculated using our SCM.
- 57.** It is worth noting that one of the clarifications in Chapter 6 ("*Technical clarifications*") may lead to some costs to firms, where they have previously interpreted the exclusion differently from its intended meaning. We propose to amend the £50,000 exclusion to make clear that it is intended to be per investment, per individual retail customer, and that it cannot be used where individual investments are aggregated. This proposed change may lead to some new ongoing costs to firms that had previously considered that the Duty did not apply to their activities. However, we consider these firm costs to have already been captured in the original CBA for the Duty.

### Indirect costs to firms

- 58.** The modelling of firm costs included in this CBA assumes that firms are already compliant with the Duty's requirements as they exist currently. Any firm that is not already compliant with the Duty will likely need to incur costs in improving their compliance practices to bring the firm into compliance with the Duty, even after the proposed changes come into effect. For firms that are already compliant with the Duty as it exists currently, after familiarising themselves with the proposed changes, they may choose to change their practices in line with the proposed changes to the Duty's scope and application. In doing so, they may incur one-off indirect adjustment costs, described below. We expect already-compliant firms to incur these adjustment costs only where doing so supports a more efficient allocation of risk and resources, resulting in a net benefit over time.
- 59.** For firms already compliant with the Duty who change their practices in response to the proposed changes to the scope and application of the Duty, we do not expect associated adjustment costs to be large. In most cases, firms will be simplifying or otherwise reducing the complexity of certain compliance activities that they are currently undertaking in order to comply with the Duty.

60. We cannot reliably quantify these indirect costs, however we can give an indication based on an upper limit estimate of all firms in scope choosing to make changes. To do this, we use the FCA's SCM to calculate:

- The costs associated with performing gap analysis to understand how any updated requirements differ from the current application of the Duty.
- Training costs associated with communicating the revised requirements and updating relevant staff training materials and delivery
- IT project costs associated with system changes needed to support revised scoping, monitoring or information-sharing arrangements
- Change project costs associated with firms having to update internal process or governance arrangements.

61. In Table 7 below we detail our total indirect cost to firm estimates split by cost category and cost scenario. We estimate total indirect costs to firms in the central scenario of £79.4m.

**Table 7: Total estimated indirect costs by cost type and scenario**

	Low estimate (£m)	Central estimate (£m)	High estimate (£m)
<b>Gap analysis</b>	22.9	22.9	22.9
<b>Training</b>	0	0	0.3
<b>IT project</b>	0	0	10.4
<b>Change project</b>	0	56.5	59.7
<b>Total</b>	<b>22.9</b>	<b>79.4</b>	<b>93.3</b>

62. Table 8 below shows indicative estimates for total cost, and average per firm cost split by firm size. The average cost by firm size in the central scenario we expect are:

- Large: £36,000
- Medium: £11,000
- Small: £2,000

**Table 8: Indicative total cost and average per firm cost disaggregated by firm size**

Firm size	Low estimate (£m)		Central estimate (£m)		High estimate (£m)	
	Total cost	Average per firm cost	Total cost	Average per firm cost	Total cost	Average per firm cost
<b>Small firms</b>	27.2	0.001	68.6	0.002	70.6	0.002
<b>Medium firms</b>	5.3	0.004	14.8	0.01	20.8	0.02
<b>Large firms</b>	3.1	0.01	8.7	0.04	14.5	0.06
<b>Total</b>	<b>35.6</b>	<b>N/A</b>	<b>92.1</b>	<b>N/A</b>	<b>106.0</b>	<b>N/A</b>

### Costs to consumers

- 63.** We do not anticipate any direct or indirect costs to consumers as a result of the proposed changes.
- 64.** We do not consider costs and benefits relating to non-UK consumers in this cost benefit analysis.

### Costs to the FCA

- 65.** The proposed changes are likely to remove some firms entirely from the scope of the Duty, exclude certain activities for others (where their remaining activities are still within scope), and support a more proportionate application of the Duty in relation to certain compliance activities. We therefore expect the proposed changes to reduce the cost to the FCA of monitoring Duty compliance by firms. However, in the short-term this may be offset by increased monitoring across firms and activities, to ensure that firms are applying the revised scope correctly and that there has been no negative impact on consumer outcomes.

### Break-even analysis

- 66.** As described above, we do not estimate total benefits to firms, as firms will only realise benefits if it is net beneficial for them to make changes. Instead, we have used break-even analysis to help contextualise the quantified costs presented above. This helps to test the proportionality of the proposed changes, by examining the likelihood that the benefits will be large enough for the policy to be net beneficial.
- 67.** For the policy to break even against our central cost estimate of £92.1m, which includes both direct and indirect costs, the proposals would need to generate discounted benefits of at least £92.1m over the 10-year appraisal period, equivalent to approximately £11.0m per year in recurring benefits.

- 68.** Across approximately 36,000 firms, that implies an average recurring benefit of roughly:
- £300 per firm per year, or
  - about £2,600 per firm in total over 10 years on a present value basis; noting that these averages do not account for differences in firm size or sector.
- 69.** This suggests that relatively modest efficiency gains per firm would be sufficient for the proposals to be net beneficial, meaning that even a limited rebalancing of risk and compliance activity could deliver positive net outcomes for firms and consumers.

## Monitoring and evaluation

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- 70.** There are no plans to specifically evaluate these proposals. However, we have committed to carry out a post-implementation review of the Duty. The review will consider how firms have implemented the Duty, whether it is having its intended effect and whether it is leading to any unintended consequences.

## Risks and uncertainty in estimation

- 71.** Our estimates of cost savings are based on judgement about how firms may respond to the proposed changes. Given the nature of the proposals, any adjustments will depend on firms' own assessments of proportionality and commercial benefit.
- 72.** We have therefore used indicative estimates of the benefits firms may realise, should they choose to make any changes. These indicative estimates should not be interpreted as definitive measures of the benefits firms will realise, as actual outcomes will depend on how individual firms respond to and implement the proposed changes.

## Annex 3

# Compatibility statement

## Compliance with legal requirements

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1. This Annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).
2. When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules (a) is compatible with its general duty, under section 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives, (b) so far as reasonably possible, advances the secondary international competitiveness and growth objective, under section 1B(4A) FSMA, and (c) complies with its general duty under section 1B(5)(a) FSMA to have regard to the regulatory principles in section 3B FSMA. The FCA is also required by s 138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
3. This Annex also sets out the FCA's view of how the proposed rules are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (section 1B(4)). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.
4. In addition, this Annex explains how we have considered the recommendations made by the Treasury under s 1JA FSMA about aspects of the economic policy of His Majesty's Government to which we should have regard in connection with our general duties.
5. This Annex includes our assessment of the equality and diversity implications of these proposals.
6. Under the Legislative and Regulatory Reform Act 2006 (LRRRA) the FCA is subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex sets out how we have complied with requirements under the LRRRA.

## The FCA's objectives and regulatory principles: Compatibility statement

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7. The proposals set out in this consultation are primarily intended to advance the FCA's operational objectives of securing an appropriate degree of protection for consumers and promoting effective competition in the interest of consumers. They are also relevant to the FCA's secondary objective to facilitate the international competitiveness and growth of the UK economy.
8. We consider these proposals are compatible with the FCA's strategic objective of ensuring that relevant markets function well. We propose a targeted package of changes to clarify and refine the scope and application of the Duty. These changes are intended to improve the proportionality and certainty of the regime, while maintaining its core objective of delivering good outcomes for retail customers.
9. We expect these changes to give firms greater confidence in determining whether and how the Duty applies, enabling them to apply it more proportionately. This can support new entrants to the market by providing greater regulatory certainty and in turn, encouraging innovation.
10. We consider these proposals comply with the FCA's secondary objective in advancing competitiveness and growth by reducing complexity and removing disproportionate costs for firms, particularly those in cross-border business and complex distribution chains, while maintaining consumer protections where they are most needed. This supports a targeted regulatory framework that can facilitate the international competitiveness and growth of the UK financial services sector.
11. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in s 3B FSMA.

### **The need to use our resources in the most efficient and economic way**

12. By clarifying and refining the scope and application of the Duty, proposals in this paper have the potential to improve the efficient use of our resources towards areas of consumer harm and remove the need for supervisory engagement relating to activities that do not materially influence outcomes for retail consumers.

### **The principle that a burden or restriction should be proportionate to the benefits**

13. Our proposals have the potential to reduce the administrative burden on a number of firms and lead to ongoing savings from lower compliance costs. As such, we consider the one-off costs resulting from our proposals to be proportionate to the benefits for firms.

### **The need to contribute towards achieving compliance by the Secretary of State with section 1 of the Climate Change Act 2008 (UK net zero emissions target) and section 5 of the Environment Act 2021 (environmental targets)**

14. In developing this consultation, we have considered the environmental, social and governance implications of our proposals and our duty under these acts. Overall, we do not consider that the proposals are relevant to contributing to those targets. We will keep this issue under review during the course of the consultation period and when considering whether to make the final rules.

### **The general principle that consumers should take responsibility for their decisions**

15. We have had regard to this principle and do not consider that our proposals impact it.

### **The responsibilities of senior management**

16. Our proposals do not specifically relate to the responsibilities of senior management. However, by clarifying the scope and application of the Duty, our proposals will help senior managers better understand how our standards apply.

### **The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation**

17. The increased clarity brought by our proposals will advance the FCA's competition objective, and benefit firms with different business models and objectives by reinforcing that the Duty affords different organisations flexibility in how they act to deliver good outcomes.

### **The desirability of publishing information relating to persons subject to requirements imposed under FSMA, or requiring them to publish information**

18. Our proposals do not affect the publication of information.

### **The principle that we should exercise of our functions as transparently as possible**

19. By explaining the rationale for each of our proposals and the anticipated outcomes, the FCA has had regard to this principle.

**In formulating these proposals, the FCA has had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s 1B(5)(b) FSMA).**

20. We do not regard our proposals as being relevant to the need for the FCA to have regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s 1B(5)(b) FSMA).

## **Further specified matters to which the FCA must have regard**

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### **HM Treasury's letter of recommendations for the FCA**

21. We have also had regard to the recommendations made by the Treasury in the November 2024 remit letter. While developing our proposals, we have, in particular, had regard to the government's policy towards the financial services sector, namely that the financial services sector has a fundamental role in delivering growth and investment throughout the economy, and that financial services regulators are key to driving forward this mission. We set out how our proposals are compatible with the advancement of the international competitiveness and growth of the UK economy in paragraph 10 above.

### **Expected effect on mutual societies**

22. The FCA does not expect the proposals in this paper to have a significantly different impact on mutual societies. Our proposals will apply to mutual societies in the same way as they apply to other regulated firms.

### **Equality and diversity**

23. In exercising our functions, we are required under the Equality Act 2010 to 'have due regard' to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, to and foster good relations between people who share a protected characteristic and those who do not.
24. As part of this, we ensure the equality and diversity implications of any new policy proposals are considered. Overall, we do not consider that the proposals materially impact any of the groups with protected characteristics under the Equality Act 2010. We will continue to consider the equality and diversity implications of the proposals during the consultation period and when making the final rules.

## **Legislative and Regulatory Reform Act 2006 (LRRRA)**

- 25.** We have had regard to the principles in the LRRRA for the parts of the proposals that consist of general policies, principles or guidance and consider that the proposals have regard to the LRRRA principles. We consider that our functions are being carried out with transparency and accountability by consulting on these proposals and considering the feedback before making final rules. We also consider that the clarity these proposals intend to bring will help firms to apply the Consumer Duty proportionately and consistently, while maintaining an appropriate level of consumer protection. Further, we consider the proposals in this paper to be targeted and necessary. The CBA details alternative options we considered and why we have opted for this approach.
- 26.** We have had regard to the Regulators' Code for the parts of the proposals that consist of general policies, principles or guidance and consider that the proposals are consistent with the principles of the code. In developing this consultation to clarify aspects of the Consumer Duty, we aim to support firms to comply with regulatory requirements in a proportionate way and reduce unnecessary burden. We are consulting openly to provide a simple and transparent means for stakeholders to engage with us and share their views.

## Annex 4

# Abbreviations used in this paper

<b>Abbreviation</b>	<b>Description</b>
<b>BACS</b>	Bankers' Automated Clearing System
<b>CBA</b>	Cost Benefit Analysis
<b>CCI</b>	Consumer Composite Investments regime
<b>COBS</b>	Conduct of Business Sourcebook
<b>COLL</b>	Collective Investment Schemes Sourcebook
<b>CP</b>	Consultation Paper
<b>DISC</b>	Product Disclosure Sourcebook
<b>The Duty</b>	Consumer Duty
<b>EANDCB</b>	Equivalent Annual Net Direct Cost to Business
<b>EMI</b>	Electronic Money Institution
<b>EMRs</b>	Electronic Money Regulations
<b>ESG</b>	Environmental, social and governance
<b>FCA</b>	Financial Conduct Authority
<b>FG22/5</b>	Final non-Handbook Guidance for firms on the Consumer Duty
<b>FLS</b>	Financial Lives Survey
<b>FPS</b>	Faster Payment Service
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>ICOBS</b>	Insurance Conduct of Business Sourcebook
<b>KII</b>	Key Investor Information
<b>LRRA</b>	Legislative and Regulatory Reform Act 2006

<b>Abbreviation</b>	<b>Description</b>
<b>MI</b>	Management information
<b>MCOB</b>	Mortgage Conduct of Business Sourcebook
<b>MPS</b>	Model portfolio service
<b>PI</b>	Payment Institution
<b>PSRs</b>	Payment Services Regulations
<b>PRA</b>	Prudential Regulation Authority
<b>PRIIPs</b>	Packaged Retail and Insurance-based Investment Products
<b>PRIN</b>	Principles for Business Sourcebook
<b>PROD</b>	Product Intervention and Product Governance sourcebook
<b>PS</b>	Policy Statement
<b>QROPS</b>	Qualifying Recognised Overseas Pension Schemes
<b>SCM</b>	Standardised Cost Model
<b>SMEs</b>	Small and medium enterprises
<b>UCITS</b>	Undertakings for Collective Investment in Transferable Securities

## Appendix 1

# Mapping of proposals against current requirements

# APPENDIX to Consumer Duty (Amendment) Instrument 202X (consultative draft)

## Mapping of proposals against current requirements

This Appendix provides an overview of how proposed new or amended Handbook rules and guidance clarify, replace, or otherwise relate to existing materials, with a view to assisting the reader and supporting engagement with the consultation process. It is not a comprehensive guide to the draft legal instrument and in particular does not cover minor clarificatory changes to the language of existing provisions. It is not intended to convey guidance on the proposed rules, but is intended to be read in conjunction with the proposed changes to the Handbook and to help explain the changes.

## Annex A (changes to the Glossary) proposals

1. New definitions for *distribution chain*, *excluded business*, *outcome rule*, *principal manufacturer*, *secondary manufacturer*, and *usually resident*, in each case reflecting proposed new rules in PRIN 2A and PRIN 3A.
2. A small clarificatory amendment to the existing definition for *manufacturer* in PRIN, aligning the term with proposed new rules in PRIN 2A and PRIN 3A relating to distribution chains where more than one firm is involved in providing a financial product or service.
3. A simpler replacement definition for *product*. Deleted elements of the current definition are now reflected in the proposed rules underpinning the new definition for *distribution chain* and the re-defined *retail market business*.
4. A replacement definition for *retail market business*. The current definition refers to regulated, ancillary etc. activities of a firm in a distribution chain which involves a retail customer, without defining a distribution chain. These various elements are now dealt with through proposed scope rules in PRIN 3A.1 which are significantly more detailed and accompanied by proposed guidance provisions (see below) with the aim of providing more certainty.

The current definition also set out several exclusions from the scope of *retail market business*. These exclusions, with slight clarificatory revisions and a number of additions, are now set out in PRIN

3A.2.1R, which underpins the new Glossary definition for *excluded business*.

5. A deletion of the existing definition for *non-retail financial instrument*. The exclusions previously set out within this definition are now set out in PRIN 3A.2.1R. The definition is not used elsewhere.

## Annex B (changes to PRIN) proposals

### **PRIN 2A The Consumer Duty**

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

6. The application rules at PRIN 2A.1.1R and PRIN 2A.1.2R have already been deleted by the Targeted Clarifications of Handbook Materials Instrument (FCA 2026/33). The remaining guidance in the application sub-section is proposed to be deleted and replaced by new guidance provisions that summarise the application of the Duty as now set out in PRIN 3A. They also signpost to new clarificatory provisions in PRIN 2A.7 and rules in new PRIN 2A.2A and PRIN 3A.4 modifying the application of the Duty.

#### **PRIN 2A.2 Cross-cutting obligations**

7. The addition of a proposed new limb to the existing guidance about avoiding causing foreseeable harm to retail customers (PRIN 2A.2.10G), reflecting guidance previously conveyed in non-Handbook materials.

#### **PRIN 2A.2A Distribution chain: roles and responsibilities [New section]**

8. A new rule requiring firms sharing information with another firm in the distribution chain under existing requirements to take reasonable care to ensure the information can be relied upon. The rule also provides that a firm is entitled to place reasonable reliance on the information and representations of another firm in the distribution chain.
9. New guidance around reasonable and proportionate information requests and information sharing along the distribution chain.
10. New rules replacing and clarifying the existing requirement in PRIN 2A.3.11R that currently references firms collaborating to manufacture a product needing to have a written agreement setting out their respective roles and responsibilities. The proposed rules reflect new concepts (principal and secondary manufacturers) and clarify what

the agreement should cover. Accompanying guidance explains its purpose.

11. New rules characterising principal and secondary manufacturers and modifying the obligations of secondary manufacturers in relation to product governance and the value assessment.

### **PRIN 2A.7 Interpreting obligations under the Consumer Duty**

12. A new rule and guidance on proportionality setting out that any specific Consumer Duty rule to which the firm is subject must be interpreted so that the obligation is commensurate with the firm's impact on outcomes for retail customers through its role and activities in relation to the product.
13. Amended guidance clarifying that manufacturers are not normally expected to take account of the needs and characteristics of individual customers.

### **PRIN 2A.8 Governance and culture**

14. Amended and clarified rules and guidance on reporting to a firm's governing body, reflecting the new provisions on proportionality in PRIN 2A.7.

### **PRIN 2A.9 Monitoring of customer outcomes**

15. The rule and guidance provisions set out under the "General" subheading are proposed to be deleted and replaced by new guidance, appearing at the end of the section and reflecting the proposed new and amended rules around the application and proportionate interpretation of specific Duty rules as relating to the firm's role and activities.
16. A new rule clarifying that the scope of a firm's monitoring obligation will depend on the firm's role and activities in relation to the product.
17. An amended rule clarifying that the obligation on a firm to notify the FCA only applies where a firm has a material concern about the conduct of another firm in the distribution chain.

### **PRIN 3 Rules about application**

18. The more specific rules about the application of the Consumer Duty are removed from this chapter.

### **PRIN 3A Application of the Consumer Duty [New Chapter]**

### **PRIN 3A.1 Activities within scope of application**

19. PRIN 3A.1.1R reflects existing constraints on the application of the Duty as appearing in the current definition of *retail market business* for limbs (1) and (2) of the new rule, and in PRIN 3.2.6R(2) for limb (3).
20. PRIN 3A.1.2R redefines *retail market business*. The main set of activities in (1)(a) track the scope of existing rules at PRIN 2A.3, PRIN 2A.4, PRIN 2A.5 and PRIN 2A.6 as read in light of the first paragraph of the current *retail market business* Glossary definition. These activities form the basis of the new *distribution chain* definition in PRIN 3A.3.2R.
21. The regulated activities in PRIN 3A.1.2R(1)(b) are listed to ensure they are clearly within *retail market business*. These include debt collecting and providing credit references, which are referenced in the current definition of *product* (which is to be replaced with a simplified definition). These activities may not involve provision of a service to a retail customer, but are activities that clearly relate to and affect retail customers.
22. PRIN 3.1.2R(2) clarifies that the Consumer Duty does not apply in respect of excluded business, which, as set out below, reflects current and new exclusions.
23. PRIN 3A.1.4R redefines *product* to a specified investment or a service involving a regulated activity (or ancillary activity, or payment service or issuance of electronic money, etc.). This is accompanied by new guidance. The limitation in the current definition relating to retail customers is included in the amended *retail market business* definition.

### **PRIN 3A.2 Retail market business exclusions**

24. The exclusions to *retail market business* that previously were listed inside the Glossary definition are now set out in PRIN 3A.2.1R, allowing for better visibility and clearer reference to specific exclusions (now *excluded business*).
25. The exclusions at PRIN 3A.2.1R(1) to (7) correspond to the existing disapplications within the current *retail market business* definition. The exclusion at (8) reflects a disapplication currently set out in PRIN 3.2.6R(3) in respect of credit unions. The exclusions at (9) and (10) have already been proposed in other consultations.
26. The exclusions at PRIN 3A.2.1R(11) to (16) are new.

### **PRIN 3A.3 Distribution chain: scope and guidance**

27. PRIN 3A.3.2R defines and characterises the distribution chain with reference to the activities in PRIN 3A.1.2R(1)(a), that is, activities tracking the matters covered by the existing rules at PRIN 2A.3 to

PRIN 2A.6. The new definition also incorporates elements that currently appear inside the existing *product* definition at (2)(b) and (c).

28. Accompanying guidance on roles in the distribution chain outlines our expectations in relation to the definition and reflects existing material in the outcome rules, for example PRIN 2A.4.18R. Further guidance deals with situations where a firm's *retail market business* activities may appear to relate to a *product* (other than the firm's own service), clarifying that in those situations the firm is not in that product's distribution chain.

#### **PRIN 3A.4 Application of specific Consumer Duty obligations**

29. Rules and guidance in this section clarify that a firm's obligations under the Consumer Duty apply in a manner that tracks the firm's role and activities.
30. PRIN 3A.4.2R provides that a firm is not subject to obligations under outcome rules (that is, any rule in PRIN 2A.3, PRIN 2A.4, PRIN 2A.5 or PRIN 2A.6) that are not relevant to the firm in light of what it does.
31. PRIN 3A.4.4R provides that a firm is only responsible for its own role and activities and is not responsible for the conduct of another firm in the distribution chain.
32. PRIN 3A.4.7R provides that a firm with a very limited role in relation to a product, such as to lack material influence over it, is not subject to the Consumer Duty at all.

#### **PRIN 3A.5 Territorial scope**

33. Rules and guidance in this section generally limit the scope of the Consumer Duty to *retail market business* where the retail customer is in the United Kingdom, subject to a few exceptions.

## Appendix 2

# Draft Handbook text

## **Consumer Duty (Amendment) Instrument 202X**

### **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) and paragraph 2A of Schedule 3 to the Electronic Money Regulations 2011 (SI 2011/99):
    - (a) section 137A (The FCA’s general rules);
    - (b) section 137R (Financial promotion rules);
    - (c) section 137T (General supplementary powers);
    - (d) section 139A (Power of the FCA to give guidance);
    - (e) section 247 (Trust scheme rules); and
    - (f) section 261I (Contractual scheme rules);
  - (2) regulation 120 (Guidance) of the Payment Services Regulations 2017;
  - (3) regulation 60 (Guidance) of the Electronic Money Regulations 2011; and
  - (4) 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 powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

### **Commencement**

- C. This instrument comes into force on [*date*].

### **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).

(1)	(2)
Glossary of definitions	Annex A
Principles for Businesses sourcebook (PRIN)	Annex B
General Provisions (GEN)	Annex C
Insurance: Conduct of Business sourcebook (ICOBS)	Annex D
Consumer Credit sourcebook (CONC)	Annex E

**Notes**

- E. In the Annex to this instrument, the notes (indicated by “*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 (Amendment) Instrument 202X.

By order of the Board

[*date*]

## Annex A

### Amendments to the Glossary of definitions

In this Annex, underlining indicates new text, unless otherwise indicated.

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

#### ***distribution chain***

as set out in *PRIN 3A.3.2R*, the *firms* that carry on one or more *retail market business* activities of the kind set out in *PRIN 3A.1.2R(1)(a)* in relation to a *product*. (See also *PRIN 3A.3.1G*)

#### ***excluded business***

the services and activities listed in *PRIN 3A.2.1R*.

#### ***outcome rule***

a *rule* in *PRIN 2A.3*, *PRIN 2A.4*, *PRIN 2A.5* or *PRIN 2A.6*.

#### ***principal manufacturer***

a *manufacturer* of a *product* who is not a *secondary manufacturer* in relation to that *product*.

#### ***secondary manufacturer***

a *manufacturer* who lacks substantive control over the *product* by virtue of the nature and extent of its contribution to the *product's manufacture*, as set out in *PRIN 2A.2A.7R(2)*.

#### ***usually resident***

has the meaning given in *PRIN 3A.5.2R*.

Amend the following definition as shown.

#### ***manufacturer***

...

(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 contributes to these activities; or

...

...

Replace the definition of 'product' with the following. All the text is new and is not underlined.

***product***

as set out in *PRIN 3A.1.4R*:

- (1) any specified investment; and
- (2) any service which amounts to, involves or includes:
  - (a) the carrying on of a *regulated activity* or an *ancillary activity*;
  - (b) providing a *payment service* or issuing *electronic money*, or activities connected with providing a *payment service* or issuing *electronic money*.

Replace the definition of 'retail market business' with the following. All the text is new and is not underlined.

***retail market business***

has the meaning given in *PRIN 3A.1.2R*.

Delete the following definition. The full definition is not shown.

***non-retail financial instrument***

## Annex B

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

In this annex, underlining indicates new text and striking through indicates deleted text, unless otherwise specified.

The words 'distribution chain' are replaced by the Glossary term '*distribution chain*' wherever they are used in the following provisions in PRIN 2A:

PRIN 2A.1.17G	PRIN 2A.4.28G
PRIN 2A.2.9R	PRIN 2A.5.14R
PRIN 2A.3.8R(2)	PRIN 2A.5.15R
PRIN 2A.3.20R(3)	PRIN 2A.7.2G(3)(c)
PRIN 2A.4.16R(2)(d)	PRIN 2A.9.17R
PRIN 2A.4.18R(2)	PRIN 2A.10.5R
PRIN 2A.4.18R(3)	

**[Editor's note: where the provisions listed above are subsequently amended in the remainder of this annex, the change described above are assumed to have been made.]**

#### PRIN 1 Introduction

##### PRIN 1.1 Application and purpose

##### Application

##### PRIN 1.1.1 | G

The *Principles* (see *PRIN 2*) apply in whole or in part to every *firm*. The application of the *Principles* is modified for *firms* conducting *MiFID business* and *Annex II benchmark administrators*. *PRIN 3* (Rules about application) specifies to whom, to what and where the *Principles* apply. *PRIN 3A* (Application of the Consumer Duty) contains specific *rules* on the application of the *Consumer Duty*.

...

## **PRIN 2A The Consumer Duty**

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

#### **Application**

##### **PRIN 2A.1.1 | R**

[deleted]

##### **PRIN 2A.1.1A | G**

- (1) A firm which carries on retail market business will generally be subject to obligations under the Consumer Duty, as set out under the application rules in PRIN 3A and in accordance with the interpretative rules and guidance in PRIN 2A.7.
- (2) The activities within scope of retail market business are set out in PRIN 3A.1.2R and are subject to the specific exclusions set out in PRIN 3A.2.1R (excluded business).

##### **PRIN 2A.1.1B | G**

- (1) A firm carrying on retail market business may not be subject to particular Consumer Duty rules.
- (2) In particular:
  - (a) The more specific obligations under the outcome rules only apply where they are relevant in light of a firm's role and activities in relation to the product (see PRIN 3A.4.2R and PRIN 3A.4.3G).
  - (b) In addition, where a firm is a secondary manufacturer, it is subject to modified, simpler obligations relating to product governance and fair value in PRIN 2A.2A.8R.

##### **PRIN 2A.1.1C | G**

- (1) In line with the interpretative rules and more detailed guidance in PRIN 2A.7, the nature and extent of the obligation on the firm under an applicable Consumer Duty rule should be interpreted reasonably and proportionately in light of the relevant circumstances.
- (2) For example:

- (a) Where a firm is a secondary manufacturer in relation to a product, what is required of it under the cross-cutting obligations in PRIN 2A.2 will generally be less demanding than what those rules would require of the same firm if it were a principal manufacturer or the product's sole manufacturer.
- (b) A firm with direct contact with retail customers, or that provides an individually tailored financial product or financial service, may need to consider the needs of individual retail customers as a matter of compliance with the Consumer Duty where this would not be applicable to other firms in the distribution chain that do not have a similar role.

**PRIN 2A.1.1D | G**

Where a firm's role in a distribution chain falls within the scope of the disapplication rule in PRIN 3A.4.6R (absence of material influence), the Consumer Duty does not apply to the firm at all.

**PRIN 2A.1.1E | G**

- (1) The definition of product for the purposes of the Consumer Duty includes both financial products and financial services.
- (2) The definition of a retail customer for the purposes of the Consumer Duty includes a prospective customer.

**PRIN 2A.1.2 | R**

[deleted]

PRIN 2A.1.3G, PRIN 2A.1.4G, PRIN 2A.1.5G, PRIN 2A.1.6G and PRIN 2A.1.7R are deleted in their entirety. The deleted text is not shown but the provisions are marked [deleted] as shown below.

**PRIN 2A.1.3 | G**

[deleted]

**PRIN 2A.1.4 | G**

[deleted]

**PRIN 2A.1.5 | G**

[deleted]

**PRIN 2A.1.6 | G**

[deleted]

**PRIN 2A.1.7 | R**

[deleted]

**Purpose**

...

**PRIN 2A.1.10 | G**

...

- (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~~ consumer support.

...

PRIN 2A.1.13G, PRIN 2A.1.14G, PRIN 2A.1.15G and PRIN 2A.1.15AG are deleted in their entirety. The deleted text is not shown but the provisions are marked [deleted] as shown below.

**~~Guidance on responsibilities of firms in a product's distribution chain~~**

**PRIN 2A.1.13 | G**

[deleted]

**PRIN 2A.1.14 | G**

[deleted]

**PRIN 2A.1.15 | G**

[deleted]

**PRIN 2A.1.15A | G**

[deleted]

**Relevance of guidance about Principles 6 and 7**

**PRIN 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*).

**PRIN 2A.1.17 | G**

...

- (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 if they applied~~, the behaviour is likely to amount to a breach of the *Consumer Duty*.

...

**PRIN 2A.2 Cross-cutting obligations**

...

**Avoid causing foreseeable harm**

...

**PRIN 2A.2.10 | G**

Avoiding causing foreseeable harm to *retail customers* includes:

...

- (5) taking appropriate action to mitigate the risk of actual or foreseeable harm, including for example by:
- ...
- (iv) allowing time and support for *retail customers* to find suitable alternatives where a *product* is withdrawn; and
- (6) carrying out appropriate due diligence before entering into business arrangements with another *firm* or accepting introductions in relation to the *product*.

...

Insert the following new section, PRIN 2A.2A, after PRIN 2A.2 (Cross-cutting obligations). The text is all new and is not underlined.

## PRIN 2A.2A Distribution chain: roles and responsibilities

### Reasonable reliance

#### PRIN 2A.2A.1 | R

- (1) In sharing information with another *firm* in the *distribution chain* for the purposes of compliance with their respective obligations under the *Consumer Duty*, a *firm* must take reasonable care to ensure the information can be relied upon by the recipient *firm*.
- (2) Where compliance by a *firm* (A) with an obligation under the *Consumer Duty* depends on information provided by, or the actions of, another *firm* (B) in the *distribution chain*, *firm* A is entitled to rely on the information provided by *firm* B or the representations of *firm* B about actions it has carried out, except where such reliance would be unreasonable in the circumstances.

### Information flows along the distribution chain

#### PRIN 2A.2A.2 | G

Examples of information sharing to which *PRIN 2A.2A.1R(1)* relates include:

- (1) information from a *manufacturer* to a *distributor* about the *product* to enable the *distributor* to meet the information needs of *retail customers* in the *target market*;
- (2) sales information from a *distributor* to the *manufacturer* – for example, where relevant to assessing whether the *product* is being distributed to *retail customers* outside its *target market*;
- (3) information from a *firm* providing customer services about trends relating to how *retail customers* actually use the *product* that may be suggestive of product design or distribution concerns; and
- (4) information from a *secondary manufacturer* to a *principal manufacturer* relating to the product governance and the value assessment.

#### PRIN 2A.2A.3 | G

- (1) A *firm* is not expected or required under the *Consumer Duty* to request from or share with another *firm* in the *distribution chain* more information than is reasonably required to meet the recipient *firm's* regulatory obligations.
- (2) For example, a *firm* with direct contact with *retail customers* by virtue of its *distribution* or customer support activities generally

need not share information about individual *retail customers* with the *manufacturer*, and the *manufacturer* does not need to request it, as such information is unlikely to be required by the *manufacturer* for the purposes of compliance with obligations under the *Consumer Duty*.

- (3) Where a *manufacturer* requests or a *distributor* shares sales information, the level of detail and quantity of that information should be proportionate and need not be fully comprehensive where, in the requesting or sharing *firm's* reasonable judgement, a representative sample or aggregate data provides sufficient information.

### **Contributing manufacturers agreement**

#### **PRIN 2A.2A.4 | R**

- (1) A *principal manufacturer* must ensure the contribution of each *manufacturer* in relation to the same *product* is reflected in an agreement that complies with *PRIN 2A.2A.5R*.
- (2) Each *manufacturer* contributing to the same *product's manufacture* must cooperate with the *principal manufacturer* in ensuring the agreement in (1) meets the requirements in *PRIN 2A.2A.5R*.

#### **PRIN 2A.2A.5 | R**

The agreement in *PRIN 2A.2A.4R(1)* must:

- (1) be set out in writing and in *durable medium*, with each party retaining a copy; and
- (2) set out an allocation of roles and responsibilities among the *manufacturers* that is:
  - (a) a clear, true, and non-misleading reflection of the reality of the arrangements between the *manufacturers* and their respective contributions to the *manufacture* of the *product*; and
  - (b) reasonable in light of each *manufacturer's* resources, capabilities and relevant expertise in relation to the *product*.

#### **PRIN 2A.2A.6 | G**

- (1) Where there are more than two *manufacturers* in the *distribution chain*, the obligation in *PRIN 2A.2A.4R(1)* may be satisfied by a single agreement to which all *manufacturers* are parties or by bilateral agreements, so as long as all contributions to the *product's manufacture* are documented in accordance with *PRIN 2A.2A.5R*.

- (2) The agreement in *PRIN 2A.2A.4R(1)* may form part of a wider agreement between the parties and need not be a separate document.
- (3) The purpose of the agreement in *PRIN 2A.2A.4R(1)* is to ensure that the roles and responsibilities of each *manufacturer* are clear to the *firms* involved and can be readily ascertained by the *FCA*, having regard in particular to the attribution of regulatory responsibilities under *PRIN 3A.4.4R* and the modified responsibilities of *secondary manufacturers* under *PRIN 2A.2A.8R*.

## **Principal and secondary manufacturers**

### **PRIN 2A.2A.7 | R**

- (1) Where a *product's distribution chain* contains more than one *manufacturer*, each *manufacturer* will be either a *principal manufacturer* or a *secondary manufacturer* in accordance with this rule.
- (2) A *manufacturer* that lacks substantive control over the *product* by virtue of the nature and extent of its contribution to the *product's manufacture* is a *secondary manufacturer*.
- (3) A *manufacturer* that is not a *secondary manufacturer* under (2) is a *principal manufacturer* in relation to the *product*.
- (4) For the purposes of (2), the following non-exhaustive factors are indicative of substantive control:
  - (a) the *manufacturer* carries on *manufacturing* activities relating to the core aspects of the *product's* design or operation;
  - (b) the *manufacturer* was responsible for initiating or setting into motion the assembly of the contributions of other *manufacturers* for the purposes of creating the *product*;
  - (c) the *manufacturer* has a coordinating role over the activities of other *manufacturers*;
  - (d) the *manufacturer* has the power, right or ability to make decisions about, veto or approve proposals relating to core aspects of the *product's* design, operation, distribution strategy, or value proposition for end *retail customers*, and has the resources, capabilities and expertise to do this effectively; and
  - (e) the *manufacturer* holds itself out as the main provider (or a main provider) of the *product*.

## Secondary manufacturer obligations

### PRIN 2A.2A.8 | R

- (1) The obligations on a *manufacturer* in *PRIN 2A.3* and *PRIN 2A.4* are replaced by the obligations set out in (2) and (3) where the *manufacturer* is a *secondary manufacturer*.
- (2) A *secondary manufacturer* must take reasonable care to:
  - (a) consider the substance and impact of its contribution to the *manufacture* of the *product* and to the overall price or cost of the *product*, having regard to the contributions of other *manufacturers* in the *distribution chain*; and
  - (b) ensure that its contribution does not create a material risk that the *product*:
    - (i) fails to meet the needs and objectives of *retail customers* in its *target market*;
    - (ii) causes foreseeable harm to *retail customers* in its *target market*; or
    - (iii) does not provide fair value to retail customers in its target market.
- (3) A *secondary manufacturer* must share with the *principal manufacturer* on request information that is reasonably required by the *principal manufacturer* to comply with obligations relating to product governance in *PRIN 2A.3* and to the value assessment in *PRIN 2A.4*.

Amend the following as shown.

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

...

### **Manufacturers: product approval process for closed products**

...

### **PRIN 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*.

...

### **~~Manufacturers: collaborating on manufacture~~**

#### **PRIN 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*. [deleted]~~

...

### **Compliance with other Handbook provisions**

#### **PRIN 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~~ comply with 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*.

...

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

#### **What is value?**

#### **PRIN 2A.4.1 | R**

~~For the purposes of this outcome~~ In this section:

...

### **Price and value: manufacturers general obligation**

#### **PRIN 2A.4.2 | R**

A manufacturer must:

- (1) ensure that ~~its products provide~~ a product provides fair value to *retail customers* in the *target markets* for ~~those products that~~ product; and
- (2) carry out a value assessment of ~~its products~~ the product and review that assessment on a regular basis appropriate to the nature and duration of the *product*.

...

## Distribution chains

### PRIN 2A.4.18 | R

...

- (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~~ manufacturer of the product they are *distributing*, including where they contribute to the manufacture of a product along with other firms, and if they are so, apply comply with the rules on manufacturers rules in this section.

...

## Reviewing the value assessment

...

### PRIN 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 firm that acts as both distributor who is a co-manufacturer and 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~~ manufacturers.

...

## Application of the price and value outcome

### PRIN 2A.4.32 | R

...

- (2) A *firm* in (1) must continue to ~~apply~~ comply with *PROD 4* (in accordance with the application of *PROD 1.4*) and *PROD 7* or the relevant *COLL rules*.

...

#### **PRIN 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~~ comply with the *closed product rules* and *guidance* in *PRIN 2A.4*.

...

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

#### **PRIN 2A.4.36 | R**

...

- (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~~ comply with *PRIN 2A.4.25R* in relation to the *relevant scheme* or *pathway investment*.

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

...

#### **Communications to retail customers**

#### **PRIN 2A.5.3 | R**

- (1) A *firm* must support *retail customer* understanding ~~so that~~ by ensuring its communications:

...

...

#### **PRIN 2A.7 General Interpretating obligations under the Consumer Duty**

#### **~~Expected standards under the Consumer Duty~~ Reasonableness**

#### **PRIN 2A.7.1 | R**

The Obligations under the Consumer Duty must be interpreted in accordance with the standard of conduct 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.

### **PRIN 2A.7.2 | G**

What is reasonable depends on all the relevant circumstances, including:

...

- (3) the *firm's* role in relation to the *product*, including:

...

- (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;~~

...

### **PRIN 2A.7.3 | G**

...

### **Proportionality**

#### **PRIN 2A.7.3A | R**

The obligation on the *firm* under any specific *Consumer Duty* rule to which the *firm* is subject must be interpreted in a manner that is commensurate with the *firm's* ability to determine or influence the outcomes experienced by *retail customers* in relation to the *product*.

#### **PRIN 2A.7.3B | G**

- (1) A *firm's* ability to determine or influence outcomes for *retail customers* will normally turn on the nature and extent of its role in the *distribution chain* and of the activities it carries on in relation to the *product*.
- (2) In general terms the degree of care required of a *firm* in complying with a *Consumer Duty* obligation should bear reasonable proportion

to the firm's ability to shape how well or badly things turn out for retail customers of the product.

- (3) A firm whose actions and decisions in relation to a product are capable of a greater impact on outcomes for end retail customers in relation to the product would normally be expected to undertake more intensive or comprehensive steps in order to comply with an applicable rule than a firm whose role or activities in relation to the same product means it has a comparatively limited or reduced ability to determine or influence retail customer outcomes.

[Editor's note: the amended subheading 'Characteristics of vulnerability' also applies to PRIN 2A.7.5G.]

### ~~Protected characteristics and characteristics~~ **Characteristics of vulnerability**

#### **PRIN 2A.7.4 | G**

- (1) In relation to the needs and characteristics of *retail customers*, a ~~firm~~ manufacturer should, among other things:
- (1)(a) pay appropriate regard to the nature and scale of characteristics of vulnerability that exist among retail customers in any relevant *target market*; and
  - (2)(b) pay appropriate regard to the impact of characteristics of vulnerability on the needs of *retail customers* in any relevant *target market*; and
- (2) Manufacturers are generally not expected to take account of the needs and characteristics of individual retail customers, though they may be relevant where the manufacturer carries out activities (for example, in the context of customer services) which involve direct interaction with retail customers.
- (3) In relation to the needs and characteristics of retail customers, a distributor should, among other things:
- (3)(a) 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)(b) 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)(c)~~ set up systems and processes in a way that supports and enables *retail customers* with characteristics of vulnerability to disclose their needs.

(4) In keeping with PRIN 2A.7.3AR, the expectations in (1), (2) and (3) should be interpreted in a manner that is reasonable in light of the firm's role and activities in relation to the product.

...

## PRIN 2A.8 Governance and culture

...

### Governing body ~~report~~ reporting

#### PRIN 2A.8.3 | R

A *firm* must ~~prepare a report for~~ to its governing body ~~setting out~~ on the results of its monitoring under PRIN 2A.9 and any actions required as a result of the monitoring.

#### PRIN 2A.8.4 | R

At least annually, the governing body of a *firm* must:

- ~~(1) review and approve the firm's report~~ reporting on the outcomes being received by *retail customers*;
- ~~(2) confirm, whether it is satisfied that the firm is complying with its obligations under the Consumer Duty; and~~
- ~~(3) assess whether the firm's future business strategy is consistent with its obligations under the Consumer Duty.~~

#### PRIN 2A.8.5 | R

When approving the *firm's* ~~report~~ reporting under ~~PRIN 2A.8.4R(1)~~ PRIN 2A.8.4R, 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~~ confirm whether it is satisfied that the firm is complying with its obligations under the Consumer Duty;
- ~~(2) any action required to address any identified instance where retail customers have not received good outcomes~~ assess whether the

firm's business strategy is consistent with its obligations under the Consumer Duty and agree any changes to it to ensure that it remains consistent with meeting those obligations; and

- (3) ~~any amendments to the firm's business strategy to ensure that it remains consistent with meeting the firm's obligations under the Consumer Duty.~~ agree any actions required to address:
- (a) any identified risk that retail customers may not receive good outcomes in relation to the product; and
  - (b) any identified instance where retail customers have not received good outcomes in relation to the product.

### **PRIN 2A.8.6 | G**

- (1) The reporting required in PRIN 2A.8.3R does not have to take the form of a separate or stand alone document. It may be incorporated into other reporting and governing documents a firm usually prepares for its governing body.
- (2) In keeping with PRIN 2A.7.3AR, a firm in a distribution chain should undertake reporting in a manner and extent that is reasonable and commensurate in light of the firm's role and the activities carried out in relation to the product.

## **PRIN 2A.9 Monitoring of consumer outcomes**

### **General**

PRIN 2A.9.1R, PRIN 2A.9.2G, PRIN 2A.9.3G, PRIN 2A.9.4G and PRIN 2A.9.5G, PRIN 2A.9.6G, PRIN 2A.9.7G and PRIN 2A.9.8R are deleted in their entirety. The deleted text is not shown but the provisions are marked [deleted] as shown below.

### **PRIN 2A.9.1 | R**

[deleted]

### **PRIN 2A.9.2 | G**

[deleted]

### **PRIN 2A.9.3 | G**

[deleted]

### **PRIN 2A.9.4 | G**

[deleted]

**PRIN 2A.9.5 | G**

[deleted]

**PRIN 2A.9.6 | G**

[deleted]

**PRIN 2A.9.7 | G**

[deleted]

**Requirement to monitor retail customer outcomes**

**PRIN 2A.9.8 | R**

[deleted]

**PRIN 2A.9.8A | R**

A firm must regularly monitor the outcomes retail customers receive in relation to the product and which reasonably relate to the firm's role and activities in relation to the product.

**PRIN 2A.9.8B | G**

- (1) The manner and extent of the monitoring in PRIN 2A.9.8AR should be reasonable and commensurate in light of the firm's regulatory responsibilities in relation to the product, in keeping with PRIN 2A.7.3AR and PRIN 3A.4.4R(1)(a).
- (2) Where a firm is subject to obligations under the outcome rules, those obligations are relevant to the scope of the monitoring in PRIN 2A.9.8AR.

**PRIN 2A.9.9 | R**

The monitoring carried out by a firm must enable it to determine at least the following as relating to the firm's role and activities in the distribution chain:

...

**PRIN 2A.9.10 | R**

...

**PRIN 2A.9.10A | G**

- (1) PRIN 2A.5.10R to PRIN 2A.5.14R set out specific requirements on the testing and monitoring of communications.
- (2) Firms may utilise the information gathered in compliance with other obligations under the Consumer Duty in preparing the report required under PRIN 2A.8.3R.
- (3) Where the firm is subject to rules in PROD which replace their obligations under rules in PRIN 2A.3 or PRIN 2A.4, the firm may use any information gathered via monitoring or reviews it carries out under PROD rules in complying with its monitoring obligations under this section.

...

### **Obligation to notify the FCA**

...

#### **PRIN 2A.9.17 | R**

~~A firm in a distribution chain must notify the FCA if it becomes aware that has material concerns about the conduct of any other firm in that distribution chain is not or may not be complying the Consumer Duty.~~

#### **PRIN 2A.9.18 | G**

In keeping with PRIN 2A.7.1R and PRIN 2A.7.2G, the obligation in PRIN 2A.9.17R is to be interpreted reasonably. The FCA would not expect notification before the relevant firms have discussed the issue between them, where the firm with concerns considers it appropriate to do so.

...

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

...

#### **PRIN 2A.11.2 | R**

- (1) Where the *product* book was purchased before 31 July 2023, the *firm* must comply with the *Consumer Duty*.
- (2) Unless:
  - (a) ~~the firm was a co-manufacturer~~ had a role in the manufacture 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.

...

### **PRIN 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~~ comply with *PRIN 2A.11.2R*.

...

## **PRIN 3 Rules about application**

### **PRIN 3.1 Who?**

...

#### **PRIN 3.1.12 | R**

~~The *Consumer Duty* only applies where a *client* is a *retail customer*, or there is a distribution chain which involves a *retail customer*. [deleted]~~

#### **PRIN 3.1.13 | R**

~~The *Consumer Duty* applies to: [deleted]~~

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

### **PRIN 3.2 What?**

...

## **The Consumer Duty: additional application provisions**

### **PRIN 3.2.6 | R**

- ~~(1) The *Consumer Duty* applies to a *firm's retail market business*, including in respect of *existing products* and *closed products*. [deleted]~~
- ~~(2)~~
- ~~(a) Subject to (b), the *Consumer Duty* applies to a *firm* with respect to the *communication or approval of a financial promotion* (see *PRIN 3.2.2R*), but only if the *financial*~~

~~promotion is addressed to, or disseminated in such a way that it is likely to be received by, a retail customer.~~

- (b) ~~The Consumer Duty does not apply to the communication or approval of a financial promotion to the extent that the financial promotion relates to an activity that is excluded from the definition of retail market business by virtue of limbs (1) to (6) of that definition.~~
- (3) ~~If the firm is a credit union, and except insofar as the Consumer Duty applies by virtue of (2), then the Consumer Duty does not apply to the following activities:~~
  - (a) ~~payment services and activities connected to the provision of payment services, except where the activity is an ancillary activity in relation to a regulated activity other than issuing electronic money; and~~
  - (b) ~~activities connected to or ancillary activities in relation to issuing electronic money, but only insofar as the activity is not an ancillary activity in relation to another regulated activity.~~

### **PRIN 3.2.7 | R**

~~Where the Consumer Duty applies to the activities of a firm operating in a distribution chain, it applies only to the extent that the person is responsible in the course of carrying out those activities for determining or materially influencing retail customer outcomes. [deleted]~~

### **PRIN 3.2.8 | R**

~~Subject to PRIN 3.2.7R, the Consumer Duty does 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, CMCOB, FPCOB, PROD or CONC. [deleted]~~

Interaction between the Consumer Duty and Principles 6 and 7

...

### **PRIN 3.2.12 | G**

~~The Consumer Duty has a broader application than Principles 6 and 7. For example it applies to firms in the distribution chain in relation to whom the retail customer may not be a client. [deleted]~~

## **Application of the Consumer Duty**

### **PRIN 3.2.13 | G**

Provisions on the application of the *Consumer Duty* are set out in PRIN 3A.

**PRIN 3.3 Where?**

**Territorial application of the Principles**

**PRIN 3.3.1 | R**

Principle	Territorial application
...	
The <i>Consumer Duty</i>	applies with respect to <del>activities carried on with retail customers located</del> <u>retail market business where the retail customer is usually resident in the United Kingdom unless another applicable rule or onshored regulation which is relevant to the activity has a different territorial scope, in which case the <i>Consumer Duty</i> applies with that scope in relation to the activity described in that rule or onshored legislation, as set out in PRIN 3A.5.1R and subject to the exceptions in PRIN 3A.5.6R.</u>

...

Insert the following new chapter, PRIN 3A, after PRIN 3 (Rules about application). The text is all new and is not underlined.

[*Editor’s note:* This chapter takes into account the proposals and legislative changes suggested in the consultation papers ‘Simplifying the insurance rules: A package of proposals on the scope of our rules, disclosure and advice’ (CP26/22), ‘ESG ratings: proposed approach to regulation’ (CP25/34) and ‘Application of FCA Handbook for Regulated Cryptoasset Activities II’ (CP26/4) as if they were made final.]

**PRIN 3A Application of the Consumer Duty**

**PRIN 3A.1 Activities within scope of application**

**General**

**PRIN 3A.1.1 | R**

The *Consumer Duty* applies to a *firm* in relation to the carrying on of *retail market business* where it is or amounts to:

- (1) the carrying on of a *regulated activity*, or of an *ancillary activity* in relation to a *regulated activity* being carried on;
- (2) the provision of a *payment service*, the issuance of *electronic money* and activities connected to the provision of *payment services* or the issuance of *electronic money*; or
- (3) the *approval* or *communication* of a *financial promotion* that relates to *retail market business*, where the *financial promotion* is addressed to or disseminated in such a way that it is likely to be received by a *retail customer*.

## **Retail market business**

### **PRIN 3A.1.2 | R**

- (1) *Retail market business* comprises:
  - (a) the following activities in relation to a *product*, where that *product* is, or is intended to be, offered, provided or sold to, *retail customers*:
    - (i) *manufacturing* the *product*, including contributing to the *manufacture* of the *product*;
    - (ii) *distributing* the *product*;
    - (iii) setting the price or charges for the *product*, or costs to be borne by the *retail customer* in relation to the *product*, or in either case for an element or component of the *product*;
    - (iv) communicating a *financial promotion*, preparing or issuing product literature, marketing materials, term sheets, or any other customer-facing communication directed to or intended to reach *retail customers* in connection with the *product*; and
    - (v) any form of pre-sale or post-sale service or activity carried on in relation to the *product*, including but not limited to general customer support services, transaction or redemption processing, account maintenance, claims handling, exercising of lender's rights, product administration or complaints handling; and
  - (b) insofar as not falling within (a), the following activities:
    - (i) *approving* a *financial promotion* that relates to *retail market business*;

- (ii) *providing credit references* where the credit reference relates to, or is likely to relate, to a *retail customer*;
  - (iii) *providing credit information services* to a *person* other than the *retail customer*;
  - (iv) exercising, or having the right to exercise, the lenders' rights and duties under a *regulated credit agreement*, where carried out by a *firm* other than the original lender;
  - (v) administration of a *regulated mortgage contract*, where carried out by a *firm* other than the original lender;
  - (vi) *debt administration*; and
  - (vii) *debt collecting*.
- (2) The *Consumer Duty* does not apply to an activity which would otherwise be *retail market business* to the extent that it is *excluded business*.

### **PRIN 3A.1.3 | R**

For avoidance of doubt, the *Consumer Duty* does not apply to the *communication* or *approval* of a *financial promotion* to the extent that the *financial promotion* relates to *excluded business*.

### **The retail product**

### **PRIN 3A.1.4 | R**

Reference to a *product* in *PRIN 2A* or *PRIN 3A* means:

- (1) any *specified investment*; and
- (2) any service which amounts to, involves or includes:
  - (a) the carrying on of a *regulated activity* or an *ancillary activity*;  
or
  - (b) the provision of a *payment service* or the issuance of *electronic money*, or activities connected with the provision of a *payment service* or the issuance of *electronic money*.

### **PRIN 3A.1.5 | G**

- (1) In general terms, the definition of *product* relates to the financial product or financial service that is purchased, entered into or used by the end *retail customer*.

- (2) Where the *firm* carries on an activity within *PRIN 3A.1.2R(1)(b)*, it carries on *retail market business* that is subject to the *Consumer Duty* notwithstanding that the service may not be provided to *retail customers* and therefore may not amount to a *product*.

## **PRIN 3A.2 Retail market business exclusions**

### **PRIN 3A.2.1 | R**

The following are *excluded business* and do not amount to *retail market business*:

- (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 respect of a *financial instrument* in respect of which the conditions in paragraphs (a) and (b) are met:
- (a) the marketing materials for the *financial instrument* (including the *prospectus*, if there is one) feature prominent and clear disclosures to the effect that the *financial instrument*:
    - (i) is being offered only to investors eligible for categorisation as *professional clients* or *eligible counterparties* under the *FCA's rules*, and
    - (ii) is not intended for *retail investors*; and
  - (b) the *issuer* of the *financial instrument* – 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 eligible for categorisation as *professional clients* or *eligible counterparties*;
- (3) activities relating to a *financial instrument* in respect of which the following minimum denomination or otherwise minimum investment applies in respect of each end investor, without aggregation across *platform service providers* or other nominee arrangements:
- (a) £50,000, or

- (b) an equivalent amount for a *financial instrument* denominated in another currency, where the equivalent amount is calculated not more than 3 *business days* before the date of issue of the *financial instrument*;
- (4) communicating or making an *offer* and preparing and communicating any associated promotional communication, where:
- (a) this is done by a *firm* with or for any issuer, holder or owner of a *financial instrument* in relation 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) the offer relates to 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*;
- (5) activities carried on in relation to:
- (a) *specialist risks contracts*:

- (i) for a *commercial customer* (including a *larger commercial customer*); or
  - (ii) where the risk is located outside the *United Kingdom*; or
- (b) any *general insurance contract* (other than *specialist risks contracts*) for a *larger commercial customer*;
- (6) 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*;
- (7) *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*;
- (8) the following activities of a *credit union*, but not including a *financial promotion*:
  - (a) *payment services* and activities connected to the provision of *payment services*, except where the activity is an *ancillary activity* in relation to a *regulated activity* other than *issuing electronic money*; and
  - (b) activities connected to or ancillary activities in relation to *issuing electronic money*, but only insofar as the activity is not an *ancillary activity* in relation to another *regulated activity*;
- (9) *providing an ESG rating* and any *ancillary activity* to that activity;
- (10) the activities specified as designated activities under section 71K (Designated activities) of the *Act* by regulations 7 and 8 of the *Cryptoassets Regulations*, where:
  - (a) the carrying on of those activities would involve the carrying on of *regulated activities* or *ancillary activities* to those activities; and
  - (b) those activities are carried on in relation to a *qualifying cryptoasset* that is not a *UK qualifying stablecoin*;

- (11) *acquiring payment transactions* where neither the *payer* nor the *payee* is a *retail customer*;
- (12) any of the following services, but only where the *firm* does not directly interact with or otherwise provide the service directly to a *retail customer*:
  - (a) the activities of a market maker;
  - (b) the provision of an account by a *credit institution* to another *person* for the purposes of that *person* satisfying its obligations under:
    - (i) regulation 21(1) or (2)(a) of the *Electronic Money Regulations*; or
    - (ii) regulation 23(5) or (6)(a) of the *Payment Services Regulations*;
  - (c) the provision of sponsored or indirect access to UK payment systems;
  - (d) *safeguarding and administering investments*;
  - (e) *safeguarding cryptoassets*;
  - (f) the activities of a *depository*, except in circumstances where the *depository* has additional responsibilities or a more active role in relation to a *fund*, for example in the context of a suspension of *dealing* in *units* in an *authorised fund*, or during the process for appointing or replacing an *authorised* fund manager; or
  - (g) *dealing* and *arranging*, but only where carried on by a transfer agent;
- (13) the activities of a *firm* where its role in relation to a *product* is limited to providing any of the following to the *manufacturer*, further to an arrangement between them:
  - (a) financing arrangements where the *firm* acts as guarantor or named issuer and which are provided to enable the acquisition by the *manufacturer* of *investments* relating to or underlying the *product*, for example, as part of an investment strategy featuring gearing or leveraged exposures;
  - (b) a *derivative* where the *firm* acts as a hedge provider and which are provided on general commercial terms and without any customisation or tailoring to the *product*, for the purposes of enabling the *manufacturer* to:

- (i) hedge the *manufacturer's* risk in relation to the *product*, or
  - (ii) achieve certain investment objectives within a *product* which is an *insurance-based investment product* or a *pension scheme*;
- (c) a *derivative* provided on terms specifically requested by the *manufacturer* and without any significant input from or alteration by the *firm* providing the *derivative*;
- (d) a *specified investment* insofar as it is provided by *firm A* to a *firm B* which is a *fund manager* to enable *firm B* to achieve investment objectives within a *product* that *firm B* provides and in respect of which *firm B* owes investors a fiduciary duty; or
- (e) market information services to the *manufacturer* to assist or inform the *manufacturer's* decisions on price-setting or on buying or selling *investments* relating to or underlying the *product*;
- (14) the provision of any *specified investment* insofar as it is incorporated into a *product*, where the *firm* providing the *specified investment* does not do so under any arrangement with the *manufacturer* of the *product* and has not customised or tailored the *specified investment* to the *product*;
- (15) in relation to a *regulated mortgage contract* for a business purpose, activities where the *customer* is a large business customer for the purposes of *MCOB 1.2.3R*; or
- (16) (except in relation to *structured deposits*) the *regulated activity of accepting deposits*, where it is carried on only for the purposes of, or in the course of, another *regulated activity* carried on by the *firm*.

### **PRIN 3A.2.2 | G**

For the avoidance of doubt, the activity of *operating a POP* is *retail market business* and is not *excluded business* in so far as that activity is carried on in relation to an investor or prospective investor who is a *retail customer* in a *qualifying public offer*.

### **PRIN 3A.3 Distribution chain: scope and guidance**

#### **Purpose**

#### **PRIN 3A.3.1 | G**

- (1) This section defines *distribution chain*, which encompasses the chain or network of *firms* involved in supplying and delivering a *product* to *retail customers* at the end of the chain.
- (2) The activities of *firms* in the *distribution chain* cover the entire lifecycle of the *product* and all activities relevant to the outcome rules at *PRIN 2A.3* to *PRIN 2A.6*.
- (3) This section also provides *guidance* on roles different *firms* may have in the *distribution chain*.

### **Meaning of distribution chain**

#### **PRIN 3A.3.2 | R**

- (1) A *product's distribution chain* consists of the *firms* that carry on one or more *retail market business* activities of the kind set out in *PRIN 3A.1.2R(1)(a)* in relation to that *product*.
- (2) The following are examples of arrangements between *firms* in the *distribution chain*:
  - (a) a service provided by *firm A* to *firm B* (further to an arrangement between them) to enable *firm B* to carry on its own activities in relation to the *product*;
  - (b) an agreement where *firm A* and *firm B* collaborate in relation to the *product* – for example, under a joint venture;
  - (c) an outsourcing agreement between *firm A* and *firm B*, where both *firms* are carrying on one or more activities in relation to the *product*;
  - (d) a commercial distribution agreement between a *manufacturer* and one or more *distributor*, or any other commercial agreement between two or more *firms* carrying on different activities in relation to the same *product*; and
  - (e) providing or distributing a *product* directly to the *retail customer* at the end of the chain.

### **Roles in the distribution chain**

#### **PRIN 3A.3.3 | G**

- (1) A *product* may have more than one *manufacturer* – for example, where:

- (a) two or more *firms manufacture a product* together (for instance, via a joint venture entity) and share the financial risks and profits from the *product*; or
  - (b) one *firm issues or provides a product* that incorporates a contribution from another *firm that manufactures a component or element of the product*.
- (2)
- (a) A *distribution chain* with multiple *distributors* may feature *distributors* at different levels in the chain as well as multiple customer-facing *distributors*.
  - (b) For example, a *distributor* may have an intermediate role in the *distribution chain*, where it *distributes the product* to one or more other *distributor* for onward *distribution* to the *retail customers* at the end of the chain.
- (3) A *distributor* may also be a *manufacturer*, for example:
- (a) if, as part of its role, the *distributor* is empowered to make material changes to the terms of a *product*, or
  - (b) in relation to a service the *distributor* provides the *retail customer*, where the service is itself a *product*.
- (4) A *firm* that is neither a *manufacturer* nor a *distributor* may nonetheless be in the *distribution chain* – for example, if the *firm* provides customer services in relation to the *product*.

**PRIN 3A.3.4 | G**

For the avoidance of doubt:

- (1) a *firm* that provides services such as claims or complaints handling in the context of a *regulated claims management activity* is not in the *distribution chain* for the *product* the claim or complaint is about;
- (2) a *firm* which prepares or issues communications to *retail customers* in the context of *debt adjusting, debt administration or debt collecting* is not, for that reason, in the *distribution chain* for a *regulated credit agreement* to which the debt relates; and
- (3) where *firm A manufactures an investment* which is incorporated by *firm B* into a separate *product* outside the context of any specific agreement or arrangement between *firm A* and *firm B*, *firm A* is not a contributing *manufacturer* in relation to *firm B's product* and is not

in the *distribution chain* for *firm B's product* (see *PRIN 3A.2.1R(14)*).

## **PRIN 3A.4 Application of specific Consumer Duty obligations**

### **General**

#### **PRIN 3A.4.1 | R**

The application of specific *Consumer Duty rules* in *PRIN 2A* is subject to the *rules* in this section.

### **Outcome rules**

#### **PRIN 3A.4.2 | R**

A *firm* need not comply with an *outcome rule* where it is clear in the circumstances that the obligation set out by the *outcome rule* is not relevant to the *firm's* proper role and activities in relation to the *product*.

#### **PRIN 3A.4.3 | G**

- (1) Where a *firm's* activities do not include a particular role, process, or step that is the subject of an *outcome rule* (for instance, because another *firm* in the *distribution chain* is responsible for it), the *outcome rule* has no relevance to that *firm* and does not apply.
- (2) For example:
  - (a) a *manufacturer* that has no role in devising a *product's* distribution strategy does not need to comply with obligations relating to the selection of distribution channels; and
  - (b) a *firm* that has no role or involvement in preparing or issuing product literature, marketing materials or any kind of consumer communication in relation to the *product* does not need to comply with the *outcome rules* in *PRIN 2A.5*.
- (3) A *secondary manufacturer* is not subject to the *outcome rules* in *PRIN 2A.3* and *PRIN 2A.4* notwithstanding that it may carry on activities subject to one or more of those *rules* and must instead comply with the obligations set out in *PRIN 2A.2A.8R(2)*.
- (4) A *firm* need not evidence compliance in respect of an *outcome rule* that does not apply to it.

### **Responsibilities of firms in a distribution chain**

#### **PRIN 3A.4.4 | R**

- (1) A *firm* in a *distribution chain*:
  - (a) is responsible for ensuring compliance with *Consumer Duty* obligations as applicable to the *firm's* own conduct – that is, its role and activities in relation to the *product*; and
  - (b) is not responsible for ensuring that the conduct of another *firm* in the *distribution chain* complies with applicable *Consumer Duty* obligations.
- (2) For avoidance of doubt, a *firm's* responsibilities for its own conduct extend to any directions, instructions, advice, approval or guidance it provides another *firm* in the *distribution chain* in relation to the *product*.

#### **PRIN 3A.4.5 | G**

PRIN 2A.3.4R relates to obligations under the *Consumer Duty* and does not affect a *firm's* responsibilities or liabilities in relation to the conduct of another *firm* in the *distribution chain* as might arise out of contractual terms, statutory requirements, or other legal requirements.

#### **PRIN 3A.4.6 | G**

The applicability of *Consumer Duty* obligations on a *manufacturer* in a *distribution chain* with more than one *manufacturer* may depend on the nature of the arrangements between the *manufacturers*. For example:

- (1) each *manufacturer* may be responsible for activities corresponding to different stages of the product approval process or for discrete components or elements of the financial product or service, which should be reflected in the agreement in *PRIN 2A.2A.4R*;
- (2) two or more *manufacturers* may agree to jointly undertake some or all aspects or stages of *manufacturing* the *product* and to share responsibility for ensuring compliance with relevant *Consumer Duty* obligations in respect of those activities; and
- (3) obligations under *PRIN 2A.3* and *PRIN 2A.4* are replaced by *PRIN 2A.2A.8R* in respect of a *secondary manufacturer*.

#### **Absence of material influence**

#### **PRIN 3A.4.7 | R**

In relation to a *firm* in a *distribution chain*, the *Consumer Duty* does not apply where the *firm* is able to demonstrate that its role in relation to a *product* is so limited or remote that it cannot determine or materially influence outcomes for *retail customers* in connection with that *product*.

## PRIN 3A.5 Territorial scope

### PRIN 3A.5.1 | R

- (1) The *Consumer Duty* applies with respect to *retail market business* where the *retail customer* to whom the *product* is, or is intended to be, offered, provided or sold, or the *retail customer* to whom the *retail market business* activity relates, is usually resident in the *United Kingdom*.
- (2) The territorial application in (1) is subject to exceptions set out in this section.

### Usually resident

### PRIN 3A.5.2 | R

A *retail customer* is to be treated as *usually resident* in the *United Kingdom* where the address provided reasonably appears to be a residential or establishment address in the *United Kingdom*, and there is no reason for the *firm* to reasonably conclude otherwise.

### PRIN 3A.5.3 | R

Where a *firm* intends a *product* to be distributed to *retail customers usually resident* in the *United Kingdom* and to *retail customers* outside the *United Kingdom*, the *firm* need only comply with the *Consumer Duty* in respect of *retail customers usually resident* in the *United Kingdom*.

### PRIN 3A.5.4 | R

Where a *firm* intends that a *product* is only *distributed* to *retail customers* who are not *usually resident* in the *United Kingdom*, the *distribution* strategy for the *product* must reflect that intention.

### PRIN 3A.5.5 | R

- (1) Where a *firm* becomes aware that a *product* only intended for *retail customers* who are not *usually resident* in the *United Kingdom* has been *distributed* to *those customers*, the *firm* must review and, if relevant, change its *distribution* strategy to mitigate as far as possible the risk of the *product* being distributed in the *United Kingdom*.
- (2) Where a *distributor* becomes aware that it has distributed a *product* not intended for *retail customers usually resident* in the *United Kingdom* to a *retail customer* in the *United Kingdom*, the *firm* must:
  - (a) undertake a review of those transactions under the cross-cutting rules; and

- (b) where harm has been identified, take appropriate action to mitigate the situation and prevent any further harm.

## **Exceptions**

### **PRIN 3A.5.6 | R**

The *Consumer Duty* applies to the following irrespective of whether the *retail customer* is usually resident in the *United Kingdom*:

- (1) the *regulated activities* of entering as provider into funeral plan contract and carrying out a funeral plan contract as provider in relation to funeral plan contracts under which the provider undertakes to provide, or secure that another person provides, a funeral in the *United Kingdom* (article 59(2) of the *Regulated Activities Order*);
- (2) *regulated* or *ancillary activities* in relation to:
  - (a) an investment which it is envisaged will or could receive, or has received assets from any of the following where the schemes are based in the *United Kingdom*:
    - (i) a *personal pension scheme*;
    - (ii) a *stakeholder pension scheme*; or
    - (iii) in the case of *regulated activities* falling within the scope of article 53E of the *Regulated Activities Order*, an *occupational pension scheme*; and
  - (b) rights or interests in any of the following where the schemes are based in the *United Kingdom*:
    - (i) a *personal pension scheme*;
    - (ii) a *stakeholder pension scheme*; or
    - (iii) (in the case of *regulated activities* falling within the scope of article 53E of the *Regulated Activities Order*) an *occupational pension scheme*.
- (3) activities within *ICOBS 1.1.1R* carried on by a *firm* for a *retail customer*, where the *State of the risk* is in the *United Kingdom*.

## **Additional territorial scope**

### **PRIN 3A.5.7 | R**

References to a *firm* in *PRIN* 3A include a *TP firm* and a *Gibraltar-based firm*.

## Annex C

### Amendments to the General Provisions (GEN)

In this annex, underlining indicates new text and striking through indicates deleted text, unless otherwise specified.

#### **GEN 2 Interpreting the Handbook**

...

#### **GEN 2.2 Interpreting the Handbook**

...

#### **Guidance applying while a firm has temporary permission**

...

#### **GEN 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~~

...

## Annex D

### Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)

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

#### ICOBS 2 General matters

...

#### ICOBS 2.7 Customers in financial difficulty

...

#### Outcomes firms should aim to achieve

...

#### ICOBS 2.7.7 | G

In relation to the *Consumer Duty*, firms are reminded of their responsibilities as a *firm* in a product's *distribution chain*, including in ~~PRIN 2A.1.14G, PRIN 2A.1.15G and PRIN 3.2.7R~~ PRIN 3A.3 and PRIN 3A.4.

## Annex E

### Amendments to the Consumer Credit sourcebook (CONC)

In this annex, underlining indicates new text and striking through indicates deleted text, unless otherwise specified.

#### **CONC 1 Application and purpose and guidance on financial difficulties**

##### **CONC 1.1 Application and purpose**

...

##### **The Principles for Businesses: a reminder**

##### **CONC 1.1.4 | G**

The Principles for Businesses (*PRIN*) apply as a whole to *firms* with respect to *credit-related regulated activities* and *ancillary activities* in relation to *credit-related regulated activities* (see *PRIN 3* and *PRIN 3A*). In carrying on their activities, *firms* should pay particular attention to their obligations under:

...

## Appendix 3

# Proposed changes to the non-Handbook guidance

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# 1 Introduction

- 1.1** The Consumer Duty ('the Duty') sets the standard of care that firms should give to customers in retail financial markets.
- 1.2** It sets expectations that can apply flexibly and dynamically to new products, services and business models as they continue to emerge and develop in a changing and increasingly digital environment. So, it better protects consumers from current and new/emerging drivers of harm, and gives firms more certainty of our expectations to support innovation, competition and new ways of serving customers.
- 1.3** The Duty is comprised of the following components.
- A **Consumer Principle** which reflects the overall standard of behaviour we want from firms and which is defined further by the other elements of the Consumer Duty.
  - The '**cross-cutting rules**' which:
    - develop our expectations for behaviour through three overarching requirements that explain how firms should act to deliver good outcomes and apply across all areas of firm conduct
    - inform and help firms interpret the four outcomes
  - The '**four outcomes**' which are a suite of rules and guidance setting more detailed expectations for firm conduct in four areas that represent key elements of the firm-consumer relationship:
    - the governance of products and services
    - price and value
    - consumer understanding, and
    - consumer support
- 1.4** The Consumer Duty is underpinned by the concept of reasonableness. This is an objective test and means that the rules and guidance must be interpreted in line with the standard that could reasonably be expected of a prudent firm:
- carrying on the same activity in relation to the same product or service, and
  - with the necessary understanding of the needs and characteristics of the customers in the relevant target market
- 1.5** What is expected of firms under the Duty will be interpreted in light of what is reasonable given the circumstances, 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)
  - the firm's role in relation to the product or service (including the firm's role in the distribution chain)
- 1.6** All firms have the same responsibility to act to deliver good outcomes for retail customers, but there will clearly be differences in the capabilities of a firm depending

on its size and activities. One question all firms can ask themselves is whether they are applying the same standards and capabilities to delivering good customer outcomes as they are to generating sales and revenue in comparable areas. For example:

- are communications focused on supporting customers as clear as those used to sell the product?
- is the quality of any post-sale support as good as the pre-sale support?

**1.7** Firms should consider whether they may be carrying out the same activities to a higher standard or more quickly when it benefits the firm, than when it benefits the customer.

**1.8** Where relevant, we have included further guidance on this in later chapters of this document (the 'Guidance').

## Our expectations of firms under the Duty

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**1.9** Firms should:

- put consumers at the heart of their business and focus on delivering good outcomes for customers
- provide products and services that are designed to meet customers' needs, that they know provide fair value, that help customers achieve their financial objectives and which do not cause them harm
- communicate and engage with customers so that they can make effective, timely and properly informed decisions about financial products and services and can take responsibility for their actions and decisions
- not seek to exploit customers' behavioural biases, lack of knowledge or characteristics of vulnerability
- support their customers in realising the benefits of the products and services they buy and acting in their interests without unreasonable barriers
- consistently consider the needs of their customers, and how they behave, at every stage of the product/service lifecycle
- continuously learn from their growing focus and awareness of real customer outcomes
- ensure that the interests of their customers are central to their culture and purpose and embedded throughout the organisation
- monitor and regularly review the outcomes that their customers are experiencing in practice and take action to address any risks to good customer outcomes
- ensure that their board or equivalent governing body takes full responsibility for ensuring that the Duty is properly embedded within the firm, and senior managers are accountable for the outcomes their customers are experiencing, in line with their accountability under the Senior Managers and Certification Regime (SM&CR)

## This Guidance

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**1.10** We are issuing this Guidance under section 139A of the Financial Services and Markets Act 2000. It provides further guidance to firms on how they should comply with their obligations under the new Consumer Duty as set out in Principle 12 and PRIN 2A.

- 1.11** This Guidance does not replace or substitute other applicable rules, guidance or law and does not require firms to act in a way that is incompatible with any legal or regulatory requirements.
- 1.12** The Duty applies across retail financial services and the Guidance reflects that. We have used a range of good and poor practice examples to illustrate the types of behaviours we do, and do not, expect firms to adopt to meet expectations under the Duty and deliver good outcomes for customers. But it is not possible to provide examples for all sectors or products on every issue.
- The examples are illustrative and therefore unlikely to reflect the full range of facts applicable to a particular scenario in practice. So, in some cases, it may be reasonable to expect firms to do more to deliver good outcomes for customers. We will consider all relevant information to determine if firms have met their obligations under the Duty.
  - Some of the examples cite particular types of firms, sectors or products. This does not necessarily mean that they are not relevant to other types of firms, sectors or products. Firms should review all examples in this guidance and consider how they may be relevant to their business models and practices.
- 1.13** In each of the outcome chapters, we set out examples of the types of questions firms can expect to be asked by us about how they are delivering the Duty. Firms should use these types of questions to guide their internal discussions at all levels, including at the board or equivalent governing body.

## Definitions

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- 1.14** In this Guidance, we generally use 'consumer' when talking about the wider group of those who use financial services and 'customer' when talking about an individual firm's customers or potential customers. However, both mean retail customers who are within the scope of the Duty and this Guidance. The Duty applies to potential as well as actual customers of firms. See Chapter 2 on scope for further details.
- 1.15** Throughout this Guidance we use:
- **must:** where an action is required by a Principle or rule
  - **should:** where we think a firm ought to consider a course of action (not specified in a Principle or rule) to comply with a Principle or rule, but this does not necessarily mean they must follow a detailed or prescribed course of action
  - **may or could:** where an action is only one of several ways of complying with a Principle or rule

## How the Duty fits with other regulatory requirements in the Handbook

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- 1.16** As always, firms will need to consider what they are required to do not only under the Principles but under other applicable rules. The Principles now include Principle 12, the new Consumer Principle, as well as the cross-cutting rules and outcome rules.

- 1.17** Firms must also consider rules in relevant sectoral conduct of business sourcebooks.
- 1.18** In certain instances, meeting existing obligations will be enough to demonstrate compliance with the products and services or the fair value outcome rules. We discuss the interaction with existing rules in more detail in later chapters.

## Interaction with Handbook and non-Handbook material under Principles 6 and 7

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- 1.19** Principles 6 and 7 do not apply where Principle 12 applies.
- 1.20** The Handbook contains both rules and guidance which refer to Principles 6 and 7, or which set out what we expect under Principles 6 and 7. This is also the case for non-Handbook guidance.
- 1.21** Guidance in the Handbook (PRIN 2A.1.17G) explains how firms can interpret these references. It explains that:
- Principle 12 imposes a higher and more exacting standard of conduct than Principles 6 and 7
  - Principle 12 also has a broader application than Principles 6 and 7 in relation to a firm's retail market business with a greater focus on consumer protection outcomes for retail customers, irrespective of whether they stand in a client relationship with the firm
  - while existing guidance on Principles 6 and 7 will remain relevant to firms in considering their obligations under the Consumer Duty, firms should take account of the inherent limits of such guidance as they do not cover our expectations under the Duty in full
  - 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
  - where a firm is acting in accordance with guidance on Principles 6 and 7, this alone should not be relied upon in considering how to comply with Principle 12
  - firms continue to need to consider all their obligations not only under the Principles but under any other applicable law (for example the Equality Act 2010 or equivalent legislation and the Payment Services Regulations 2017)
- 1.22** While existing Handbook and non-Handbook guidance and material on Principles 6 and 7 therefore continue to apply for the purposes of, and may go some way to demonstrating compliance with, the Duty, this will not be enough for firms to be certain they have fully met our expectations under the Duty. Firms will therefore need to consider what further action is needed to meet new obligations under the Duty.

## Interaction with our Guidance on consumers in vulnerable circumstances and work on diversity and inclusion

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- 1.23** The Duty raises the standard of care afforded to all consumers, while our guidance on the fair treatment of vulnerable customers (FG 21/1) sets out what firms should do to ensure that customers in vulnerable circumstances experience outcomes as good as those for other consumers.

- 1.24** FG 21/1 therefore remains relevant for firms, and firms should refer to it for further information on our expectations.
- 1.25** Where the Duty rules specifically reference customers with characteristics of vulnerability, they do so in a way that is consistent with and informed by our guidance on the fair treatment of vulnerable customers.
- 1.26** Consumers in vulnerable circumstances may have additional needs or be at greater risk of harm if things go wrong. For this reason, the Duty makes explicit reference to firms paying attention to the needs of customers with characteristics of vulnerability.
- 1.27** We expect consumers with characteristics of vulnerability to benefit from the overall improvements in outcomes delivered as a result of the new Duty. There can be many reasons why a firm's conduct or business model results in different outcomes for different groups of customers. However, we expect firms to be able to identify when particular groups of customers, such as customers with characteristics of vulnerability or customers who share specific protected characteristics, under the Equality Act 2010 or equivalent legislation, receive systematically poorer outcomes. This may indicate that the firm is not meeting the Duty for those groups or is breaching its legal responsibilities.
- 1.28** The Duty also supports existing legal requirements, such as those in the Equality Act 2010, by requiring firms to monitor whether any group of retail customers is experiencing different outcomes than other customers and take appropriate action where they do. We also remind firms of their existing legal obligations under the Equality Act.
- 1.29** The Duty is also aligned with and supportive of our work on diversity and inclusion more broadly. We see a diverse and inclusive industry as central to achieving the outcomes we expect in financial services. Diversity of thought and inclusive behaviours in financial services will help to deliver better consumer and market outcomes including fair value, fair treatment, suitability, confidence and access.
- 1.30** We also see the Duty as complementary to our follow up work to our discussion paper on diversity and inclusion in the financial sector, (DP 21/2). Our follow up work is expected to focus on diversity and inclusion among firms' workforces, while the Duty focuses on firms' relationship with their customers, but both are designed to drive better outcomes for consumers.

## **Interaction with other (non-FSMA) regulatory requirements**

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- 1.31** The Duty does not replace other requirements. Firms will also need to consider any other applicable law. This will include, but is not limited to:
- consumer protection legislation, such as the Consumer Rights Act 2015 and the Consumer Protection from Unfair Trading Regulations 2008
  - data protection regulation, such as the General Data Protection Regulation (the GDPR) and the Data Protection Act 2018 (the DPA 2018)
  - equalities legislation, such as the Equality Act 2010 or equivalent legislation, for example in Northern Ireland

## 2 Scope of the Consumer Duty

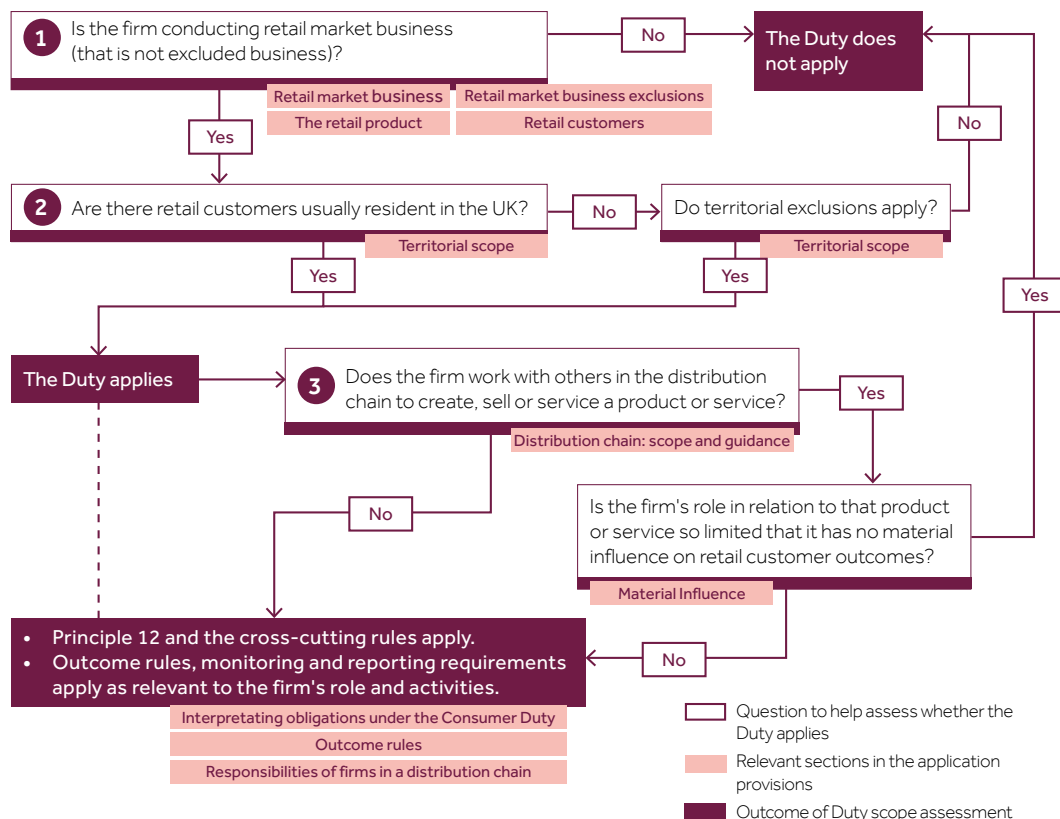
### Overview

**2.1** The Duty applies to the regulated activities and ancillary activities of all firms authorised under the Financial Services and Markets Act 2000 (FSMA), the Payment Services Regulations 2017 (PSRs) and E-money Regulations 2011 (EMRs), in respect of products and services for prospective and actual retail customers. It also applies in relation to the approval of financial promotions that relate to retail market business.

**2.2** This chapter sets out guidance on the definition of a 'retail customer', the definition of retail products and services, and on the application of the Duty to:

- retail market business and activities excluded from scope
- the distribution chain
- wholesale markets
- firms with a material influence over retail customer outcomes
- firms dealing with customers, products or services outside the UK
- unregulated activities

**2.3** The below diagram summarises, at a high level, a structured sequence of questions to help firms navigate whether the Duty applies to their activities. It intends to support firms in considering the key concepts within this chapter, with signposts to the relevant PRIN 3A provisions.



- 2.4** Where a product or service is in scope of the Duty, the Duty applies to activities across the whole lifecycle of the product or service, from high-level strategic planning to individual customer interactions, in a manner that reflects the role and activities of each firm in the distribution chain.
- 2.5** Some firms will conduct activities which fall outside of the retail market business scope of the Duty, or which have been specifically excluded from its scope. Where this is the case, the firm does not need to comply with the Duty in respect of those activities. Principles 6 and 7, and related Handbook material, would continue to apply (where they did previously) to firms in respect of customers or transactions out of scope of the Duty. This includes small and medium enterprises (SMEs) outside the scope of the Duty (but which are covered by Principles 6 and 7).

## Retail customer scope

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- 2.6** The Duty applies to products and services offered to 'retail customers'. The retail customer definition aligns broadly with the scope of our Handbook or relevant regulations in each sector. For example:
- For consumer credit, the Duty applies to all regulated credit-related activities.
  - For deposit-taking activities, the Duty applies to consumers, micro-enterprises, charities with a turnover of less than £1 million and a natural person acting in a capacity as a trustee if acting for purposes outside their trade, business or profession (in line with the 'banking customer' test in the Banking Conduct of Business Sourcebook (BCOBS)).
  - For insurance, the scope follows the position in the Insurance Conduct of Business Sourcebook (ICOBS). The Duty does not apply to reinsurance, contracts of large risk sold to commercial customers or other contracts of large risk where the risk is located outside the UK. Nor does it apply to activities connected to the distribution of group insurance policies or the extension of these policies to new members.
  - For investments, the Duty applies to business conducted with a customer who is not a professional client, as set out in the Conduct of Business Sourcebook (COBS).
  - For mortgages, the Duty follows the position in the Mortgage Conduct Business Sourcebook (MCOB). The Duty therefore applies to all regulated mortgage contracts within the perimeter but not, for example, unregulated buy-to-let contracts or commercial lending. Where the owner of a mortgage book is unregulated and the regulated party is an administrator, the Duty would apply in an appropriate and proportionate manner to the administrator's function.
  - For payment service or e-money providers, the Duty applies to business conducted with consumers, micro-enterprises and small charities (where the definitions of these terms are the same as for deposit takers, as noted above).
- 2.7** Where we already regulate and apply protections to the provision of financial services to ~~small and medium enterprises~~ (SMEs), the Duty applies to firms dealing with them, in line with the approach in existing sourcebooks.
- 2.8** The Duty applies to firms dealing with prospective as well as actual customers. In general, firms only deal with consumers with whom they have a contract, but firms will not always be dealing with someone who is already an actual customer. For example:
- when approving or communicating a financial promotion

- when answering a question from a prospective customer
- where a prospective customer applies for a product or service

**2.9** In some instances, this might also include customers who are declined a product or service. Firms would need to consider the Duty when declining to take on a prospective customer, for example in relation to their communications or customer support.

~~2.9 The Duty applies across all of a firm's activities, from high-level strategic planning to individual customer interactions.~~

**2.10** ~~Sometimes the Duty means that~~ Many Duty obligations, particularly for manufacturers, require firms should think about to consider their customers collectively rather than on an individual basis. For example, when a firm is designing a product, considering price and value or developing its communications or customer service approach, it should consider the needs of its customer base and target market.

**2.11** ~~At other times~~ However, the Duty will have an impact on the way rules require firms ~~deal with~~ to consider individual customers where they firm provide a tailored product or service, or interact with retail customers on a one-to-one basis. For example, when communicating with an individual customer, rather than communicating with multiple customers, firms should pay appropriate regard to the needs and characteristics of that customer.

**2.12** In relation to investments, the Duty does not apply to customers who elect to be treated as professional clients under COBS. ~~It does, however, apply to the process a firm uses to determine a client's status. A firm that encourages a customer to seek a 'professional client' classification simply to avoid providing consumer protection would breach the Duty. If a firm is aware that a customer has been incorrectly classified by another firm earlier in the distribution chain, including an unauthorised firm, it should reclassify the customer and provide the correct level of consumer protection.~~

~~2.13 Principles 6 and 7, and related Handbook material, continue to apply (where they did previously) to firms in respect of customers or transactions out of scope of the Duty, including customers outside the scope of sectoral rules, as set out above~~

## Products and services subject to the Duty

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**2.13** Financial services products are subject to the Duty if they have been, or may be, distributed to retail customers.

**2.14** A service provided to retail customers is subject to the Duty if it amounts to, involves, or includes:

- the carrying on of a regulated activity or an ancillary activity (see the section below on 'How the Duty applies to unregulated activities' for further explanation of ancillary activity), or
- providing a payment service or issuing electronic money, including activities connected with those services

**2.15** These rules apply regardless of whether a firm has a direct relationship with end retail customers. For example, the Duty applies to a firm that prepares or approves

communications to retail customers, even if another firm has the direct relationship with retail customers.

## **How the Duty applies across the distribution chain**

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- 2.11 The Duty applies across the distribution chain, from product and service origination through to distribution and post-sale activities. By the 'distribution chain', we mean all firms involved in the manufacture, provision, sale and ongoing administration and management of a product or service to the end retail customer.
- 2.12 The Duty applies to all firms that have a material influence over, or determine, 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
- 2.13 A firm will be able to determine or have material influence where it makes or influences decisions over any of the above. We would generally expect firms with a decision-making role for one or more of the four customer outcomes to have greatest responsibility under the Duty.
- 2.14 Whether a material influence exists would depend on the extent to which a firm is in practice exercising discretion over customer outcomes. A material influence would not include, for example, a firm whose role is limited to:
- 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.
- 2.15 Where it applies, the extent of a firm's responsibilities under the Duty will depend on the firm's role and the extent of its influence over retail customer outcomes. The level of responsibility depends on what the firm's actual role and influence is in practice, rather than just what is set out in contractual terms between firms in the chain.
- 2.16 Firms that can determine or materially influence retail customer outcomes need to consider the end customers in the distribution chain, whether or not they are a direct client of the firm. This includes beneficiaries of trust-based pension schemes where the FCA authorised firm's client may be the trustee.

### Example – payments

In the payments sector, the Duty applies across the distribution chain and will apply to all payment services providers where their activities can determine or have a material influence over retail customer outcomes.

Distribution chains may look different from other sectors. For example, a distribution chain may include an e-money issuer and agents and distributors that carry out activities on behalf of the issuer. The issuer may design the product or service that is then distributed by agents or distributors. It is the issuer's responsibility to ensure that agents and distributors comply with the Duty when providing services on behalf of the issuer.

Another example of a firm in a distribution chain in the payment sector may be the credit institution that safeguards the funds of payment or e-money institutions. Similarly, a payment chain may include payment initiation service providers in addition to the account providers executing the payments. It may also include acquirers to the extent that their activities determine or have a material influence over retail customer outcomes.

## Retail market business

- 2.16** The Duty applies to a firm conducting retail market business, which covers activities relating to products or services offered or provided to retail customers. This includes activities in the distribution chain relating to:
- manufacture of a product or service, or contribution to its manufacture
  - distribution of a product or service
  - determining the price or value of a product or service
  - preparation or issuing of a communication intended for retail customers, and
  - provision of post-sale services or any form of customer support in relation to a product or service
- 2.17** The Duty also applies to certain activities which do not form part of the distribution chain but have a clear connection to retail products or services. This includes:
- approval of financial promotions that relate to retail market business
  - provision of credit references or credit information
  - exercise of lender rights or performance of lender duties under a credit agreement,  
and
  - debt administration and debt collection
- 2.18** Firms should identify whether their activities constitute retail market business. This means firms shouldn't limit their assessment to activities where they have a direct relationship with retail customers. Where activities provided to other firms amount to retail market business, they fall within scope of the Duty.
- 2.19** While the scope of retail market business is broad, some business will not be subject to the Duty. Where an exclusion applies, or where a firm's role in relation to a product is so limited that it does not have a material influence on customer outcomes, the Duty does not apply.

## **Application to the wholesale market and exclusions from retail market business**

- 2.20** The Duty does not apply to firms carrying out purely wholesale business with no connection to retail products and services. However, it was intentionally designed to capture firms involved in the manufacture, ongoing operation, distribution and ongoing servicing of retail products and services – not only where firms have a direct relationship with the end retail customer.
- 2.21** The Duty would apply where a wholesale firm carries on retail market business in relation to a product or service as part of the distribution chain, for example by contributing to the manufacture of a product. For example, an investment bank that designs a structured product for sale to retail customers would be subject to the Duty and the bank would need to meet the Duty's obligations in relation to that product. On the other hand, an investment bank providing wholesale instruments that a third-party firm independently uses as component parts of a retail product would not.
- 2.22** Similarly, a fund manager of a fund that is intended only for institutional investors will not be subject to the Duty where a third party, without its involvement, includes that fund as part of a retail fund of funds or a model portfolio service.
- 2.23** There are also specific exclusions from the Duty for activities that are sufficiently remote from retail customer outcomes or have a limited connection to the retail-facing features of a product. These exclusions are set out in PRIN 3A.2.1R, and address several scenarios, including for wholesale markets, payment services, mortgages, insurance and credit unions. These specific exclusions do not preclude firms from determining that the Duty does not apply to them on the basis of other scope provisions set out in this chapter.
- 2.24** Although benchmark administration activities are not within scope of the Duty, benchmarks have an important role in the financial market ecosystem. This includes being used in products within the scope of the Duty. In this case, the Duty may apply to other firms in the distribution chain of such products. We therefore encourage benchmark administrators to bear this in mind in considering how they conduct their own business.
- 2.25** For the avoidance of doubt, we also confirm that:
- Credit rating agencies are not within scope of the Duty. Credit rating agencies issue credit ratings which are opinions of the creditworthiness of an entity, a debt or financial obligation, debt security, preferred share or other financial instrument, or of an issuer of such a debt or financial obligation, debt security, preferred share or other financial instrument, issued using an established and defined ranking system of rating categories.
  - Institutions such as recognised investment exchanges, recognised clearing houses, settlement systems and trade repositories would not be subject to the Duty where they are not authorised persons subject to our regulation. Trading venues run by authorised persons, however, would be subject to the Duty unless another exclusion applies, as set out above.

### **Example – payments**

A payment or e-money institution provides retail customers with payment services, such as card payments or e-money wallets. It designs the product and, in some cases, distributes it through agents or other firms. In this scenario, the payment or e-money institution is conducting retail market business.

To meet its safeguarding obligations, the payment or e-money institution holds customer funds in a safeguarding account with a credit institution. Where the credit institution's role is limited to the provision of the safeguarding account, it falls outside the scope of the Duty by virtue of an exclusion.

Other firms may form part of the distribution chain. For example, agents or distributors acting on behalf of the issuer, payment initiation service providers, or account providers executing payments may all fall within scope of particular Duty rules depending on the extent of their role and activities.

Where a regulated firm distributes payment services via an intermediary which falls outside the FCA regulatory perimeter, the regulated firm retains responsibility under the Payment Services Regulations (PSRs) and Electronic Money Regulations (EMRs) for ensuring the unregulated firm delivers good outcomes to retail customers.

- 2.21 — A firm that is remote from the retail customer, with no direct customer 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.
- 2.22 — A firm that has more of a key role — for instance by determining a product's charges or terms and conditions — would have more significant obligations. If a firm's actions, or failure to act, carries a direct risk of consumer harm, the Duty would be relevant to more of their actions. For example, if a firm works with a fund manager to design a fund, and has a decision-making role on elements such as the target market or investment strategy, it would be regarded as a co-manufacturer under the products and services outcome and the price and value outcome.

## **The distribution chain**

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- 2.26** The Duty applies across the distribution chain, from product and service origination through to distribution and post-sale activities.
- 2.27** The distribution chain refers to the network of firms involved in bringing a product or service to retail customers. A firm is part of a distribution chain where it carries on retail market business activities in relation to a product or service.

- 2.28** Firms in the distribution chain may be connected through different types of arrangements. For example, firms may:
- provide services to another firm to enable it to carry on its own activities in relation to a product or service
  - contribute to the development or operation a product or service, or
  - enter into distribution or commercial agreements relating to a product or service

- 2.29** A product may have more than one manufacturer, including where firms jointly develop a product or service, or where a firm contributes a component or element of a product that another firm has designed as part of an arrangement between them. Similarly, a firm may perform more than one role in the distribution chain. For example, a distributor may also be a manufacturer where it has the ability to make material changes to the terms of a product. Some firms that are not manufacturers or distributors may nevertheless support how the product is delivered or operated for retail customers.

### **How the Duty's outcome rules apply across the distribution chain**

- 2.30** The application of the Duty's outcome rules for a firm in a distribution chain depends on the role it performs and the activities it carries out in relation to a product or service.
- Where a single firm carries out multiple roles in relation to a product or service, it is likely to carry on activities that engage more than one of the Duty's outcome rules in PRIN 2A.3 to PRIN 2A.6.
  - Where those roles are carried out by different firms across a distribution chain, the application of specific outcome rules for each firm will depend on the role it performs in relation to the product.

- 2.31** Where a firm does not perform a particular role or activity that is the subject of an outcome rule, that rule will not be applicable to the firm. For example, a firm that has no role in preparing or issuing communications would not need to comply with obligations relating to the consumer understanding outcome.

### **The extent of firms' obligations in the distribution chain**

- 2.32** Where the Duty applies, the extent of a firm's obligations under the Duty will depend on the firm's role. The level of responsibility depends on what the firm's actual role is in practice, rather than just what is set out in contractual terms between firms in the chain.
- 2.33** A firm that is remote from the retail customer, with no direct customer relationship, is likely to have more limited obligations. For example, a fund manager working with the board of an investment trust may have a contributing role in product design and other matters, but the ultimate decisions may be taken by the board. The fund manager 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.
- 2.34** A firm that has a more significant role – for instance determining a product's charges or terms and conditions – would have more significant obligations. Firms should interpret the Duty in a manner that is reasonable and proportionate in light of their role and activities in relation to a product or service. For example, if a firm works with a fund manager to design a fund and has a decision-making role on elements such as the target market, investment strategy or fund charges, it would be regarded as a manufacturer under the products and services outcome and the price and value outcome.

- 2.35** Where an FCA-authorized firm carries out activities in relation to an occupational pension scheme, it need only consider scheme members as end customers, and apply the Duty, where they are members of a defined contribution scheme. However, the trustees of a defined benefit scheme may themselves be retail customers of the firm. In this case the firm will need to consider relevant obligations under the Duty in relation to its activities for the trustees.
- 2.36** ~~The Duty imposes new obligations on firms acting under to which the 'agent as client' rules in COBS 2.4 may apply. Firms must consider if there are retail customers at the end of the distribution chain and if they can determine or materially influence outcomes for them. Where this is the case, firms must comply with the Duty they are conducting retail market business and are subject to the Duty for any activities.~~ For example, when developing a target market, ensuring products or services are designed to meet their needs and objectives, or assessing value for a product or service, a firm needs to consider the end retail customers in the distribution chain, even if it does not have a direct customer relationship with them. Firms can, however, continue to apply the 'agent as client' rules in relation to other requirements. For example, a discretionary wealth manager may continue to treat financial advisers as their client for the purpose of assessing proposed transactions under the suitability requirements.

#### Example – investment products

Several different firms are involved in the manufacture and distribution of an investment product ~~and can determine or materially influence customer outcomes.~~ These often include a fund manager, a platform provider, and a financial adviser.

Each firm has a responsibility commensurate to its role in the distribution chain ~~and the degree to which it can determine or materially influence retail customer outcomes.~~ The actual level of responsibility relates to what their real role is, rather than just what is set out in contractual terms between firms in the chain.

All firms subject to the Duty must act to deliver good outcomes to customers and comply with the cross-cutting rules. Each has a role to help avoid causing foreseeable harm and ensure that the final product and associated support will help the customer realise their financial objectives. Each firm must act in good faith in its design and operation of the relevant products and services and in any interactions with the customer.

Depending on their role, some or all of the four ~~outcomes~~ sets of outcome rules in PRIN 2A.3 to PRIN 2A.6 will also be relevant.

- **The fund manager:** The firm must develop a fund to meet the needs, characteristics and objectives of a target market of customers. It must develop an appropriate distribution strategy and set charges to provide fair value to customers. The firm must also communicate in a way that customers can understand and offer appropriate customer support standards. It must review the fund regularly to assess whether it meets the needs of the target market, offers fair value and has been distributed appropriately.
- **The platform provider:** As a distributor of the fund, the platform provider must obtain sufficient information to understand the value assessment and whether any remuneration it receives would result in the product no longer providing fair value. It must design an appropriate distribution strategy, provide

appropriate customer service standards and regularly monitor how the platform is used in practice. As a distributor of the fund, the financial adviser must consider the target market of the product as part of its advice and take care to meet the information needs of retail customers in relation to the fund. Separately, the firm must consider how it meets the Duty in the design and delivery of its initial and, where relevant, ongoing advisory services. This includes, for example, considering the needs of the target market, following the consumer understanding rules for its communications and considering if its charges provide fair value.

- **The financial adviser:** TheAs a distributor of the fund, the financial adviser must consider the target market of the product as part of its advice and take care to meet the information needs of retail customers in relation to the fund. Separately, the firm must consider how it meets the Duty in the design and delivery of its initial and, where relevant, ongoing advisory services. This includes, for example, considering the needs of the target market, following the consumer understanding rules for its communications and considering if its charges provide fair value.

The firm will need to consider both the target market for the design of its service and the individual customers it advises. In this example, the fund manager and platform provider are more likely to have a focus on the target market rather than on individual customers under the Duty.

In addition, the adviser can often also have the clearest oversight of the customer's overall position and an overview of the total proposition. In this instance, it should consider the overall outcomes being delivered for the customer. This should include whether the overall cost to the customer, including all product and distribution charges in the distribution chain, provides fair value. The firm should also consider if the customer is given an appropriate level of information about the overall proposition, in a timely and understandable format, to enable the customer to make effective decisions.

## Application to the wholesale market

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- 2.26 — As noted above, the Duty applies to all firms that can determine or have a material influence over retail customer outcomes. This could include firms in the wholesale market, even if they do not have a direct relationship with retail customers.
- 2.27 — For example, an investment bank that designs a structured product for sale to retail customers would be subject to the Duty. On the other hand, an investment bank providing wholesale instruments that a third-party firm independently uses as component parts of a retail product would not.
- 2.28 — Similarly, a fund manager of an institutional investor-only fund, would not be subject to the Duty if a third party, without its involvement, invests into the institutional fund via a retail fund of funds.
- 2.29 — Certain wholesale activities are specifically excluded from the Duty:
- Manufacture of products or services only for wholesale purposes, where they meet the conditions in the 'retail market business' definition.
  - Activities relating to non-retail financial instruments.

- ~~Market activities for certain financial instruments meeting the criteria in the 'retail market business' definition.~~
- ~~Activities relating to insurance contracts of large risks for commercial customers or where the risk is located outside the UK.~~
- ~~Activities connected to the distribution of group insurance policies or the extension of these policies to new members.~~
- ~~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~~

## **Material influence**

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- 2.37** The Duty doesn't apply to firms with a role so limited or remote that they are unable to determine or influence outcomes for retail customers in relation to a product or service.
- 2.38** Where a firm carries on retail market business, where no specific exclusion applies, but where it doesn't have any material influence over retail customer outcomes, it isn't subject to the Duty.
- 2.39** A material influence would not include, for example, a firm whose role is limited to:
- Actions in the distribution chain that are remote from the retail customer and where those actions are tightly constrained by a mandate set by a professional client which is entirely independent of the firm. For instance, this could include a portfolio manager whose role is limited to managing assets under a tightly defined mandate from a third party for an investment product. 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 a role determining the design, branding and promotion of the product.
  - Providing factual information to support the work of another firm in the chain.
  - Providing IT systems.

## **Application outside the UK**

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### **Relevant considerations for firms outside the UK**

- 2.40** Only firms conducting regulated activities in the UK are within our regulatory remit and, so, subject to the Duty.
- 2.41** Where the distribution chain involves firms in Gibraltar selling products or services to UK retail customers, the Duty still applies. It applies to those firms whether they have an establishment in the UK or operate on a cross-border basis.
- ~~2.33~~ ~~In the future, a new permanent legislative framework – the Gibraltar Authorisation Regime (GAR) – will be established. This will enable UK market access for specified Gibraltar-based financial services firms if they intend to carry on approved activities in the UK. It is expected that Gibraltar's regulation of firms under the GAR would be aligned with the UK approach. Once the rules are aligned, we will review the position~~

and propose to rely on the Gibraltar Financial Services Commission (GFSC) regulation of firms in Gibraltar under those rules.

- 2.42** The Duty also applies to firms in the temporary permissions regime following the UK's withdrawal from the EU. The UK left the EU on 31 January 2020 and the temporary permissions regime allows European Economic Area (EEA) firms to continue operating in the UK within the scope of their permissions for a limited period, while seeking full UK authorisation, if necessary. The Duty applies to these firms, whether they are doing regulated business from an establishment in the UK or on a cross-border services basis. The Duty also applies to firms in supervised run-off under the financial services existing contracts regime.
- 2.43** We recognise that risks remain for UK retail customers if the distribution chain involves other parties outside the UK that are not subject to equivalent requirements. To help manage this risk, UK distributors of non-UK products and services must take all reasonable steps to understand the product or service, the target market it would serve and the value it provides in order to ensure it will be distributed appropriately. Regulated firms should also consider whether including a firm that is not subject to the Duty in the distribution chain leads to a risk of poor customer outcomes.
- 2.36 — For firms dealing with non-UK customers, the Duty applies in the same way as existing sectoral Sourcebooks or other sectoral rules or guidance. Where the chain includes non-UK distributors, which are not subject to the Duty, UK manufacturers may not be able to obtain relevant information from them. In this case, UK firms should consider what is reasonable in the circumstances to gather information. For example, they could use any information that they do have available to support their work, but they would not be expected to obtain information from firms that are not subject to the Duty.
- 2.44** Relevant considerations for UK firms with customers outside the UK  
Subject to limited exclusions, the Duty applies to firms conducting retail market business where the retail customer is usually resident in the UK.
- 2.45** A retail customer is treated as usually resident in the UK where the address provided reasonably appears to be a residential or establishment address in the UK, and there is no evidence to the contrary.
- 2.46** Unless an exclusion applies, as discussed below, this means:
- The Duty doesn't apply to a firm conducting business wholly for customers who aren't usually resident in the UK.
  - Where a product or service is intended for sale to customers in the UK and to those who are not, firms must only comply with Duty requirements in relation to customers usually resident in the UK. For example, firms don't need to design products to take account of specific needs, characteristics and objectives of customers outside the UK, to test non-UK customers' understanding of disclosure material, or to monitor outcomes for customers outside the UK.
- 2.47** We recognise that firms play different roles in the manufacture and distribution of products and services, and that their ability to identify the location of end retail customers will vary accordingly.

- **Manufacturers:** These firms are responsible for designing and operating products or services, and for identifying a target market, which may include or exclude customers usually resident in the UK. Where products or services are designed only for distribution outside the UK, this must be reflected in distribution strategies to guard against distribution to UK retail customers.
- **Distributors:** These firms often have more direct engagement with the end retail customers and greater visibility of the customer's identity and circumstances, including their usual residence. We expect that these firms should know the customer's address. Unless there is any reason to believe otherwise, firms should use this to determine whether the customer is usually resident in the UK.

**2.48** Where a firm finds that a product or service, that wasn't intended for retail customers in the UK, has been distributed in the UK, it must review, and potentially amend, its distribution strategy to guard against future sales in the UK.

**2.49** Where a distributor becomes aware that it has distributed a product to customers in the UK, when it wasn't intended for UK distribution, it must review the transactions under the cross-cutting rules. Where harm has been identified, it must take appropriate steps to mitigate the situation and prevent any further harm.

**2.50** Firms must still comply with the Duty when conducting business for UK armed services personnel and civil servants posted overseas, and their dependents, with a British Forces Post Office address. The address is legally considered a UK address, so the Duty still applies.

**2.51** There are exclusions to this general approach in the following areas:

- **Non-investment insurance contracts:** Firms in this sector must follow a slightly different approach, reflecting the features of that market. Consistent with the approach in ICOBS and PROD 4, the Duty doesn't apply where both the customer's habitual residence and the state of the risk (i.e. the location of the insured property) are outside the UK. This reflects how insurance markets typically work: with customers buying cover where the insured property is based, even if they live elsewhere.
- **Specific exclusions for products and services targeted at customers who aren't usually resident in the UK:** The Duty still applies where firms deal with customers who aren't usually resident in the UK in relation to the following:
  - **Pre-paid UK funeral plans:** Firms in the UK selling pre-paid funeral plans for UK funerals to customers.
  - **Regulated or ancillary activities relating to UK pensions:** Firms in the UK conducting activities, including providing advice or arranging transactions, for UK pensions. This includes, for example, pension transfer advice and activities relating to Qualifying Recognised Overseas Pension Schemes (QROPS).

## How this the Duty applies to unregulated activities

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**2.52** The Duty only applies within the FCA's regulatory perimeter, so will not apply to wholly unregulated business. It does not, for example, apply to credit products outside our remit, such as unregulated business lending.

- 2.53** However, the Duty applies to authorised firms conducting ancillary activities. These are unregulated activities in connection with, or held out as being for the purposes of, regulated activities, or in connection with the provision of payment services or the issuing of electronic money.
- 2.54** Whether an activity which is unregulated is carried on in connection with a regulated activity, payment service or the issuing of electronic money, or is held out for the purposes of a regulated activity, will depend on the facts. ~~It is likely that activities which are necessary for the completion of a regulated activity will be ancillary to that 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.~~
- ~~2.40~~ ~~Ancillary activities would not cover, for example a broker selling boiler insurance and an unregulated routine service plan to the same customer. Where two separate contracts are arranged at the same time and completion of the regulated activity does not depend on sale of the unregulated product, the latter is not regarded as an ancillary activity.~~
- 2.55** Activities which are necessary for the completion of a regulated activity may be part of that regulated activity, or, where they are not themselves regulated activities, may be ancillary to it.
- 2.56** Ancillary activities may be precursors to a regulated activity or follow a regulated activity. This may be, for example, as a matter of ordinary market practice or the firm's contractual obligations to the customer, where there is a reasonable connection to the regulated product or service.
- 2.57** For instance, the detailed design of a regulated financial product or service, and ongoing customer support services for that product or service, are not themselves regulated activities but are clearly connected to them.
- 2.58** Beyond this, ancillary activities may, for example, include services or products which are unregulated, but which are offered or provided on the basis that:
- they add functionality or otherwise expand the benefits to retail customers of the regulated product or service, provided there is a reasonably close connection to or with the regulated product or service, or
  - the unregulated product or service is held out as being for the purposes of the that regulated product or service

## 3 Application to products and services sold before the Consumer Duty comes into force

### Overview

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- 3.1** The Duty does not have a retrospective effect and does not apply to past actions by firms. Actions taken before the Duty comes into force are subject to the rules that applied at the time.
- 3.2** However, the Duty does apply, on a forward-looking basis, to:
- existing products and services – these are products and services still on sale to new customers or available for renewal by existing customers
  - closed book products and services – these are products and services that are no longer on sale to new customers or available for renewal by existing customers

### Review of existing products and services

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- 3.3** Firms need to comply with the Duty in full for existing products or services. They must review products or services against all aspects of the Duty before the end of the implementation period and on an ongoing basis.
- 3.4** If firms identify issues with an existing product or service, these need to be addressed before they can sell it to new customers. This might mean a firm needs to take action, including updating the contractual terms and conditions of a product or service before it can be sold to new customers.
- 3.5** Firms will also need to consider how to address any harm to customers with existing contracts, as set out below in the sections on assessing fair value and on actions to address potential harm.

### Review of closed products and services

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- 3.6** The Duty also applies in full to closed products and services. However, the products and services outcome does not apply in the same way as for new or existing products and services. For example, as there would be no further sales, there are no requirements for firms to have a target market or distribution strategy for the product or service.

**3.7** We still expect firms to review closed products and services under the Duty. This includes:

- Reviewing the product or service during the implementation period, and on an ongoing basis, under the cross-cutting rules. Firms should identify whether there are aspects of the design of the product or service which mean they are not meeting these rules. For example, they should consider if any aspect of the product or service could lead to foreseeable harm or frustrate customers pursuing their financial objectives. Where they identify that aspects of the design could cause the product or service to breach the cross-cutting rules, they should take appropriate action to mitigate harm.
- Ensuring products continue to offer fair value under the price value outcome rules.
- Ensuring they meet the consumer understanding and consumer support outcomes in respect of these customers.

**3.8** When reviewing closed books, firms could consider:

- Carrying out an initial review first. For example, firms might want to consider what aspects led to the decision to close the product or service, to see if that has a bearing on customer outcomes. If a product was closed because it offered poor value compared to newer products, this is clearly a factor to consider.
- Prioritising review of products or services with higher risk of consumer harm. For example, if a firm has received complaints about a product, such as in relation to price and value, it could focus on that product.
- Incorporating a review of the elements of the Duty into existing and ongoing review cycles, so long as they meet the implementation deadlines for compliance with the Duty.
- Grouping similar products and services together for review. For example, firms may be able to:
  - analyse cohorts of products or services together, or
  - more quickly conclude, for instance, that more recent closed book products or services (which are similar to those still on sale) provide fair value going forward.

By 'similar products and services' we mean those products and services that are intended to meet similar customer needs and where the customer base is similar. Firms should consider if it is appropriate to group the products or services in question. They should consider if the customer base, complexity and risk of consumer harm are sufficiently similar. Firms should not group products or services where they are aware of any issue that could impair their ability to assess that product or service adequately.

**3.9** Firms will also need to consider how to address any harm to customers in these products and services, as set out below in the sections on assessing fair value and on actions to address potential harm.

## Assessing fair value for existing contracts made before the Duty comes into force

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- 3.10** We recognise that the rules under the price and value outcome cannot be so easily applied as other aspects of the Duty to existing contracts made before the Duty comes into force. These rules are linked to the original contractual terms of products and services. These contractual terms may be vested rights.
- 3.11** While the Duty will not infringe vested rights (see the section below), we think it is important that firms consider our overarching expectations under the price and value outcome for their existing and closed products or services. For example, firms should be confident that:
- these products or services do not exploit consumer lack of knowledge and/or behavioural biases to enable unfair prices to be charged
  - complex pricing and terms do not make it harder for customers to assess value
  - there is and remains a reasonable relationship between the price customers pay and the benefits of the product or service
  - they have considered whether significant changes to the benefits of a product or service should affect the price: for example, if a firm reduces the benefits available on a product, it should consider if there should be an accompanying reduction in charges for the product
- 3.12** As we set out in Chapter 7, firms should consider value in the round. A product or service that meets all of the other elements of the Duty (for example, if 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 are properly supported) is much more likely to offer fair value. This is both because of the benefits customers receive and because they have the information and support they need.
- 3.13** Reviews are only needed at the level of the product or service itself. There is no requirement to review individual existing contracts. For example, firms do not need to repeat their underwriting of customers for insurance or credit purposes. They should be looking at the product or service broadly.
- 3.14** Firms will not be judged under the Duty with the benefit of hindsight. We recognise that market conditions change over time, including economic and demographic assumptions, and firms can take account of the conditions and assumptions that applied at the time a product or service was introduced.
- 3.15** The Duty does not require firms to amend charges going forward for existing customers where assumptions are later found to have proven incorrect. However, where a firm could reasonably be expected to have known, at the time the product or service was purchased, that assumptions were significantly incorrect, firms should consider if they complied with the rules in place at the time.
- 3.16** For existing products and services that remain on sale, firms should review any assumptions that formed the basis of the charging structure to consider if material changes since the product or service was launched should be reflected in the assessment of value for new customers going forward.

- 3.17** In addition, we recognise that products and services may have additional benefits provided in early years, which are covered by costs paid in later years. Firms reviewing existing or closed products or services are able to take account of the benefits provided and costs incurred prior to the Duty coming into force.

## Actions to address potential harm

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- 3.18** Firms acting to address potential harm for existing customers in a product or service, are not expected to give up any vested contractual rights – although they would be free to do so.
- 3.19** For these purposes, vested rights include pre-existing contractual rights to which a firm already has legal entitlement (eg annual fees that are due) and rights to payments falling due on occurrence of a contractually specified event (eg exit charges).
- 3.20** When considering whether expectations under a contract amount to a vested right, a firm should consider the contract length and whether it is freely terminable by either party. We consider that, where a customer can terminate a contract without an exit charge, firms have no more than an expectation of the customer continuing the contract. In this case, the future payment of charges for a product or service by a customer are not vested rights.
- 3.21** Where there is a vested right, firms would need to consider alternate ways to prevent harm for existing customers. Appropriate actions would depend on the context. Firms might be able to take actions that do not require any contractual changes or to make changes to contracts that do not alter vested rights to remuneration or interfere with pre-existing rights to charge an exit fee. Depending on the case, these changes could include, for example, providing greater flexibility on how customers can engage with a product or assisting a customer to switch to a new product or service that does not have the same issues. Firms could also consider enhanced customer support to help customers avoid the risk materialising.
- 3.22** We do not expect firms to move all existing customers onto the latest version of a contract, or to standardise pricing models for all legacy business. Firms should review each product or service, or group of products or services, on its own merits and address any issues they find. So, for example, we do not expect all legacy deposit accounts to offer the same interest rate; instead, firms should check that the interest rate provides fair value in the context of each product.
- 3.23** We recognise that the impact of a remedial action may be different for different groups of customers. For some groups of customers, the costs of remedial action may outweigh the benefits. For example, if a firm were to consider helping customers move to a different product or service, this could carry a tax liability, depending on the circumstances. A firm identifying problems with a product or service for existing customers is not generally expected to make unilateral changes to a contract, unless it is to the benefit of all customers and the firm has the contractual right to make the change. Nor should firms withdraw products or services from the market or individual customers without considering the Duty and the impact this could have on customer outcomes.

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

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**3.24** Firms can sell a product or service book to another firm to operate. This could happen, for example, where a firm leaves the market but where there are existing contracts that need to be managed.

### Product or service books purchased before the Duty takes effect

**3.25** Firms that purchased product or service books before the Duty takes effect must comply with the Duty. We recognise, however, that, in many cases, purchasers did not develop the products or services and so will not necessarily have all of the relevant information to conduct ongoing reviews under the products and services outcome and the price and value outcome. We would therefore expect these firms to use their best endeavours to meet these requirements.

**3.26** When conducting reviews under the products and services outcome and the price and value outcome, firms could, for example, consider any relevant:

- contact they have had with customers showing problems may exist for any group or groups of customers with characteristics of vulnerability
- complaints from customers that indicate problems with the product or service design and value
- charges, terms and conditions in comparable products or services dating from the same time as the product or service was created
- 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 whether they are reasonable

**3.27** 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 more fully with the Duty.

**3.28** The earlier sections of this chapter are also relevant in describing our expectations when firms review existing contracts.

**3.29** Where a firm makes a significant adaptation to a product or service in a book it has bought, it must follow the relevant rules in the products and services outcome and the price and value outcome, to ensure the change provides good outcomes under the Duty.

### Product or service books purchased after the Duty takes effect

**3.30** Firms considering the sale of a product or service book after the Duty comes into force must provide relevant information to the firm buying the book to help it comply with the Duty.

- This information should enable the purchaser to understand the product or service design and the basis on which it has been assessed as providing fair value. The information should enable the purchaser to monitor on an ongoing basis if the product or service meets the needs, characteristics and objectives of the target market and offers fair value.

- Firms should comply with data protection and competition laws when sharing this information. We would not generally expect them to share commercially sensitive information.

**3.31** Firms considering the purchase of a product or service book after the Duty comes into force must gather information from the selling firm to understand the product or service design and value, such that it can meet the rules going forward. The information must provide sufficient detail to allow the firm to conduct ongoing reviews of the product or service.

**3.32** Where a product or service book was originally sold before the Duty came into effect and is being sold once more, firms should follow the approach as for books sold before the Duty came into effect.

## **3A Firms' roles and responsibilities across the distribution chain**

### **Overview**

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**3A.1** The Duty should be interpreted reasonably based on the circumstances, including a firm's role in the distribution chain. This chapter sets out how firms can apply the Duty in a way which is reasonable and proportionate. It focuses on how the Duty applies where firms are in scope, particularly as part of longer distribution chains.

### **Firms' responsibilities, due diligence and reliance**

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#### **Responsibilities**

**3A.2** Firms are only responsible for ensuring compliance in respect of their own role and activities and are not expected or required to oversee the compliance of other firms in the distribution chain, unless other regulation or contracts require this.

**3A.3** The types of scenarios where other regulation or contracts require firms to consider actions by other firms, include:

- Where firms outsource activities to third parties, they remain responsible for compliance under the Senior Management Arrangements, Systems and Controls sourcebook (SYSC). They should also consider the Duty when making outsourcing decisions. For example, a firm should consider if outsourcing customer servicing could have a negative impact for customers.
- In line with guidance on the use of third-party tools to fulfil part of their own obligations under our rules, in FG11/05, firms remain responsible for meeting those rules. Firms should use a tool only where they are satisfied that it provides outputs that are appropriate and fit for purpose.
- Under the products and services outcome, discussed in Chapter 6, and the price and value outcome, discussed in Chapter 7, manufacturer firms must have appropriate regard to the distribution of products and services. For instance, a manufacturer must regularly review its products, including whether the intended distribution strategy remains appropriate.
- Principal firms are required to oversee the actions of their appointed representatives, as set out in the Supervision sourcebook (SUP), and should check they comply with the Duty when doing so.
- Principal payments and e-money firms are responsible for the actions of their agents and distributors, as set out in the EMRs and the PSRs. We expect them to have appropriate systems and controls in place to oversee their agents' and distributors' activities effectively. As part of this, they should comply with the Duty.

## **Due diligence**

**3A.4** We also expect firms to avoid causing foreseeable harm to retail customers by carrying out any appropriate due diligence when deciding when to work with another firm in a distribution chain.

- A firm's approach to due diligence should be proportionate and is likely to depend on the circumstances, including the risk of harm the product presents to retail customers. It could, for example, involve a product manufacturer assessing overall if a potential distributor partner has the knowledge and capabilities to sell the product in a way that delivers good outcomes for retail customers, rather than an in-depth assessment of the distributor's approach to the Consumer Duty.
- Alternatively, as explained in Chapter 6, a firm manufacturing a particularly complicated product might consider only allowing the product to be sold with advice or by distributors with specific knowledge, expertise and competence to understand the features of the product.
- Firms considering working with unregulated entities in the distribution chain should consider the impact such firms could have on customer outcomes. There have in the past, for example, been problems with unregulated introducers or advisers encouraging customers to invest money in speculative ventures or unregulated investments. Regulated firms should consider whether including an unregulated entity in the distribution chain leads to too great a risk of poor outcomes. Where they decide to work with an unregulated entity, firms should consider whether it is necessary to introduce additional ~~steps~~ measures to mitigate risks and guard against poor outcomes ~~risks~~ materialising. For example, they could consider further due diligence or monitoring.

## **Reliance**

**3A.5** Where a firm's compliance with the Duty depends on information provided by, or actions carried out by, another firm in the distribution chain, the firm may reasonably rely on that information and on representations made by that other firm about the actions it has taken.

**3A.6** The Duty does not supersede existing rules that permit reliance on other regulated firms. Where Handbook provisions, such as COBS 2.4, allow a firm to rely on information, assessments or recommendations provided by another firm subject to equivalent regulatory requirements, that reliance remains compatible with meeting their obligations under the Duty.

**3A.7** Where there is more than one manufacturer of a product or service, the firms involved must have a written agreement outlining their respective roles and responsibilities. This agreement should help clarify which firm is responsible for deciding a particular issue. See Chapter 6 for further discussion on our expectations where firms work together to manufacture a product or service.

**3A.8** Where firms have multiple legal entities in a group structure, we do not expect firms to duplicate work, for example, that could be better handled centrally. Each regulated entity would ultimately be responsible for ensuring it complies with the Duty for its business.

**3A.9** Firms are expected to act in good faith and not rely on information where it would be unreasonable in the circumstances, for example where information comes to their

attention which clearly indicates that other firms involved in the distribution chain for the same product or service may be causing consumer harm.

**3A.10** For example, a firm's monitoring activity and management information may indicate an issue that requires further investigation to understand the root cause and who in the chain is best placed to address it. Where there is a trend of complaints about a product, further analysis may be needed to understand if the root cause is an issue with the product – for the manufacturer to address, or an issue with the way it is being sold – which a distributor needs to address, or a mix of both. In such cases, we expect firms to work together constructively to support good outcomes for retail customers. Firms should consider what reasonable steps they can take to address an issue caused by another firm in the chain, including raising concerns with the relevant party.

#### **Example – consumer credit**

A lender manufactures a point-of-sale lending product. A third party distributes the credit product alongside retail customer purchases of goods such as furniture and electronics.

The lender is not responsible for ensuring the third party is fully compliant with the Duty, but it must take appropriate action to mitigate consumer harm it identifies when carrying out its own activities.

For example, if, in subsequent product reviews, the lender finds that consumer harm is being caused as its loans are not being distributed in accordance with the intended distribution strategy and target market, it must take appropriate action to address the situation and prevent any further harm. It could, for example, consider amending the distribution strategy or providing additional information to the third party.

#### **Example – model portfolio management service**

Firm A is an authorised firm which acts as a discretionary investment manager. Firm A provides an 'off-the-shelf' multi-client managed model portfolio service (MPS) to an authorised financial adviser, Firm B.

Firm B provides financial advice to retail investors and makes recommendations on which MPS, if any, is suitable for individual investors.

Firm A complies with the relevant rules, including:

- providing product information, including details on the target market, risk profile and the fair value assessment to Firm B
- producing disclosures and supporting materials, which are shared with Firm B
- monitoring the MPS and checking it is functioning as intended
- advising Firm B on any material changes to the MPS

Firm B also complies with the relevant rules, including:

- ensuring it understands the MPS, its features and target market
- conducting suitability assessments for each retail investor
- recommending an appropriate model portfolio (if any)
- considering the impact of its charges and service on the value of the MPS
- sharing relevant information upstream to Firm A
- ensuring its clients understand the features and risks of the MPS

In this arrangement, Firm B reasonably relies on Firm A for the design of the MPS, including the accuracy of its risk rating, target market and disclosures. Firm A, in turn, reasonably relies on Firm B to assess the suitability of the MPS for each client and to ensure that recommendations reflect the client's objectives, financial situation and risk tolerance.

If Firm B identifies any significant issues relevant to Firm A through its direct interactions with retail investors, Firm B reports these promptly to Firm A. For example, if investors provide consistent feedback to Firm B that part of a disclosure document is too complex to understand, Firm B informs Firm A so that changes can be made to the document.

Both firms can continue to rely on the information provided by the other party to meet their obligations under the Duty.

### **Notifying the FCA**

As the Duty applies to firms through the distribution chain, there may be situations in which firms disagree as to the best way in which to provide good customer outcomes:

**3A.11** A firm identifying consumer harm elsewhere in the chain must raise the concerns with other relevant parties. It must also notify the FCA where it becomes aware that another firm in the distribution chain may not be complying with the Duty. Depending on the issues involved, this might be the only action a firm needs to take. In addition to firms notification obligations under Principle 11, firms should notify the FCA in respect of material concerns about the conduct of another firm in its distribution chain which cannot be resolved.

**3A.12** A firm which has identified the concern may, where reasonable, first raise it with the other firm and seek clarification or comfort, before deciding if it is appropriate to contact the FCA.

### **Obtaining information from other firms to meet the Duty**

**3A.13** There are some Duty requirements that mean firms will need to obtain information from other firms to meet their obligations. For example, a manufacturer might need to collect information from distributors to carry out product reviews under the products and services outcome and the price and value outcome, see chapters 6 and 7 of this guidance for more information on this. Firms may also need to obtain information from others to meet their monitoring obligations under the Duty, as covered in Chapter 11 of this guidance.

**3A.14** Firms should collect information in a proportionate way by focusing on obtaining information that enables them to understand if the activities they are responsible for

are supporting good retail customer outcomes in line with the Duty where it applies, or where they may need to act to address issues.

**3A.15** This shouldn't be a tick-box exercise and, if firms have existing data from other sources that provides all the information they need, they don't need to gather more information.

**3A.16** Firms are not expected to collect data that does not meaningfully help them to understand how they influence retail customer outcomes.

**3A.17** This means, for example, product manufacturers are likely to focus on obtaining information that enables them to understand if product features are supporting good outcomes for end users. In this scenario, they would not be required to gather information in relation to other outcomes, such as customer support, if this is not part of their role and they are not responsible for this.

**3A.18** We recognise that distribution chains for retail market business can be long and complicated. This can cause issues particularly for manufacturer firms obtaining relevant information about the impact of their activities on customer outcomes. Some manufacturers do not have full visibility of the distribution chain or the end customers. We expect firms to do what is reasonable. For example:

- It may be that a manufacturer firm has some information about the end customers from some sources. For instance, a firm may make some direct sales of a product and could use the information it does have.
- It may be that some manufacturers have no knowledge of the end distributor or end customers. Some fund managers for example, selling via platforms, will not know if other distributors are involved or if their funds are being sold outside the target market.
- In this type of scenario, firms should consider what is reasonable in the circumstances to gather information. For example, it may be possible to send a periodic survey to distributors, or ask the next firm in the chain for relevant information, including the identity of other firms in the chain or sales information.
- If other firms do not provide that information, the manufacturer firm should use any information it does have. But, where there is a complete lack of information and no ability to find it, manufacturers may not need to take any further action.

**3A.19** Firms should generally focus on themes and trends at target market level, rather than individual customers or cases. Firms must comply with data protection and competition laws when sharing information.

**3A.20** A firm's approach will depend on its role and the risk of harm it presents to retail customers. For example, a proportionate approach could mean gathering less information to monitor an established product with well understood risks and benefits to customers, but focusing more on monitoring for risks and any potential harms that could be caused by a product new to market.

**3A.21** In some cases, targeted, qualitative or risk-based monitoring approaches may be more appropriate, for example, where a firm is more remote from retail customers, or has limited ability to act on more granular data.

- 3A.22** A reasonable sampling approach for targeted information or qualitative focus groups with key partners in the distribution chain, rather than extensive surveys issued widely, can be proportionate.
- 3A.23** Firms may gather key information at the outset and seek additional information if they become aware of an issue that needs further exploration.
- 3A.24** Use of industry developed templates to support efficient and proportionate sharing of information across distribution chains can help firms to meet their Duty obligations.
- 3A.25** Distributor firms are required to share information to support manufacturers when reviewing products or services. Where firms do not comply with this requirement, they may therefore be in breach of the Duty.

## **Customer vulnerability**

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- 3A.26** Under the Duty, firms are expected to consider the nature and scale of characteristics of vulnerability that exist in the relevant target market, and its impact on customers' needs.
- 3A.27** Firms' obligations apply based on what is reasonable in the circumstances, focusing on the outcomes that may result from their actions. For instance, when a firm is designing a product or service, it should consider whether the product or service has features that could risk harm for any group of customers, such as those with characteristics of vulnerability. When a firm is dealing directly with a particular customer, it should pay appropriate regard to the needs and characteristics of that customer.
- 3A.28** Manufacturers further removed from the end customer should consider risks arising from their own activities such as product design, target market assessments and distribution arrangements – taking steps to mitigate the risk of harm to customers, including those in vulnerable circumstances, where appropriate. Firms closer to the consumer, such as distributors, have more direct responsibilities for identifying and responding appropriately to customers' needs, for example by taking reasonable steps to ensure that individual customers are able to understand product features and by responding flexibly to their support needs (see Chapter 8 for guidance on how firms can provide effective consumer support).
- 3A.29** We always expect manufacturers to consider if the product or service design could lead to additional harms for customers with characteristics of vulnerability. However, manufacturers can take a proportionate, risk-based approach in the case of products without features that present additional risks of harm to customers, such as a simple tracker fund. In practice, this might mean manufacturers only need to ensure disclosures support consumer understanding of the product and there are processes in place to identify any issues that do arise.
- 3A.30** Where a manufacturer reasonably concludes product features do not present particular risks to consumers in the target market, including consumers in vulnerable circumstances, good outcomes are likely to be secured by distributors that deal directly with the end customer ensuring the product is offered, explained, and can be accessed, in a way that meets the needs of customers, including those in vulnerable circumstances.

- 3A.31** Alternatively, for more complex products with features that could cause particular harm to customers in vulnerable circumstances, or target markets with a high concentration of potentially vulnerable groups, manufacturers will need to do more to mitigate the risk of harm. This includes when designing product features and through their monitoring and product reviews, considering actions such as revisiting product design, target market assessment or distribution arrangements where necessary to prevent harming customers in vulnerable circumstances.
- 3A.32** Where distributors become aware of harm, or potential harm caused by an activity for which a manufacturer is responsible – for instance, if there is significant feedback about product features – they should provide relevant, proportionate feedback to the manufacturer, so it can act on the information where appropriate.
- 3A.33** Firms can reasonably rely on others in the distribution chain who interact with customers directly to identify consumers in vulnerable circumstances and provide support. However, they should not ignore evidence of poor outcomes for customers in vulnerable circumstances, where those outcomes could be caused by their own activities or factors within their control. Where information reasonably available to a firm indicates a material risk of harm, we expect that firm to act, including escalating issues to other parties in the chain where they are better placed to address the source of harm.

### **Example – investment funds**

#### ***Scenario 1: simple tracker fund***

*A low-cost tracker fund is designed to replicate the performance of a widely recognised market index. The fund has straightforward investment objectives and is distributed through financial advisers and platforms.*

Given the simple nature of the fund, we expect outcomes monitoring and governance to be proportionate to firms' roles and the risk of foreseeable harm.

The **fund manager** considers if any product features pose particular risks to customers in vulnerable circumstances. The fund operates in a simple way, with no unusual features, and units can be redeemed quickly and without penalty. The fund tracks the market and money invested can decrease as well as increase, particularly over the short term. So, the fund manager recognises this means it may not meet the needs of some customers, including those with low financial resilience who cannot afford short term losses and may need to maximise funds available to them at short notice. The fund manager therefore makes sure product disclosures support customers' understanding of how the fund operates and equips customers, including those in vulnerable circumstances, to make effective decisions on if it's the right product for them.

The **adviser** has processes in place to identify individual customers in vulnerable circumstances and provide additional support to them at appropriate points of the customer journey. Similarly, the **platform provider** assesses if customers in vulnerable circumstances (such as those with lower financial capability) can understand key information and risks displayed on its platform (including that the value of investments can go up and down. As distributors, both firms monitor outcomes for customers in vulnerable circumstances, such as complaints, and make improvements to the way they support customers where appropriate.

### Scenario 2: complex investment fund

A complex, actively managed fund uses leverage, which some customers may find difficult to understand. The fund is manufactured by an asset manager, made available on an investment platform and recommended to customers by financial advisers.

Given the product's complexity, we would typically expect more active outcomes monitoring and timely escalation where information indicates a material risk of harm.

In its target market assessment, the **fund manager** identifies an increased risk of harm for customers with low financial capability or resilience, because leverage can amplify losses. It therefore monitors for trends and indicators of systemic misunderstanding of the product or harm for this group – seeking information from the platform provider and advisers as appropriate – to understand whether it should take any reasonable steps within its role. These may include reviewing the target market, amending product communications, or making changes to distribution arrangements, such as limiting distribution to advised channels.

The **adviser** assesses whether individual customers' circumstances affect their risk tolerance and capacity for loss, to determine whether the fund is suitable. Where appropriate, it provides additional support during the customer journey – such as by proactively checking that customers understand key risks – or recommends an alternative product that better meets the customer's needs.

Where the adviser identifies material risks through its customer interactions, it escalates proportionate feedback to other relevant firms in the distribution chain.

### Example – consumer credit

A lender manufactures a short-term unsecured credit product aimed at customers with limited access to mainstream credit. The product, which is distributed exclusively through a third-party credit broker, may carry a heightened risk of harm to some consumers in vulnerable circumstances where credit is taken out or rolled over.

Given the likelihood of vulnerability in the target market (for example low financial resilience), we would typically expect more detailed and regular monitoring, involving appropriate information-sharing by both firms to support timely action where information indicates a material risk of harm.

The **lender** uses outcomes monitoring (including information it receives from the broker, where relevant) to identify whether product features may be leading to poor outcomes for particular groups of customers. For example, monitoring may show that customers with low financial resilience are more likely to roll over the credit, incur repeated late payment fees or default charges, resulting in the total cost of credit rising quickly. Where the lender considers that its charging structure is contributing to these outcomes, it should take reasonable steps within its role to address this (for example removing or adjusting charges,

introducing earlier intervention triggers, engaging with the broker on changes to the customer journey and communications for these customers).

The **credit broker**, as the initial firm interacting with customers, is also well placed to consider how it can support customers in a way that meet their needs.

For example, it may identify customers in vulnerable circumstances where it sees indicators such as repeated applications for credit within a short period. Where appropriate, it provides additional support, such as offering extra time or different channels to complete key steps, explaining costs and risks in plain language, discussing alternatives and signposting customers in financial difficulty to free, independent debt advice.

It asks the lender to share where a loan application is declined and any cancellations or withdrawals that take place within a short period, so it can look for signs that the products are not being distributed consistently with their designed target markets or other concerns relating to the Duty outcomes and cross-cutting obligations.

It provides relevant information and feedback to the lender to help the lender provide support to customers in vulnerable circumstances introduced by the broker, and to support the lender's review of product design, charges, disclosures or distribution arrangements.

### **Applying the Duty with other regulatory requirements in the distribution chain**

**3A.34** The below example illustrates how the Duty applies in practice where a firm forms part of a wider distribution chain and does not have direct interaction with retail customers. It brings together the concepts discussed in this chapter, including firms' roles and responsibilities, reliance on other firms, and taking a proportionate approach based on the firm's role.

**3A.35** For example, where a wholesale firm manufactures a retail investment product, the Duty applies to the extent of its role. This would typically include Principle 12, the cross-cutting rules, rules under the relevant Duty outcomes, and associated monitoring and governance requirements. The firm would also be subject to other product governance or disclosures requirements in our Handbook, such as chapter 3 of the FCA's Product Intervention and Product Governance sourcebook (PROD). See Chapter 6 and 7 for further detail on the Duty's interaction with these requirements.

**3A.36** Where this is the case, firms should consider how their existing processes and arrangements can support them in meeting obligations under the Duty. However, they remain responsible for complying with the Duty in respect of their own role and should work with other firms in the distribution chain where this is necessary to deliver good outcomes for retail customers.

### **Example - applying the Duty across the distribution chain: retail structured products manufactured by firms subject to PROD 3**

An investment bank manufactures retail structured products for distribution by independent third-party firms to retail customers. The bank doesn't have direct contact with these customers. A significant proportion of these products are sold to customer outside the UK and fall outside the scope of the Duty. The Duty applies only to the products intended for selling to customers who are usually resident in the UK.

#### **The products and services outcome**

The bank is subject to PROD 3 product governance requirements, and the Duty's products and services outcome (PRIN 2A.3) doesn't apply where PROD 3 applies.

The bank is responsible for designing the product and ensuring it meets the needs of its identified target market in accordance with PROD 3. This includes identifying the target market for the product, as well as ensuring that it is distributed appropriately.

#### **The price and value outcome**

The Duty's price and value outcome (PRIN 2A.4) imposes manufacturer obligations on the bank to consider whether the product, including its payoff structure, is likely to deliver fair value and whether it could give rise to foreseeable harm. The cross-cutting rules, including the requirement to act in good faith, are also relevant.

In designing the product, the bank considers:

- whether the benefits of the product are reasonable relative to its costs
- whether the product structure could lead to poor outcomes for certain customer groups
- whether it is acting in good faith in its design and governance decisions.

The bank uses its existing PROD 3 product governance and review processes to support compliance with the Duty's requirements. PROD 3 already requires manufacturers to undertake regular product reviews, including assessing whether products continue to meet the needs of the target market and taking action where appropriate. These arrangements help the bank to monitor whether the product continues to provide fair value over time.

#### **The consumer understanding outcome**

The bank is subject to the CCI regime in preparing a product summary, which helps the firm meet the Duty's consumer understanding outcome (PRIN 2A.5).

The bank is responsible for designing and preparing the product summary, distributed via third parties, for retail customers. It needs to ensure that the product summary and any additional product communication meet the information needs of, and are likely to be understood by, retail customers. Where appropriate, the bank must test that the communications support good outcomes.

The bank also needs to provide distributors with clear and comprehensive information about the product, its intended value and its target market. This information should enable distributors to assess whether the product is appropriate for their customers and distribute it in a way that is consistent with providing fair value.

The Duty doesn't make the bank responsible for activities outside its role, for example reviewing the additional communications designed by third-party distributors for retail customers.

### **The consumer support outcome**

The bank does not interact directly with retail customers and does not design or operate customer support channels. It also does not have an influence on how retail customers receive ongoing support, such as through responding to queries, providing assistance or resolving issues.

However, under the Duty's consumer support outcome (PRIN 2A.6), it is responsible for dealing with reasonable requests from another firm in an effective way and in good time to enable that firm to support retail customers. And, if it ever did provide support directly to a retail customer, for example if it dealt with a complaint, it would need to comply with the requirements.

### **Monitoring requirements**

The bank is subject to PROD 3 requirements to monitor and review its product on a regular basis. The Duty also requires firms to monitor whether customers are receiving good outcomes.

On an ongoing basis, the bank relies on its existing PROD 3 product governance, review and oversight arrangements to obtain information from its distributors. It uses this information to assess whether the product continues to meet the needs of the target market and deliver fair value, including any indicators of distribution outside the target market or potential risks of harm.

The bank is subject to the Consumer Composite Investments (CCI) regime and must prepare a product summary, which helps the firm meet the Duty's consumer understanding outcome (PRIN 2A.5).

Where the information indicates a potential issue, for example where there are indicators that the product is being distributed outside the target market, the bank considers whether this may give rise to a material risk of harm and undertakes further root-cause analysis.

- In doing so, the bank considers whether the issue relates to activities within its control, such as whether the target market definition or the information it has provided to distributors is sufficiently clear and complete, or whether it arises from how distributors are applying their own sales process.
- Where the issue relates to matters within the bank's control, the bank considers whether action is needed, for example by revisiting aspects of its target market or disclosures.
- Where the issue instead relates to the actions of distributors, such as deficiencies in their sale processes or training, the bank considers whether any changes to its distribution strategy are appropriate, within the scope of its role. Acting in good faith, the bank provides feedback to distributors on the issues identified. However, it does not oversee distributors' compliance processes,

and distributors remain responsible for implementing any improvements. If concerns persist, the bank may consider whether it would be appropriate to terminate the distribution arrangement, recognising that it would generally be expected only where other reasonable steps have not been effective.

Where the information reviewed does not indicate a material risk of harm and instead reflects a difference in judgement as to how distributors apply their obligations, the bank continues to rely on distributors' assessments and controls in good faith and does not take further action or escalation.

### **Reporting requirements**

The bank uses existing PROD 3 reporting and governance arrangements, considered through a Duty lens, to provide an aggregate report to the Board (or equivalent governing bodies) for review and approval. This is typically covered annually, confirming that products are operating as intended and supporting good outcomes for retail customers.

## 4 The Consumer Principle

### Overview

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- 4.1** The Consumer Principle, Principle 12, requires firms to 'act to deliver good outcomes for retail customers'.
- 4.2** It sets a higher standard than both:
- Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly.
  - Principle 7 – A firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading.
- 4.3** Principle 12 reflects the positive and proactive expectations we have of firm conduct, and our desire for firms to think more about customer outcomes and place customers' interests at the heart of their activities.
- 4.4** It should prompt firms to ask themselves questions such as, 'Am I treating my customers as I would expect to be treated in their circumstances?' or, 'Are my customers getting the outcomes from my products and services that they would expect?'.
- 4.5** As we set out in Chapter 2, Principle 12 imposes obligations on firms towards customers of products and services, irrespective of whether the customer is a direct client of the firm.
- 4.6** Firms should consistently challenge themselves to ensure their actions are compatible with customers' interests and financial objectives.
- 4.7** In this chapter, we provide some over-arching guidance on Principle 12, how it should be interpreted, and its relationship with the cross-cutting rules.

### What this means for firms

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- 4.8** Principle 12 focuses on customer outcomes, and requires firms to:
- pro-actively act to deliver good outcomes for customers generally and put customers' interests at the heart of their activities
  - focus on the outcomes customers get, and act in a way that reflects how consumers actually behave and transact in the real world, better enabling them to access and assess relevant information, and to act to pursue their financial objectives
  - ensure they have sufficient understanding of customer behaviour and how products and services function to be able to demonstrate that the outcomes that would reasonably be expected are being achieved by those customers

- where they identify that good outcomes are not being achieved, act to address this by putting in place processes to tackle the factors that are leading to poor outcomes, and
- consistently and regularly challenge themselves to ensure their actions are compatible with delivering good outcomes for customers

**4.9** Firms should embed a focus of acting to deliver good outcomes in each of their business functions and put customer interests at the heart of their business model and culture. This ranges from high-level strategic planning to individual customer interactions, as well as product and service development, sales and servicing, distribution, support, and risk and control functions.

**4.10** Our key expectations of conduct under the Consumer Principle are explained further through the cross-cutting rules set out in PRIN 2A.2. The cross-cutting rules set out how firms should act to deliver good outcomes for customers.

**4.11** The Consumer Principle does not mean that individual customers will always get good outcomes or will always be protected from poor outcomes. It also does not impose an open-ended duty that goes beyond the scope of the firm's role and its ability to determine or influence customer outcomes, or protect customers from all potential harms. For instance, firms are not expected to protect customers from risks that come from the nature of the product (such as investment risk), where they have complied with their obligations under the Duty and have good reason to believe the customer understands and accepts that risk. More guidance is given on this in the following chapter.

**4.12** The Consumer Principle also does not change the nature of a firm's relationship with its customers. For example, it does not create a fiduciary relationship where one would not otherwise exist, nor require a firm to carry out any regulated activity (for example provide advice) where it would not otherwise have done so.

## Reasonable application of the Duty

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**4.13** As set out in Chapter 1, the Duty is underpinned by the concept of reasonableness which is an objective test. The obligations on firms will 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 services, taking appropriate account of the needs and characteristics of customers in the relevant target market.

**4.14** This includes (amongst other things), paying appropriate regard to the nature and scale of characteristics of vulnerability that exist in the relevant target market and the impact of these characteristics on the needs of customers in the target market. When a firm is dealing with a particular customer, it should pay appropriate regard to the needs and characteristics of that customer.

**4.15** We expect firms to focus on the customer outcomes that may result from their actions, considering what a firm knows, or could reasonably be expected to have known, at the relevant time.

**4.16** What is reasonable will depend on a range of factors reflecting a firm's role in the distribution chain and its ability to determine or materially influence the outcomes customers receive. These factors include:

**4.17 The nature of the product or service being offered.** What the firm needs to do will depend on the nature of the product or service being offered or provided, including the following.

- The risk of harm to customers: For example, if a manufacturer is developing a higher risk product, it should take additional care to ensure it meets customers' needs and is targeted and distributed appropriately. There will be types of products (such as those that are higher risk) and types of services that may only be appropriate for certain types of customers or certain customer needs.
- Complexity of the product or service: Customers may find it more difficult to assess the features, suitability or value of more complicated products or services. For example, this could include products with fewer visible risks, such as investments with non-standard charging structures or other features that may not be easy for customers to understand. Firms offering more complex products and services should take extra care to promote, and monitor, customer understanding.
  - For example, firms selling products which are only likely to be appropriate for a narrow target market should design the customer journey to make this clear and equip customers for whom the product is not designed to understand this.
  - Or, firms could introduce 'positive friction' to a sales process for a complex and high-risk product. For instance, they could slow down how quickly transactions are made, perhaps by providing additional information. By requiring customers using an online service to watch a video on the risks, before they can make a transaction, firms could help customers make a properly informed and reasoned decision. While the consumer support outcome aims to reduce unnecessary and harmful barriers ('sludge') that unreasonably restrict a customer from acting in their interests, we recognise that friction can also have a positive function where it is in customers' interests.
- Costs, fees and charges involved with the product or service. For example, complex charging structures with multiple fees or differential pricing may carry greater risk of poor outcomes.
- The relative utility to the customer of the product or service as a whole and of specific features, options, or services within the product or service, if subject to separate fees or charges.

**4.18 The characteristics of customers in the relevant target market.** These characteristics include the following.

- Their resources, degree of financial capability or sophistication and known or reasonably foreseeable characteristics of vulnerability if a firm knows or should reasonably have known about them. For example, the size and type of SME client a firm is dealing with may be relevant to what is required of the firm under the Duty, because it may indicate greater or lesser resources, financial capability or sophistication.
- Their reasonable expectations in relation to the product or service. What the firm needs to do to comply with the Duty will vary depending on what customers in the relevant target market would expect. This would depend for example on the nature and the quality of the product or service. For instance, a service marketed as 'no-frills' would create different expectations from a 'top-end' service. So, a financial

adviser providing holistic financial advice and wealth management on an ongoing basis has a more wide-ranging relationship with customers, including assessment of their financial position and ongoing recommendations as circumstances change, than a firm providing a simple current account which has no non-essential add-ons.

**4.19 The firm's role in relation to the product or service.** This includes the following.

- The firm's relationship with the customers: As previously mentioned, the Duty does not require a firm to assume a fiduciary duty or require an advisory service where it does not already exist.
- Whether the firm has provided or will provide advice to the customers: What steps a firm needs to take may vary where advice is being provided to the customer.
- The firm's role in the distribution chain (including its role in making decisions which determine or materially influence outcomes for customers in relation to the product or service): As explained in Chapter 2, firms throughout the distribution chain have obligations under the Duty. What is reasonable will depend on each firm's role in the distribution chain. Where firms are outsourcing activities to third parties, they should consider the impact this has on customer outcomes.
- The stage in the firm's relationship with the customers: There will be times when 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 act reasonably in such circumstances may be greater than when a customer is making decisions which carry a lesser risk of adverse outcomes.

## Consumer and firm responsibility

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**4.20** The Duty does not remove consumers' responsibility for their choices and decisions. However, consumers can only be expected to take responsibility for their actions when they are able to trust that the range of products and services they choose from are designed to meet their needs, and offer fair value. They need help to understand products and services, and they need confidence that firms will act in a way that helps, rather than hinders, their ability to make decisions in line with their needs and financial objectives.

**4.21** Under the Duty, firms are responsible for enabling and empowering consumers to take responsibility for their actions and decisions.

**4.22** Some consumers' low levels of financial capability, financial resilience or confidence in managing their money and finances, coupled with behavioural biases, means regulators cannot set a universal requirement of the degree of responsibility a consumer can be expected to take. Firms must understand and take account of behavioural biases and the impact characteristics of vulnerability can have on consumer needs and decisions.

## 5 The cross-cutting rules

### Overview

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**5.1** The Duty includes three cross-cutting rules which set out how firms should act to deliver good outcomes for retail customers.

**5.2** They require firms to:

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

### Relationship between the cross-cutting rules, and with the Consumer Principle

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**5.3** The cross-cutting rules articulate the standards of conduct that we expect under Principle 12. They set out how firms should act (proactively and reactively) to deliver good outcomes for customers. As with the rest of the Duty, they apply both at a target market level and an individual customer level, depending on the situation.

**5.4** The cross-cutting rules work together as a package, and poor conduct will often breach more than one of the cross-cutting rules.

- For example, acting in good faith is a key part of creating an environment in which customers can make decisions in their own interest and pursue their financial objectives. It is also a key part of acting to avoid causing foreseeable harm. If a firm continues to sell a product it knows to be causing harm, it is also likely to be acting in bad faith.
- Similarly, a firm that does not act to avoid causing foreseeable harm is also not likely to be acting to enable and support customers to pursue their financial objectives. For example, where a firm fails to explain the risks of a product to customers, it is unlikely to be acting to avoid causing foreseeable harm or enabling and supporting customers to pursue their financial objectives.

## Relationship between the cross-cutting rules and the four outcomes

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- 5.5** The cross-cutting rules also inform and are supported by the four outcomes which set out more detailed rules in key areas of the customer relationship, including the following points, for example.
- Firms acting in good faith in their interactions and communications with customers is an essential element of complying with the outcome rules on consumer understanding and consumer support.
  - Firms should act to avoid causing foreseeable harm in the way that they design and price products and services and make this a key objective of how they comply with the relevant outcome rules.
  - Providing effective communications that customers can understand, and effective consumer support are an essential way in which firms act to enable and support customers to pursue their financial objectives, by creating the right environment for this.
  - The cross-cutting rules also help firms interpret the four outcomes. For example, one way for a firm to know a product does not offer fair value, would be if it were to lead to foreseeable harm.
  - The cross-cutting rules also help define the overarching standards of conduct firms should follow in areas not explicitly dealt with through the four outcomes, so compliance with the four outcomes would not be exhaustive of what the Principle or cross-cutting rules require.

## Acting in good faith

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- 5.6** Firms must act in good faith towards customers. This is a standard of conduct characterised by honesty, fair and open dealing, and consistency with the reasonable expectations of customers.
- 5.7** Firms and customers both have a role to play if customers are to achieve good outcomes. However, when consumers deal with financial services firms, there is generally an imbalance in bargaining position, knowledge and expertise. Therefore, consumers can only reasonably be expected to take responsibility for their choices and decisions if firms act openly and with honesty.
- 5.8** As set out in Chapter 4, acting in good faith is a key part of creating an environment in which customers can pursue their financial objectives. It is also a key part of acting to avoid causing foreseeable harm. It supports the other cross-cutting rules by focusing on the intent behind the actions or inactions of the firm.
- 5.9** A firm would not be acting in good faith where it fails to take account of customers' interests, for example in the way it designs a product or presents information. Seeking to exploit consumers' lack of knowledge and understanding would also be a clear sign a firm is not acting in good faith. This would include seeking to exploit customers' behavioural biases, such as tendencies to be influenced by the way things are presented, overvaluing immediate impacts and undervaluing future ones or attaching less weight to effects that are further off, such as termination or renewal fees.

- 5.10** Firms also need to ensure that their culture supports and is conducive to their staff acting in good faith. A firm is unlikely to be able to act in good faith if it uses staff incentives, performance management or remuneration structures which are likely to cause detriment to their customers. Firms should have adequate arrangements in place that can help to detect and manage the risk of non-compliance with regulatory obligations arising from their remuneration or performance management practices.

## When firms should consider the requirement

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- 5.11** Firms must act in good faith at all stages of the customer journey and during the whole lifecycle of a product or service. This will include a firm's behaviour focused on groups of customers (for example at product manufacture or distribution stage) and when it is interacting with individual customers (for example through its consumer support).
- 5.12** At **product or service design stage**, firms can act in good faith by designing products or services to support the objectives and needs of customers in the target market and offer **fair value** (see Chapters 6 and 7). Examples of not acting in good faith in this area would include the following.
- Designing features to exploit the behavioural biases of consumers in order to create a demand for a product.
  - Using algorithms, including machine learning or artificial intelligence, within products or services in ways that could lead to consumer harm. This might apply where algorithms embed or amplify bias and lead to outcomes that are systematically worse for some groups of customers, unless differences in outcome can be justified objectively.
  - Adding variations to products to make them more difficult to compare with other products from competitors.
  - Designing products and services that do not offer fair value, or in which pricing and charges are not presented in a way that makes it easy for the consumer to understand the total cost.
- 5.13** Firms can act in good faith to support their **customers' understanding** (see Chapter 8) by presenting information in an even-handed way that properly explains the benefits and risks. For example, a firm would not be acting in good faith if it:
- promotes products or services in a way that misleads customers about the benefits or risks, for instance by disguising the risks or burying key terms in documents or web pages they know customers are unlikely to read
  - inappropriately exploits consumers' biases to create a demand for a product or take advantage of consumers, particularly when in difficult or stressful situations
  - presents customers with incomplete, distorted or skewed information
- 5.14** Through their **consumer support**, firms would also not be acting in good faith if they operate systems or processes that they know frustrate or prevent customers enjoying the use of their products (see Chapter 9). An example of this would be designing websites or mobile phone applications to manipulate or subvert consumers' choices through harmful leading questions.
- 5.15** If a firm identifies that it has caused customers harm, either through its action or inaction, the firm must act in good faith by taking appropriate action to rectify the

situation. This includes considering whether remedial action, such as redress, is appropriate. Firms should pay redress promptly when it is due and considering relevant decisions of the Financial Ombudsman Service.

**5.16** In some situations, it will be appropriate for a firm to provide redress, while other forms of remedy, such as providing an apology, will be appropriate in other situations.

**5.17** We expect firms to take existing decisions and guidance from the ombudsman service into account and to apply the same approach where cases present similar facts. Where the ombudsman service has made a decision relevant to the case(s) at hand, we will consider a firm to be acting in bad faith if it delays paying redress where this is due but instead waits for the ombudsman service to make a further decision. We expect firms to promptly pay redress in these circumstances.

### **What it does not require**

**5.18** Neither the requirement to act in good faith nor the Duty overall creates a fiduciary relationship (for example, a requirement to act only in a client's interest and not to profit from the firm's position as fiduciary) where it does not already otherwise exist between the firm and the customer.

**5.19** The requirement for firms to take appropriate action to remedy harm does not require a firm to remedy the effects of risks inherent in a product that the firm reasonably believed that the customer was aware of, understood and accepted.

## **Avoid causing foreseeable harm**

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**5.20** Firms must avoid causing foreseeable harm to customers. Firms can cause foreseeable harm to customers through their actions and omissions. This can occur not only when the firm is in a direct relationship with a customer but also through their role in the distribution chain even where their actions or omissions are not the sole cause of harm. As we explain in Chapter 2, the Duty applies across the distribution chain and the extent of a firm's responsibilities will depend on its role and the extent of its influence over customer outcomes.

**5.21** Whether harm is considered foreseeable would depend on whether a prudent firm acting reasonably would be able to predict or expect the ultimately harmful result of their action or omission in connection with the product or service.

**5.22** Firms must take proactive and reactive steps to avoid causing harm to customers through their conduct, products or services where it is in a firm's control to do so. This includes ensuring that no aspect of their design, terms and conditions, marketing, sale of and support for their products or services cause foreseeable harm.

**5.23** Examples of foreseeable harm include:

- consumers being unable to cancel a product or service that isn't right for them anymore because the firm's processes are unclear or difficult to navigate
- products and services performing poorly where they have not been appropriately tested in a range of market scenarios to understand how consumers would be affected

- products and services causing harm because the firm's inappropriate distribution strategy leads to products and services being distributed widely to customers for whom they were not designed and whose interests they do not serve
- consumers incurring overly high charges on a product because they do not understand the product charging structure or how it impacts on the value of the product
- consumers incurring high total costs of investing such that the total charges are likely to outweigh the expected above-cash returns from the investments
- consumers with characteristics of vulnerability being unable to access and use a product or service properly because the customer support is not accessible to them
- consumers becoming victims to scams relating to their financial products for example, due to a firm's inadequate systems to detect/prevent scams or inadequate processes to design, test, tailor and monitor the effectiveness of scam warning messages presented to customers
- consumers finding it too difficult to switch to a better product or different provider because the process is too onerous or unclear

**5.24** As the Duty is underpinned by the concept of reasonableness, firms are only responsible for addressing the risk of harm when it is reasonably foreseeable at the time, considering what a firm knows, or could reasonably be expected to have known. This will depend in part on the information the firm collects as part of its business, and this in turn will depend on the scale, service offering and capabilities of the firm. However, we expect all firms to collect enough information to be able to act to avoid causing foreseeable harm.

**5.25** Firms should proactively consider how consumers' behavioural biases, such as inertia, might lead their products or services to cause foreseeable harm.

**5.26** Firms' obligation to avoid foreseeable harm applies throughout the customer journey and lifecycle of the product or service.

**5.27** Firms should identify the potential for harm that might arise if their products and services change or their understanding about the impact on customers changes and take appropriate action to mitigate the risk of actual or foreseeable harm.

**5.28** The regular reviews we require of firms provide an opportunity to identify any new or emerging harms. Firms will also become aware of sources of harms (for example through consumer complaints, management information (MI), press reporting, and FCA supervisory focus and communications such as 'Dear CEO' letters).

**5.29** Where harm was not foreseeable at the outset but became apparent later, we would expect firms to take appropriate action to mitigate the risk of actual or foreseeable harm. They could do this by updating or amending the design or distribution strategy of a product or service, providing additional support or updating information or advice. For example, if a debt management or advice firm providing an ongoing service to a customer identifies a change in the customer's circumstances that means the previous advice may no longer be appropriate, the firm should update its advice to the customer, and where appropriate adapt their debt management plan.

## How the firm's relationship with the customer affects the requirement

**5.30** Where a firm has an ongoing relationship with a customer relating to an ongoing product or service the firm would need to act to avoid causing foreseeable harm to that customer throughout the product's lifecycle and the firm's relationship with the customer in relation to that product. Examples of this could include a financial adviser updating its advice, a lender providing appropriate support or forbearance when a customer experiences financial difficulty or an insurance firm responding promptly to a customer's notification of a change of circumstances which affects the nature or amount of cover the policy provides.

**5.31** If the firm is only involved with the provision of a product or service at a point in time, is no longer providing that product or service to the customer and does not have an ongoing relationship with the customer, it does not need to act to avoid harm that was not foreseeable at the point it provided the product or service.

## When firms should consider the requirement

**5.32** Firms should act to avoid causing foreseeable harm at all stages of the customer journey. They should do this when they are thinking about groups of customers (for example their target market or the audience for a financial promotion) or when they are interacting with individual customers (for example when communicating with or providing support to an individual customer).

**5.33** At **product or service design**, including in relation to **price and value** (see Chapters 6 and 7) firms should act to avoid foreseeable harm by:

- ensuring that products and services are designed to meet the needs of customers within their target market, that the products and services are being distributed to their target market and checking that they remain consistent with the needs, characteristics and objectives of the target market
- testing how products and services are likely to function
- considering whether their charges represent fair value to different groups of customers
- taking appropriate action, such as amending charges, where a value assessment identifies the price of the product or service does not provide fair value

**5.34** In supporting **customers' understanding** (see Chapter 8) firms should act to avoid foreseeable harm by:

- communicating product or service terms clearly and highlighting key risks for consumers, for example, by prominently disclosing and adequately explaining significant risks in a way that customers are likely to understand
- considering consumers' information needs after the initial point of sale, and throughout the cycle of the product
- helping to ensure consumers get the necessary calls to action to avoid something that would negatively impact them
- testing communications where appropriate to support consumer understanding so that they can make effective decisions and act in their interests

**5.35** Through **consumer support** (see Chapter 9) firms should act to avoid foreseeable harm by:

- adopting a flexible consumer support approach that takes account of the needs of customers with characteristics of vulnerability
- using appropriate friction in customer journeys to give customers sufficient opportunity to understand and assess their options
- dealing with issues when they arise to prevent customers from suffering harm as a result of firm inaction

### **What it does not require**

**5.36** Neither this cross-cutting rule nor the Duty overall:

- Mean that consumers can or will be protected from all harm.
  - Sometimes harm will occur because of circumstances that were not reasonably foreseeable. For example, wider economic or market conditions could change the relative attractiveness or suitability of certain products for certain consumers, or cause firms to take actions (for example stopping redemptions from a specific fund) that cause harm.
  - Sometimes firms might only be able to identify the harm when it is too late for the firm to act. For example, a consumer's circumstances could change suddenly in a way that affected their insurance cover shortly before they needed to claim. Or the nature of the harm may be such that there was no way a firm could act to avoid it. Where a firm could reasonably be expected to act, they should do so.
  - Many financial products involve risk. These may be due to the nature of the product or service, or external factors. A consumer may suffer an adverse outcome if such a risk materialises. For example, investments may carry a risk of capital loss, and secured lending may put a consumer's home at risk if they do not keep up with repayments. We do not expect firms to protect their customers from risks that they reasonably believed the customer understood and accepted. Whether such a belief is reasonable would depend (among other things) on the nature of the product offered by the firm, and the adequacy of the firm's product design, communications and customer services. The extent to which the firm has complied with all relevant requirements (for example requirements around ensuring that products are sold to the right target market, requirements on responsible lending and creditworthiness) in relation to the sale of the product or service will also be a relevant factor to take into account.
- Prevent an insistent customer from making decisions or acting in a way that the firm considers to be against their interests. Even where firms act reasonably to meet the Duty, consumers may sometimes make poor decisions. Firms should aim to help customers understand the consequences of their decisions but, if a customer insists on a course of action that the firm regards as harmful, they are not obliged to prevent it. However, the firm should take steps to ensure that customers understand the risks of their action.
- Require a firm to ration the use of or withdraw individual products or interfere in the transactions of customers based on potential risk where a prudent firm would not otherwise do so. For example, if a customer is looking to buy something using their debit card instead of credit card, the rules do not require their bank to intervene/ add friction to the customer journey at point of sale to make the customer aware that their credit card may have additional protections which could be useful.

- Go beyond what is reasonably expected by consumers in the delivery of their service. For example, whilst a lender should consider key harms that can flow from borrowing (such as the risks of borrowing to consolidate debts or to invest), the Duty does not generally require firms to act to protect customers from more-specific harms related to how they spend funds they borrow, or impose additional requirements in relation to goods or services purchased using borrowed funds.
- Prevent a firm from withdrawing a product or service. However, a firm can cause foreseeable harm or frustrate the objectives of its customers in the way it does so. For example, if a firm withdrew a product or service abruptly or without considering the effect on the consumers who are impacted this could cause foreseeable harm. Where a firm is planning to alter or withdraw a product or service, they should consider whether it could lead to foreseeable harm for their customers or a specific group of customers (such as customers with characteristics of vulnerability) and take steps to mitigate the impact of the potential harm. This could mean not withdrawing the product or service too abruptly, allowing time and support for customers to find suitable alternatives and ensuring that they communicate any changes in a timely, clear and sensitive manner. This should include setting out what it means for the consumer, communicating alternative solutions, and the consequences to any consumers of not acting. Firms should engage with us if they are considering withdrawing or restricting access to products or services in a way that will have a significant impact on characteristics of vulnerability or on overall market supply.

## Enable and support customers to pursue their financial objectives

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- 5.37** Firms must act to enable and support customers to pursue their financial objectives. This rule is concerned with the financial objectives of the consumer in relation to the financial product or service and applies throughout the customer journey and life cycle of the product or service.
- 5.38** As with the entire Duty, this rule does not remove the responsibility that consumers have for their actions. But consumers can only take responsibility where they are enabled and supported to make informed decisions in their interests through firms creating the right environment. Firms must proactively and reactively focus on putting customers in a better position to make decisions in line with their needs and financial objectives. This would include recognising and taking account of consumers' behavioural biases and the impact that characteristics of vulnerability can have on their needs.
- 5.39** As with acting to avoid causing foreseeable harm, 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. The conclusions a firm can reach about the customers' financial objectives will also depend on the type of product or service it provides:
- For the most part, where a firm provides a product or service on an execution-only or non-advised basis, customers' financial objectives can be assumed by the firm to be the enjoyment and use of the product and service they have purchased. For example, a firm providing a cash Individual Savings Account (ISA) without advice might assume their customers have an objective of keeping their savings safe and trying to maintain or improve their value over time.

- By contrast, a firm providing advisory or discretionary services would understand more about the customer's specific objectives and would need to act on that knowledge. For instance, an advice firm might know a customer has the financial objective to retire by a particular age or to make sure a dependent is provided for.

**5.40** Where a firm declines to provide a customer with a particular product or service, the firm should still consider whether there is information or support it could provide to help the customer pursue their financial objectives. For example, a firm could signpost a customer to a third party that provides reliable and relevant information to such consumers. An example of information or support that may be appropriate to provide a customer that has been declined credit is the 'Money Helper' [guide](#).

**5.41** Travel insurance firms are required to signpost customers with pre-existing medical conditions to a directory of specialist insurers in certain circumstances. This approach is consistent with our expectations under the Duty, as firms signpost declined customers to a reliable source of information that can help them to achieve their financial objectives. Firms in other markets should consider a similar approach when they decline customers.

### **When firms should consider the requirement**

**5.42** Firms should act to enable and support customers to pursue their financial objectives at all stages of the customer journey. They can also do this when a firm is thinking about both groups of customers and when they are interacting with individual customers.

**5.43** Customers are more likely to make decisions in their interests and achieve their financial objectives when firms take steps to ensure that the products and services function as expected, are of fair value, firms' communications are clear and consumer support does not create unreasonable barriers.

**5.44** At **product or service design** stage, including in relation to **price and value** (see Chapters 6 and 7), firms can support consumers in pursuing their financial objectives by:

- designing products or services with clear and straight-forward features so they can be understood by consumers in the target market
- not charging unreasonable exit fees which discourage customers from leaving products or services that are not right for them, or getting better deals

**5.45** In their **communications** with customers (see Chapter 8) firms can support customers in pursuing their financial objectives by:

- considering the characteristics of the customers that their communications are aimed at and tailoring their communications accordingly so that they are likely to be understood
- helping customers navigate the information the firm provides, making it easy for consumers to identify the key information and their available options, and
- having systems and processes in place to test and monitor the impact of communications on consumer understanding and using the outputs to improve their communications

**5.46** Through **consumer support** (see Chapter 9) firms can support customers in pursuing their financial objectives by:

- designing and delivering consumer support in a way that does not create unreasonable barriers to consumers realising the benefits of products and services or acting in their interests
- ensuring that their consumer support enables consumers to fully use the products and services they buy and supports them in acting in their own interests: this includes avoiding 'sludge' in the design of consumer journeys, which uses friction to prevent consumers from taking actions such as cancelling a product or amending terms
- ensuring that the channels of support they provide work effectively and do not act as a barrier to customers utilising their products, cancelling or switching to another provider should they wish to

### **What it does not require**

**5.47** Neither this cross-cutting rule, nor the Duty overall, require firms to go beyond what is reasonably expected by customers in the delivery of their service.

- It does not require firms to carry out regulated activities outside of their scope of service and/or permissions (for example it does not require firms without investment advice permissions to make a personal recommendation ~~firms without advice permissions to provide advice~~).
- Firms are not required to go beyond what is expected of a prudent firm in the situation. For example, where a customer's financial objective at the relevant point in time is to switch to a cheaper insurance, whilst the firm must not impose unreasonable barriers that prevent or discourage the customer from switching, the Duty does not create an obligation on the firm to provide the customer with a cheaper insurance contract or inform the customer about cheaper options elsewhere.

**5.48** As set out above, a consumer's financial objective is normally defined by their purchase of a product and service. Even in advised sales, the fact that a firm would need to understand the customer's underlying financial objective is a function of them purchasing the regulated activity of advice. This will not require the firm to go beyond what is reasonably expected by customers in relation to advised sales.

## 6 The products and services outcome

### Overview

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- 6.1** We have seen harm occur where products or services were poorly designed or were distributed widely to customers for whom they were not designed. In addition, there is likely to be a link to the price and value outcome, as however they are priced, products and services that are poorly designed, or distributed to consumers for whom they were not designed, are unlikely to provide fair value.
- 6.2** Consumers can only pursue their financial objectives and avoid foreseeable harm when products and services are fit for purpose. Firms acting in good faith should design and distribute products and services to meet this aim.
- 6.3** The products and services outcome rules are therefore central to firms acting to deliver good outcomes. They set out a range of requirements, including the need for relevant firms to:
- ensure that the design of the product or service meets the needs, characteristics and objectives of customers in the identified target market
  - ensure that the intended distribution strategy for the product or service is appropriate for the target market
  - carry out regular reviews to ensure that the product or service continues to meet the needs, characteristics and objectives of the target market

### What this means for firms

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#### Guidance for manufacturers

- 6.4** Firms are manufacturers if they create, develop, design, issue, manage, operate, carry out, or (for insurance or credit purposes) underwrite a product or service, or a component or element of a retail product or service.
- 6.5** Where relevant, these terms include activities under the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 in relation to retail market business. For example, managing includes 'managing investments' and operating includes 'operating an electronic system in relation to lending'. However, the terms are not limited to specific definitions and firms should look to the plain language meaning. For example, firms that purchase product or service books would be managing, operating or carrying out activities in relation to the book, which means they are classed as a manufacturer. The concepts are deliberately broad, and the terms may overlap, to capture all aspects of the design, launch and ongoing operation throughout a product or service's life.
- 6.6** The rules apply to the manufacture of products and services. Services include 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. So, firms need to review the service at that level, rather than for each customer. These rules would only apply at an individual customer level where a bespoke service is developed for a particular customer.

**6.7** The guidance in this chapter is relevant to:

- new or significantly adapted products or services
- existing products or services that remain on sale to new customers or can be renewed by existing customers

**6.8** See also our guidance in Chapter 3 regarding the application of the rules to products and services sold before the Duty ~~comes~~came into force.

***Firms working together to manufacture a product or service***

**6.9** More than one firm may be involved in the manufacture of a product or service. In these cases, firms would be either a principal or secondary manufacturer.

~~6.9 — There multiple manufacturers for a single product or service. For example, an intermediary might design an investment fund and work with a fund manager to launch it. Both are considered co-manufacturers.~~

~~6.10 — A firm would be considered a co-manufacturer where they can determine or materially influence the manufacture of a product or service. This would include a firm that can determine the essential features and main elements of a product or service, including its target market.~~

~~6.11 — Where firms collaborate in this way, they must have a written agreement outlining their respective roles and responsibilities to comply with the rules in this section.~~

~~— We expect the agreement to be a confirmation of which firm is responsible for meeting different aspects of the rules under this outcome. So, in the event of a problem, it is clear which firm is accountable.~~

**6.10** A firm would be a principal manufacturer where it has substantive control over the design or operation of the product or service. The rules set out indicative factors for where a firm would be considered to have substantive control. These include, for example, a firm with the power, right or ability to make decisions about core aspects of a product's design, operation, distribution strategy, or value proposition for end retail customers.

**6.11** There will always be a principal manufacturer, and where there are other manufacturer firms that lack substantive control, as described above, they are classed as secondary manufacturers.

**6.12** Where firms work together to manufacture a product or service, the principal manufacturer(s) must ensure that the contribution of all manufacturers is set out in a

written agreement that outlines firms' respective roles and responsibilities under the relevant Duty rules.

- Firms must make sure the nature of their relationships with other firms, and therefore their respective responsibilities, are clear and reflect the reality of the arrangements.
- This written agreement doesn't need to be in a standalone document and other, wider agreements between the firms could be used to document their roles and responsibilities. In many cases, we would expect commercial agreements between firms working together to manufacture a product or service to comply with this requirement.

**6.13** The purpose of the agreement is to ensure that the roles and responsibilities of each manufacturer are clear to the firms involved and can be readily ascertained by the FCA if issues are identified.

**6.14** This approach does not mean that all responsibilities, actions and their implications are split evenly.

- Our rules should not be interpreted to mean firms working together to manufacture a product or service must have a say in each other's decisions, or that they are expected to engage in joint decision making. Where firms' roles are distinct, it may be appropriate for their responsibilities and decision-making to remain separate.
- Responsibilities don't need to be allocated evenly in every case. One firm can ensure compliance with most or all the requirements where this reflects the reality of its role and of the arrangements with the other firms involved.
- A firm is generally only liable for remedial action in respect of harm it has caused. However, in some cases, regulatory requirements or contracts might mean a firm is responsible or liable for harm caused by another firm in the distribution chain (see the section on Responsibilities in Chapter 3A for more discussion on this).

**6.15** A secondary manufacturer, lacking substantive control of a product or service, isn't subject to all the rules under the products and services outcome or the price and value outcome. Instead, the rules require it to ensure that its contribution to the manufacture of the product or service doesn't create a material risk that the product or service:

- fails to meet the needs and objectives of retail customers in its target market
- causes foreseeable harm to retail customers in its target market, or
- doesn't provide fair value to retail customers in its target market

**6.16** Where a principal manufacturer requests it, secondary manufacturers must share information relating to its contribution to the product's manufacture.

**6.17** We would generally expect less from secondary manufacturers than for principal manufacturers under the cross-cutting rules in PRIN 2A.2.

### **Example – firms manufacturing a model portfolio service**

An authorised firm, Firm A, is a wealth manager which builds a model portfolio service (MPS) to be distributed by financial advisers to retail investors. A second authorised firm, Firm B, manages an authorised fund available to retail investors via various investment platforms.

Firm A chooses to include the authorised fund managed by Firm B in the MPS. Firm A does so independently of Firm B's input, and without any arrangement between the firms in relation to the design or operation of the MPS.

Firm A exercises substantive control over the key features of the MPS, including its target market, asset allocation and charging structure. As a result, Firm A is subject to the Duty as the principal manufacturer of the MPS.

Because Firm A has included Firm B's fund in the MPS without Firm B's input, Firm B does not meet the conditions to be seen as a secondary manufacturer of the MPS. As a result, Firm B does not have any activities relating specifically to the MPS. However, Firm B remains subject to product governance and assessment of value rules in its role as manufacturer of the authorised fund.

A third authorised firm, Firm C, manages a fund that is made available to Firm A and where Firm C acts as a contributing manufacturer. Unlike Firm B, it has a role providing input to Firm A on the overall structure of the MPS and how the fund is used within the portfolio.

While Firm C does not exercise substantive control over the MPS as a whole, its contribution to the design or operation of the MPS meets the conditions for it to be a secondary manufacturer. In that case, Firm C would be subject to relevant obligations, such as ensuring that its contribution doesn't create a material risk that the product causes foreseeable harm to retail customers.

### **Example – firms contributing to the manufacture of a retail structured product**

Firm A, a manufacturer of retail structured products, contracts with Firm B to develop a custom option to be used within the product. The option is tailored specifically to form part of Firm A's retail structured product.

Firm A has substantive control over the retail structured product, and the option is created to its specification. It is subject to the Duty as the principal manufacturer of the structured product.

Firm B doesn't have substantive control over the structured product, but in creating the option, it contributes to the design and operation of the product. Firm B is not considered a principal manufacturer of the structured product but instead is a secondary manufacturer.

It must, for example, avoid causing foreseeable harm to retail customers and provide fair value in the design of the option. We would expect it to ensure it works closely with Firm A, such as by providing accurate and timely information

as requested by Firm A. This information could, for instance, enable Firm A to understand the option's value and how it would behave under a range of potential market conditions. This would support Firm A in meeting its own responsibilities under the Duty.

### **Outsourcing arrangements**

- 6.18** Firms may outsource manufacture of a product or service to another firm. Where they do, they remain responsible and liable for the outcomes received by their retail customers. This includes how they manage the outsourcing arrangement and oversee the outsourced activities.
- 6.19** Where a firm outsources activities to an outsourced service provider that is also an authorised firm conducting activities subject to the Duty, both firms should assess their respective responsibilities under the Duty. In doing so, firms should focus on the substance of what they do, rather than the contractual structure of the outsourcing arrangement. Each firm is responsible for complying with Duty obligations in respect of their own role and activities in relation to the product or service.
- Where a firm outsources activities in relation to product manufacture, we would generally expect it to retain substantive control over the design or operation of the product or service. We would therefore expect it to be a principal manufacturer for the purposes of the Duty.
  - While authorised firms acting as an outsourced service provider might have a contributing role in the manufacture of a product or service, in general, we wouldn't expect them to exercise substantive control over the design or operation of a product or service. Therefore, we would expect them to be secondary manufacturers and subject to obligations under the Duty that are proportionate to their contribution.
- 6.20** However, in limited circumstances, an authorised firm acting as an outsourced service provider may exercise substantive control over the design or operation of the product or service.
- 6.21** This may arise where the outsourced service provider's role goes beyond providing support and instead involves shaping the key features of the product or how it is offered to retail customers. For example, this could include where the outsourced service provider:
- designs or determines core aspects of the product or service
  - has the ability to make or approve decisions about its operation, distribution, or value to retail customers, or
  - acts as the main provider of the product to retail customers.
- 6.22** Where this happens, we would also treat the outsourced service provider as a principal manufacturer for the purposes of the Duty.

**Other arrangements, including white labelling, under which retail products or services are created by one firm and used or developed further by another firm**

**6.23** Firms may develop a retail product or service for the purpose of other firms to later adapt or embed into their own offering to retail customers.

- **Initial development of the product or service:** Where a firm develops a retail product or service, it will be a principal manufacturer of that product or service and will remain subject to the relevant requirements under the Duty for that initial offering, even where that product or service is subsequently distributed, embedded or used by another firm. For example, it would need to design the product or service with a target market in mind, ensure the product or service is designed to meet their needs and objectives, and that fair value has been provided.
- **Subsequent use of the initial product or service by another firm:** Where a second firm adapts or combines the initial product or service into a new offering, the firms must consider if they are working together as manufacturers of the same offering, and, if so, if they are both principal manufacturers of the end product or service.
- **White labelling and other similar arrangements:** Where a firm distributes a product or service developed by another firm without materially changing how it is designed or operates, it will not meet our definition to be a manufacturer. It would instead be a distributor of the product or service.

**Example – firms working together to manufacture a retail investment platform service**

An authorised firm, Firm A, designs and develops a modular investment platform service intended for use in retail markets (Service 1). It is the principal manufacturer of the service as it exercises substantive control over the design of the service. It must comply with the applicable Duty requirements, including under the products and services outcome and the price and value outcome, with respect to Service 1.

However, Firm A doesn't make the service available directly to retail customers; it is developed for other firms to incorporate into their retail offerings. A retail bank, Firm B, enters into an agreement with Firm A for the provision of its own platform service, Service 2, which Firm B distributes to its own retail customers. Firm A develops Service 2 to meet Firm B's specifications but uses elements of Service 1 as the basis for it.

In this arrangement:

- Firm B exercises substantive control over Service 2. Firm B is therefore responsible for complying with applicable Duty requirements, including under the products and services outcome and the price and value outcome, with respect to Service 2.
- Firm A has a contributing role in relation to Service 2 but doesn't exercise substantive control over it. It is therefore a secondary manufacturer for it and must comply with the relevant rules.
- If, however, Firm A did have a role that allowed it to exercise substantive control over Service 2, it would also be classed as a principal manufacturer of that service.

***Manufacturers must approve existing products or services, any significant adaptation to a product or service, or any new product or service they introduce***

- 6.24** The rules apply to each product or service a firm markets or distributes. They apply to existing products or services, to new products or services a firm intends to launch, and to any significant changes a firm plans to make to products or services.
- 6.25** In some instances, it can be unclear whether a product should be classed as new or existing.
- When a customer tops up a unit-linked or with-profits insurance bond, they generally do not make the investment into the same policy. Instead, the money is invested in a separate policy. However, where this is a top-up to an existing bond, with the same terms and conditions, this should be seen as an existing product under the rules, rather than a new product.
  - Most mortgage lenders offer deals for a limited period only, replacing them from time to time with new deals with different interest rates. Other terms and conditions, including other elements of the charging structure (such as entry and exit fees), remain the same from deal to deal. In such cases, unless there are significant additional changes to the product terms and conditions, we would not expect the change to amount to a new product.
- 6.26** Whether a proposed change would be significant depends on the potential impact it could have on customers. Firms should consider features added or removed from the product or service, changes to the target market and any other changes to the terms and conditions. For example:
- Updating a general insurance product to clarify the cover might not amount to a significant change. However, if the change narrows the scope of cover, this is likely to amount to a significant change requiring re-assessment under the approval process.
  - A firm broadening its investment platform service to offer a wider choice of investments of a similar type to those already included, might not be making a significant change to the service. However, if it makes available a new type of investment product that is more complex and carries additional risks that the target market might not understand, this is likely to amount to a significant change.
  - A change to a product or service might, on its own, not amount to a significant alteration. However, if there are several small changes, either at one time or sequentially, together they may amount to a significant change.
- 6.27** Firms should regularly review the approval process to ensure that it is still valid and up to date considering their experience manufacturing and reviewing products and services. They should amend the approval process where necessary.
- 6.28** If a firm decides to withdraw a product or service, we expect it to consider the Duty and the impact withdrawal could have on customer outcomes.

***A manufacturer must identify a target market of customers for whom a product or service is designed***

- 6.29** Firms must identify a group or groups of customers sharing common features whose characteristics, needs and objectives the product is or will be designed to meet. These customers are the end-users of the product or service, not other firms in the distribution chain. They are the target market of the product or service.

- 6.30** The rules require firms to identify the target market at a sufficiently granular level, considering the characteristics, risk profile, complexity and nature of the product or service.
- 6.31** One way firms may wish to test whether the target market has been identified appropriately is to consider if it would include any groups of customers for whose needs, characteristics and objectives the product or service is generally not compatible. Firms may consider if there are any groups of customers who might suffer harm from the product and think if this helps to refine the target market. For example:
- An investment fund might start with a target market described in terms of investment objective and investment risk. However, the target market should be refined and clarified if the product is generally incompatible with the needs, characteristics and objectives of people who cannot commit to hold the investment for more than five years or who cannot afford to bear potential investment losses.
  - General insurance products might be designed to meet the needs, characteristics and objectives of customers looking to insure certain technological items. However, if these items are likely to be adequately covered by standard contents insurance, the target market should be refined to exclude people with existing cover.
  - The initial target market for a financial advice firm's services might be any customer with a potential pension and investment need. However, the inclusion of high fixed minimum fees in its adviser charging model means that the target market should be refined to exclude customers with very small investment amounts.
- 6.32** This consideration can be helpful in relation to many aspects of product and service design. For example, it may help determine an appropriate distribution strategy and relevant information to be provided to distributors and customers. It may also be relevant for ongoing reviews of the product or service, to check if the product or service is reaching customers for whose needs, characteristics and objectives the product or service is generally not compatible and causing harm.
- 6.33** For simple products or services intended for the mass market, identifying the target market may be a straightforward exercise. For example, the target market may be more widely defined for:
- term life assurance paying out a sum assured on a policyholder's death within a fixed term, for a fixed premium
  - a payment service allowing free transactions for customers
- 6.34** For more complex or niche products or services, firms should define target markets in more detail, taking account of any increased risk of consumer harm associated with these products or services and their potential mis-sale. For example, a structured product with capital at risk that offers high headline rates of return but with complicated features that make it difficult for investors to understand what returns are likely in practice may need a more defined target market and a particular distribution strategy, such as being sold only with advice.
- 6.35** For products or services serving multiple purposes and multiple groups of customers, the target market should cover all relevant groups of customers. Firms may wish to consider if there are any groups of customers who might suffer harm from the product or service, to consider whether this helps refine the target market.

**6.36** In determining the target market, firms should consider the overall product or service and what is expected of consumers' ability to understand relevant concepts. The more complicated a product or service structure and features, the more difficult it is likely to be to explain without risk of consumer misunderstanding. This may have an impact on the target market for the product or service. Material conditions or limitations for a product or service should be clear to the target market and, where appropriate, firms should test consumer understanding. Firms should also consider requirements under the customer understanding outcome, discussed further in Chapter 8.

***A manufacturer must consider the needs of customers with characteristics of vulnerability in its target market***

**6.37** Customers may move in or out of vulnerable circumstances at any stage. A firm's target market for a product or service is likely always to include some customers with characteristics of vulnerability, customers who will experience vulnerability over time, as well as groups with other diverse needs. However, the extent of consumer vulnerability and the range of needs present will vary between target markets. Our 2020 Financial Lives Survey found that 46% of UK adults, equivalent to 24 million people, showed one or more characteristics of vulnerability.

**6.38** Under the products and services outcome rules, firms are not expected to review the needs, characteristics and objectives of individual customers, to track potential vulnerability for each customer or to monitor the diverse needs of each customer. Instead, we expect firms to:

- design products or services to take account of the needs, characteristics and objectives of all groups within the target market
- consider whether a product or service has features that could risk harm for any group of customers, including those with characteristics of vulnerability

~~6.29 — We also expect firms to take active steps to encourage customers to share information about their needs or circumstances, where relevant. This will practically help firms to understand the needs of customers in the target market.~~

~~6.30 — We do not expect firms to explore customers' circumstances exhaustively or to identify every customer with characteristics of vulnerability. We do, however, expect firms to support their staff to identify signs of vulnerability, for instance through training and resources, and to set up systems and processes that enable customers to disclose their needs, if they choose. See our guidance for firms on the fair treatment of vulnerable customers for more information about different ways that firms can achieve this.~~

**6.39** We recognise that how firms act to support customers in vulnerable circumstances will depend on their role in the distribution chain, their activities and the risk of harm to consumers (see Chapter 3A for guidance on responsibilities across the distribution chain in relation to customer vulnerability).

**6.40** Firms should consider the needs, characteristics and objectives of customers with characteristics of vulnerability at all stages of the design process, including idea generation, development, testing, launch and review, to ensure products and services meet their needs.

**6.41** Firms may wish to consider taking an inclusive design approach to meet the needs of customers in their target market, including those with characteristics of vulnerability.

Inclusive design is a methodology that involves designing products and services to be accessible and meet the needs of as many customers as possible. All target markets are likely to include customers with characteristics of vulnerability, and inclusive design can be an effective way to consider and meet customers' diverse needs. Fair by Design and the Money Advice Trust have produced a practical guide for firms on inclusive design.

**6.42** Our guidance for firms on the fair treatment of vulnerable customers provides further detail on our expectations. Examples of actions firms can take in relation to identifying the needs of customers with characteristics of vulnerability in the target market include:

- holding focus groups with customers with characteristics of vulnerability or consumer representatives at the development stage to get a greater understanding of their needs and how products can meet them
- exploring resources provided from, and consulting with, specialist organisations offering information on how the needs of customers with characteristics of vulnerability can be met in the design stage
- consulting with customers or representative groups when seeking to alter or withdraw a product
- employing third-sector organisations who can review products from the viewpoint of customers with characteristics of vulnerability

**6.43** Firms should be aware that particular groups of customers may have, or be more likely to have, characteristics of vulnerability, for example older people. Data from our 2020 Financial Lives Survey also showed that minority ethnic adults were disproportionately likely to be in vulnerable circumstances. There is also evidence that people with certain protected characteristics, such as disabled and minority ethnic people, are more likely to be living in poverty, which can be an indicator of vulnerability when interacting with financial services. Where health is a driver of vulnerability it will likely have substantial overlap with the protected characteristic 'disability' under the Equality Act 2010.

**6.44** Where a product or service might meet the needs, characteristics and objectives of particular groups of customers, firms should not exclude them simply because they have characteristics of vulnerability. Doing so is likely to be inconsistent with our cross-cutting rules, in particular our requirement to act in good faith.

**6.45** Where products or services were developed after the Equality Act 2010, firms should also take account of its requirements in their work. Where distinct groups of customers within the target market sharing protected characteristics, as defined in the Equality Act 2010, experience different outcomes from other customers from a firm's products or services, we expect firms to investigate the causes of this.

**6.46** Firms should satisfy themselves that different outcomes for different groups of customers are compatible with the firm fully meeting the standards required by the Duty and, where relevant, the Equality Act or equivalent legislation, for all its customers.

**6.47** Over time, if evidence emerges that customers with a certain protected characteristic are disproportionately experiencing harm, or vulnerable to harm, we expect firms to consider this evidence, review their relevant conduct and assure themselves that they are compliant with our Duty requirements and obligations under the Equality Act 2010.

### **Example – poor practice**

Some life assurance products include terminal illness benefit. Under this, the policy will pay out if a customer is diagnosed with one of a list of medical conditions and has a life expectancy of less than, in general, 12 months.

In practice, however, some customers find the claims process difficult to navigate, particularly at a time when they should almost certainly be regarded as having characteristics of vulnerability.

Customers may feel discouraged from pursuing a claim through the pre-claims customer journey if claims agents assess the initial call inappropriately.

Claims may also be rejected without appropriate consideration; for example, where firms disagree with the customer's medical practitioner without strong evidence based on the clinical notes.

Firms designing, or reviewing, products with terminal illness benefit should consider their obligations under the products and services outcome. They should, for example, consider whether the criteria for a diagnosis to lead to a pay out under terminal illness benefit meet the needs, characteristics and objectives of the target market. Where a policy only covers a defined list of conditions, this could include making sure that coverage is sufficient to meet the needs of the target market.

Firms should also consider other aspects of the Duty, including whether:

- their approach meets the requirements to act in good faith and avoid causing foreseeable harm
- they comply with the requirements under the customer communication outcome when providing information on the limitations of the policy and its key features
- they comply with the requirements under the customer support outcome when dealing with customers who may have a valid claim

### ***A manufacturer must ensure its products or services, including existing products and services, are designed to meet the target market's needs, characteristics and objectives***

**6.48** The rules require firms to ensure each product or service is designed:

- to meet the identified needs, characteristics and objectives of customers in the identified target market
- so that it does not adversely affect groups of customers in the target market, including groups with characteristics of vulnerability
- to avoid causing foreseeable harm to customers in the target market

**6.49** As part of this assessment, firms must consider the impact on customers in vulnerable circumstances. Any target market is likely to contain customers with characteristics of vulnerability and customers who will experience vulnerability over time.

**6.50** To meet these requirements, we expect firms to base their work on real consumer needs, characteristics and objectives. They should not merely look to copy other products or services in the market.

- 6.51** Firms must consider if a product or service could adversely affect groups of customers in the target market, including groups of customers with characteristics of vulnerability. For example, they could consider if any aspects of a product or service could cause foreseeable harm to groups of customers in the target market, in particular those with the most prevalent and impactful characteristics of vulnerability.
- 6.52** Firms should also consider other regulatory or legislative requirements that apply to the design of products and services. Section 62 of the Consumer Rights Act 2015, for example, requires that terms in contracts with consumers are fair.

#### **Example – poor practice**

We have seen examples of some products that were designed, either intentionally or through insufficient consideration of consumer outcomes, with aspects that exploit behavioural biases. For example, we have seen complex investment products where the complexity disguises high risks, high costs, or poor prospects of the product delivering a return commensurate with the risks and costs.

Product design that disguises risks is unlikely to meet our rules for firms to design products and services to meet the needs, characteristics and objectives of the target market. It is also likely to be inconsistent with firm acting in good faith and enabling and supporting customers to pursue their financial objectives.

#### **Example – poor practice**

We have seen products and services that are designed with features that can deter customers from acting in their interests. For example:

- online services where it is not clear whether customers are purchasing products on an advised or non-advised basis
- unreasonable exit fees which discourage customers from leaving products or services that are no longer right for them, or accessing better deals
- practices or contract terms that discourage exit, for example requiring customers to go into a branch to close a product or cancel using registered post services

Practices such as these are likely to breach our product and services outcome rules. They are also likely to be inconsistent with the cross-cutting rules, particularly enabling and supporting customers to pursue their financial objectives, and avoiding causing foreseeable harm.

- 6.53** The rules require firms to undertake appropriate testing of their products or services. In doing so, they must assess whether the product or service will meet the identified needs, characteristics and objectives of the target market, including customers in the target market who have characteristics of vulnerability.

- 6.54** Firms should consider the appropriate level of testing.
- In all cases, they must test products and services in a qualitative manner. For example, they could consider likely changes to the target market's needs in the future and whether the product or service would continue to meet those needs.
  - Where relevant, depending on the type and nature of the product or service and the risk of harm, firms must also conduct quantitative testing. This could include, for example, testing how investments would perform in different market conditions.
- 6.55** As well as considering what has happened in the past, to guard against recurrence of previous problems, firms should consider what might happen in the future. Where relevant, we would not expect firms simply to consider what returns might be delivered based on past performance alone.
- 6.56** Firms should consider how the product or service is likely to function over its proposed term and, where different, the average time customers are expected to hold the product or service, so they can properly assess all potential risks to customers.
- 6.57** Manufacturers could also consider consumer testing. This could be particularly relevant where there are greater risks of consumer harm.
- 6.58** In a thematic review into the distribution of retail investments, TR14/10, we give examples of how testing can inform the design of the full customer journey.
- 6.59** Where a firm undertakes consumer testing, we would expect the range of consumers included to be appropriate and representative of the groups of customers likely to be impacted. Firms should consider if they should conduct testing for any groups of consumers who might have particular needs or experience different outcomes to other consumers in the target market. As part of this, firms should consider how to include the needs of customers with characteristics of vulnerability.
- 6.60** Any consumer research should be designed to solicit open feedback and this feedback should be fairly considered and acted upon.
- 6.61** Firms could also consider conducting consumer research on an ongoing basis to support product reviews.

#### **Example – poor practice**

In a Thematic Review, we identified weaknesses in the design and governance of some structured products. We found that some products were not designed with proper consideration of customer needs, characteristics and objectives, and were of limited value to the customers they were sold to. Causes of this included:

- inadequate testing of how products are likely to perform in all market conditions
- inadequate consideration of the value of products, in comparison to alternative uses of customers' money
- distribution strategies based on factors deemed to be attractive to customers, rather than seeking to meet identified needs, characteristics and objectives

We would expect firms to do more to match product design with the needs, characteristics and objectives of the target market. Firms should be able to determine and evidence this via testing as part of the product approval process.

Manufacturing or distributing products or services that are unlikely to meet the objectives of customers in the target market would not be consistent with acting in good faith, enabling and supporting customers to pursue their financial objectives or avoiding causing foreseeable harm.

***A manufacturer must develop a distribution strategy appropriate for the target market***

- 6.62** When developing a distribution strategy for their products and services, firms should consider what distribution channels are appropriate for the target market. For example, a firm manufacturing a particularly complicated product might consider only allowing the product to be sold with advice or by distributors with specific knowledge, expertise and competence to understand the features of the product.
- 6.63** Unless they have an oversight role, manufacturers are not responsible for the activities of distributors. For example, a vertically integrated firm with a single legal structure may be responsible for both manufacturing and distributing a product or service, while a firm with different legal entities under a group structure may split responsibility for different aspects of the Duty among those entities. See Chapter 3A for further discussion on firms' roles and responsibilities across the distribution chain.
- 6.64** Firms must make all appropriate information available to distributors to:
- understand the characteristics of the product or service
  - understand the identified target market
  - consider the needs, characteristics and objectives of any customers with characteristics of vulnerability
  - identify the intended distribution strategy
  - ensure the product or service will be distributed in accordance with the target market
- 6.65** Firms should comply with data protection and competition laws when sharing information. However, they must provide distributors with adequate information to enable them to comply with their own requirements under the products and services outcome.

**Example – good practice**

A product manufacturer designs a complicated investment product. Its target market is sophisticated investors seeking capital growth and who are willing and able to take significant investment risk. The manufacturer identifies that the product could cause significant harm if bought by customers outside of the target market who may not understand the risks or be able to afford the potential losses.

The manufacturer develops a distribution strategy in which the product can only be sold with advice. The manufacturer identifies a distributor with the appropriate skill and experience to advise on and sell the product. It provides all

relevant information about the product and its target market to the distributor. This enables the distributor to assess whether the product is suitable for particular customers and ensure it is only sold to customers in the target market. The manufacturer also monitors on an ongoing basis whether the product is distributed to customers in the target market.

This is also likely to be consistent with the cross-cutting rules, showing the firm is taking steps to act in good faith and avoid foreseeable harm.

### **Guidance for distributors**

**6.66** Firms are distributors if they offer, sell, recommend, advise on, arrange, deal, propose, or provide a product or service, including at renewal. Some of these terms – selling, arranging and dealing – use Handbook definitions to clarify their meaning. Elsewhere, the terms take their plain language meaning. The concepts are deliberately broad, and the terms may overlap, to capture all aspects of the distribution of a product or service.

**6.67** Distributors must have distribution arrangements for each product or service they distribute

**6.68** The distribution arrangements must:

- avoid causing and, where that is not practical, mitigate foreseeable harm to customers
- support management of conflicts of interest
- ensure the needs, characteristics and objectives of the target market are taken into account

**6.69** In relation to management of conflicts of interest, for example, firms should not make any arrangements, such as by way of remuneration or sales targets, that could provide an incentive to employees to recommend a particular product or service when an alternative would better meet a customer's needs.

### ***Distributors must understand the products or services they distribute***

**6.70** Distributors must get appropriate information from manufacturers so they have the necessary understanding of the products or services they distribute. The information must allow them to:

- understand the characteristics of the product or service
- understand the identified target market
- consider the needs, characteristics and objectives of any customers with characteristics of vulnerability
- identify the intended distribution strategy
- ensure the product or service will be distributed in accordance with the needs, characteristics and objectives of the target market

**6.71** Firms should not distribute a product or service if they do not understand it sufficiently.

***Firms distributing products or services that were not created by a firm subject to the rules for manufacturers should comply with the products and services outcome***

**6.72** A product or service may not have been approved in accordance with the obligations under the products and services outcome if it was developed by a firm outside the UK. In this case, distributors must comply with the obligations on distributors under the rules for this outcome. They must for example, take all reasonable steps to understand the product or service and the target market it would serve in order to ensure it will be distributed appropriately.

***A distributor should identify or create a distribution strategy***

**6.73** The rules require distributor firms to identify the intended distribution strategy for the product or service and ensure it will be distributed in accordance with the target market for products and services.

**6.74** When a distributor sets up or implements a specific distribution strategy to supplement the manufacturer's strategy for a product or service, it must be consistent with the manufacturer's intended distribution strategy and the identified target market.

**Example – poor practice**

A firm distributed a packaged bank account that included a range of additional features, such as travel insurance. When distributing the product, the firm did not have sufficient controls to prevent the product being marketed to customers who would be unlikely to use the additional features. As well as being likely to be an inappropriate distribution strategy, this could mean the firm is not acting to avoid foreseeable harm.

**Data and monitoring**

**6.75** Chapter 11 sets out our overall expectations for firms to monitor the outcomes their customers are experiencing. In this section we highlight elements of monitoring that are specifically relevant to the products and services outcome.

**6.76** Manufacturers must regularly review whether their:

- products and services meet the identified needs, characteristics and objectives of the target market, including any identified for customers with characteristics of vulnerability
- distribution strategy remains appropriate for the target market
- products or services have been distributed to customers in the target market

**6.77** Distributors must regularly review whether:

- their distribution arrangements are appropriate and up to date
- products and services have been distributed to customers in the target market

**6.78** When deciding how regularly to review a product or service, firms should consider factors such as:

- the nature and complexity of the product or service
- the nature of the customer base, including whether there are significant numbers of customers with vulnerable characteristics
- any indicators of customer harm

***Sharing*** ***Obtaining and sharing information***

**6.79** Under the Duty, some requirements mean that firms need to obtain information from other firms to meet their obligations. For example, a manufacturer might need to collect information from distributors to carry out product reviews under the products and services outcome and the price and value outcome. See Chapter 3A for guidance on how firms can obtain information from other firms to meet our expectations under the Duty.

**6.80** We expect the detail and scope of information requests to be proportionate to meet the firm's regulatory obligations. Manufacturers could ask distributors questions such as:

- Are there any issues identified by the distributor in relation to the target market assessment?
- Are there any issues identified by the distributor in their review of distribution arrangements for a product or service that are relevant to its manufacture?
- Have any issues relevant to the manufacturer, such as in relation to product design, been identified by, or for, customers with characteristics of vulnerability? What are they at a high level (not identifying individual customers)?
- Have any sales outside the target market been identified in the distributor review? In what way are they outside the target market? What harm is foreseeable? What is the cause of this and who does this best sit with to address?

**6.81** If a manufacturer judges that a product should generally be held for at least five years but lacks oversight of the full distribution chain or end customers, it could ask what proportion of customers hold the product for less than one year, or between one and five years. This could help it to understand if the product is working as expected and identify potential consumer harm to investigate further. To support manufacturers' reviews, distributors must, upon request, provide relevant information, including, where appropriate, sales information, information on cancellations, and information on the regular reviews of their distribution arrangements.

**6.82** The requirement to provide information to support manufacturer reviews applies to all distributor firms in the distribution chain. We expect all firms in a distribution chain to co-operate where they are asked to do so. For example, if they do not have relevant information to provide to the manufacturer, intermediate firms might need to pass on information or provide details of firms later in the chain to allow flow of information.

**6.83** In general, we do not expect distributor firms to share information without being asked. As the information is to support a manufacturer review of a product or service, we expect the manufacturer firm to consider what information would be helpful and to take reasonable steps to gather it. For example, a manufacturer firm could consider focus groups including a few distributor firms, or sending surveys to distributors. These steps could help ensure the information requests are manageable and focused on the issues the manufacturer firm wishes to cover.

**6.84** As an exception to the general approach, where appropriate, distributors must inform other relevant parties in the distribution chain if they take remedial action following a review of distribution arrangements. There is also a requirement for firms to notify relevant parties in the distribution chain if they identify consumer harm. If distributors identify information that should be shared with the manufacturer, they should provide it promptly. For example, this could include situations where a distributor identifies foreseeable harm or problems with the way a product or service is operating in practice.

~~6.74 Firms should comply with data protection and competition laws when sharing information.~~

**6.85** We would not generally expect distributor firms to share information about individual customers, including where this conflicts with data protection laws. They should consider providing anonymised or aggregate information instead: where necessary. For example, information could relate to the proportion of customers with characteristics of vulnerability, rather than identifying individual customers with additional needs. Or a firm could provide any feedback they have received, on an anonymous basis, of the ~~reason~~ reasons customers cancel a product early.

**6.86** Where manufacturers ask for information, distributors should consider what they can do to help. Distributor firms should consider if the information they provide is adequate to help the manufacturer in its reviews of a product or service.

### ***Monitoring distribution of products and services not designed by firms subject to this outcome***

**6.87** Firms distributing products or services manufactured by firms to which the products and services outcome does not apply should take extra care when reviewing their distribution arrangements. They should consider whether the product or service remains appropriate for the needs, characteristics and objectives of the target market.

### ***The types of data/ monitoring firms could consider***

**6.88** In order to monitor this outcome, firms could consider data such as:

- sales information and information on business persistency
- customer feedback
- complaints received about the product or service, and the results of root-cause analysis of those complaints
- analysis of whether the product or service functions as expected at outset, including whether customers use product or service features as expected
- where appropriate, consumer research, such as focus groups or new testing

### ***Actions to address issues identified in the review***

**6.89** If firms identify issues in their review, they must take appropriate action to mitigate the situation and prevent further harm from occurring. Where appropriate, they must inform other firms in the distribution chain about their actions.

**6.90** In terms of action they could take, firms could consider, for example, making changes to a product or service, providing additional information to distributors or customers, amending the distribution strategy before making further sales, offering existing customers the option to leave the product or service without additional cost, or providing appropriate mitigation of any harm suffered.

### Example – good practice

A consumer credit firm designed a lending product with late payment fees. The target market included customers who are likely to be less financially resilient. In its review of the product, the firm identified that a sizeable proportion of its customers were not making payments on time and were paying substantial sums in late payment fees. The firm investigated why this was the case and took action to mitigate the situation and prevent further harm. The firm reconsidered its approach to assessing creditworthiness and made its payment terms more flexible, to help make payments more manageable.

The firm also applied forbearance by waiving its missed payment fees for existing customers, and by providing additional support and communications to help affected customers.

As well as meeting rules under the products and services outcome, this also shows the firm acting in good faith and acting to avoid foreseeable harm.

As the target market included customers with characteristics of vulnerability, the firm paid particular attention to mitigating the risks to which they would likely be exposed.

### Example – poor practice

A pure protection product manufacturer has a distribution strategy of non-advised tele-sales by third parties. Over time, the firm found that 40% of its contracts sold in this way were cancelled within the first year. This could indicate that product was being sold widely outside the target market and that the customers affected are suffering harm.

The firm considered that only the distributor firms are responsible for product sales and took no further action to investigate what drove the high cancellation rates.

While the firm is not responsible for the activities of its distributors, it is required to take all reasonable steps to ensure that products are distributed to the identified target market and to review whether the distribution strategy remains appropriate. Where foreseeable harm is identified, firms must take appropriate action to mitigate that harm.

The manufacturer could investigate the causes behind the high cancellation rates and consider whether it needs to amend the target market, provide additional training to some of its distributors, or amend the information it provides for prospective customers. If such actions do not address the issue, and many customers continue to suffer foreseeable harm, the firm should consider additional actions. This could include changing the distribution strategy or ceasing to work with certain distributors if they are not selling the product in accordance with the intended distribution strategy. Addressing low persistency rates could also be beneficial to the firm.

### Example – poor practice

Some e-money products aimed at specific groups of customers have been purchased by customers outside the target market. This may not necessarily lead to consumer harm, but firms should consider the implications. For example, they may need to make changes to the target market or distribution strategy.

In some cases, we have seen firms engaged in cross-selling, where the promoted products are appropriate for the original target market but may not necessarily be so for all of the wider group of actual customers. This could create a risk that customers purchase products which do not meet their needs.

### Key questions for firms

- 6.91** In the table below, we set out examples of the type of questions firms can expect to be asked in their interactions with the FCA in relation to this outcome. We would also expect ~~the Duty champion and the Chair to use~~ this type of question to guide discussions by the firm's board or equivalent governing body.

### Key questions for firms

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

### What this does not mean

- 6.92** The products and services outcome rules do not require firms to:
- Exclude particular groups, such as customers who might have characteristics of vulnerability and whose needs or objectives a product might meet. We expect firms

to design products or services to take account of the needs of all groups within the target market.

- Ensure that products or services are suitable for individual customers within the target market, except where this is relevant in the context. For example, firms need to consider suitability for individual customers when providing advice or discretionary services, or assess affordability when arranging a loan. ~~Applicable rules regarding these activities continue to apply separately to the rules under this outcome, which are general in nature.~~
- Mitigate harm that was not foreseeable. However, firms need to keep their products, services and distribution strategies under regular review: they should take appropriate actions if a risk of consumer harm becomes foreseeable.

## Interaction with existing rules

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- 6.93** The Product Intervention and Product Governance sourcebook (PROD) sets similar requirements on the design, approval, marketing and management of certain products and services throughout their lifecycle. But PROD does not have general application across all retail markets that we regulate.
- 6.94** ~~Where~~ a firm's product or service is subject to the rules in PROD for financial instruments and structured deposits (PROD 3), insurance (PROD 4) or funeral plans (PROD 7), it must continue to comply with those rules ~~and~~. To the extent that those rules apply, the rules in PRIN 2A.3 do not apply to the firm ~~for~~ in relation to that product or service.
- 6.95** In some cases, a product or service would have been within scope of PROD but for certain application provisions. For example, some products were introduced before the relevant rules in PROD came into force. In addition, certain types of firm follow PROD 3 as guidance rather than rules. The rules in PROD are broadly equivalent to those under the products and services outcome. So, in these cases, firms may choose whether to comply with 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 Duty.
- 6.96** The following are examples of material that a firm could use to show that it has followed the provisions of PROD:
- details of the firm's product approval process
  - where more than one firm is involved in manufacturing a product or service, a copy of the written agreement
  - records of the target market assessment
  - records of the firm's product or service testing, including a record of scenario analysis
  - records of information provided to distributors
  - records of any reviews of the product or service, including in relation to action taken to address any identified issues
  - records of the firm's oversight and control arrangements
  - copies of any compliance reports that comply with PROD
- 6.97** Evidence of compliance with PROD, whether through the material listed above or otherwise, will demonstrate that the firm is not in contravention of the products and services outcome.

**6.98** The Duty as a whole is broader than the existing rules in PROD, so satisfying the PROD rules is unlikely to mean a firm meets all aspects of the Duty. For example, firms would still need to consider elements of the Duty such as the customer support outcome for their product or service, and to pay appropriate regard to the nature and scale of characteristics of vulnerability that exist in the target market.

## Summary

**6.99** Below we give examples of actions that are likely to be consistent or inconsistent with the products and services outcome.

Actions likely to be inconsistent with the Duty	Actions likely to be consistent with the Duty
A target market is defined so broadly that it captures groups of customers for whose needs, characteristics and objectives the product or service is generally incompatible.	The target market is defined at a sufficiently granular level to help avoid sales to customers for whose needs, characteristics and objectives the product or service is generally incompatible.
Products or services are marketed or distributed without considering whether they are designed to meet the needs, characteristics and objectives of customers in the target market.	A manufacturer considers if a product or service meets the needs, characteristics and objectives of customers in the target market and, where it does not, takes appropriate action to mitigate the situation and prevent any further harm.
A manufacturer does not test a new product or service before launch and, as a result, does not identify that the product does not meet the needs, characteristics and objectives of the target market.	A manufacturer tests its product or service before launch to assess how it is likely to function in different conditions and whether it could lead to foreseeable harm. Where it identifies potential issues, the firm adjusts the product or service to avoid them or mitigate their impact.
A distribution strategy is not appropriate and the product or service is distributed to groups of customers for whose needs, characteristics and objectives the product or service is incompatible.	A product or service has an appropriate distribution strategy and is sold to customers in the target market for whose needs, characteristics and objectives the product or service was designed.
A firm does not review its products or services or distribution arrangements and does not identify a potential issue when it becomes foreseeable. The firm misses the chance to prevent the harm before it can materialise, and customers suffer harm.	A firm identifies a potential issue during its regular review of a product or service or distribution arrangement and takes appropriate steps.

<b>Actions likely to be inconsistent with the Duty</b>	<b>Actions likely to be consistent with the Duty</b>
Firms do not consider the fairness of their product or service contract terms, resulting in unfair terms that are not enforceable.	Firms draft and regularly review their product or service contract terms to ensure compliance with the fairness requirements of the Consumer Rights Act 2015.

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## 7 The price and value outcome

### Overview

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- 7.1** Retail customers experience harm where they don't get value for their money. A lack of fair value is unlikely to be consistent with customers realising their financial objectives and firms cannot act in good faith if they are knowingly manufacturing or distributing poor value products or services.
- 7.2** Fair value is about more than just price. The Duty aims to tackle factors that can result in products or services which are unfair or poor value, such as unsuitable features that can lead to foreseeable harm or frustrate the customer's use of the product or service, or poor communications and consumer support.
- 7.3** The specific focus of the price and value outcome rules is on ensuring the price the customer pays for a product or service is reasonable compared to the overall benefits (the nature, quality and benefits the customer will experience considering all these factors). Value needs to be considered in the round and low prices do not always mean fair value. We expect firms to think about price when assessing fair value but not at the expense of other factors.
- 7.4** Our intention is not to set prices and our rules do not have this effect. It also does not mean that firms are expected only to offer products and services at a low price. Products or services that cost more for customers may well provide value if that reflects their quality and benefits.
- 7.5** A product or service that doesn't meet any of the needs of the customer it is sold to, causes foreseeable harm or frustrates their objectives is unlikely to offer fair value whatever the price. A product or service that has negligible or no obvious benefit for consumers is unlikely to provide fair value whatever the price.
- 7.6** High pricing might also indicate that some other element (eg transparency, simplicity of terms, ease of exit) isn't functioning properly and/or that there is an absence of effective competition in a market.
- 7.7** A product or service that meets all of the other elements of the Duty (for example, if 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 are properly supported) is therefore more likely to offer fair value. This is both because of the benefits customers receive 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 should they prefer. Under the rules, firms should be ensuring these conditions are met.
- 7.8** Even in cases where other elements of the Duty are met, the price and value outcome rules still prompt firms to ask questions such as:
- Are there elements of the pricing structure that could lead to foreseeable harm?

- Are there fees or charges or rates which appear unjustifiably or unreasonably high compared to the benefits of the product and other comparable products (either in the firm's product portfolio or comparable products supplied by other firms)?
- Should/have any changes in the benefits of the product been reflected in the price?
- Should/have any material changes to assumptions that underpinned pricing (for example on costs of servicing) been reflected in changes to the price?

## Assessing value

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- 7.9** In order to assess if a product or service provides value, firms must consider at least the following:
- the nature of the product or service, including the benefits that will be provided or may reasonably be expected and their qualities
  - any limitations that are part of the product or service (eg limitations on scope of cover for insurance products), and
  - the expected total price customers will pay, including all applicable fees and charges over the lifetime of the relationship between customers and firms
- 7.10** When firms perform value assessments, in addition to the above, they may consider a range of factors in demonstrating that the price paid is reasonable compared to the benefits. These are also factors that we may consider when we look at the firms' value assessments. They include the following points.
- The costs firms incur to manufacture and/or distribute the product or service, including the cost of funding (eg for loans). Difference in costs may for example explain why otherwise similar products are priced differently, and/or explain changes in the price charged over time.
  - The market rates and charges for comparable products or services and whether the product is a significant outlier compared to these. Where a product or service is a significant outlier, it might prompt the firm to check that other elements of the design of, and support for a product or service are functioning properly, and/or to confirm they are still confident the price is reasonable compared to the benefits received.
  - Whether there are any products in the firm's portfolio which are priced significantly lower for a similar or better level of benefit.
  - Any accrued costs and/or benefits for existing or closed products.
- 7.11** This is a different assessment to the one carried out in the context of competition law on excessive pricing as abuse of a dominant position, though some of the factors may overlap with factors referenced in competition law.
- 7.12** Depending on the nature of the product or service, firms could conduct customer research, testing or use internal data to assess whether a product or service provides fair value. They should not rely solely on individual consumers to consider whether the price provides fair value in relation to the benefits.
- 7.13** Firms have the discretion to decide on the factors they use in their value assessments, provided those factors allow them to demonstrate that there remains a reasonable relationship between the total price of the product or service and the benefits the customer receives.

- 7.14** If a product or service does not provide or ceases to provide fair value to customers, firms must take appropriate action to mitigate and prevent harm, for example, by amending it to improve its value or withdrawing it from sale. Chapter 3 provides more detail on the assessment of fair value for existing and closed products and services.
- 7.15** Firms must assess value at the design stage and before offering products or services to consumers. They must ensure that the prices represent fair value for a foreseeable period. The foreseeable period will depend on the nature of the product or service and, where a product or service renews, includes following renewal.
- 7.16** Firms must also monitor and assess the value of their products and services throughout their life, conducting regular reviews of their value assessment. Where a firm identifies that a product or service does not provide fair value, it must take appropriate action to address the issue. This will allow consumers to be confident that the product or service will continue to provide fair value.
- 7.17** Where products and/or services are sold together as part of a package, firms must ensure that each component product or service, and the overall package, provides fair value. We expect firms to be able to show us that they have made an assessment and can demonstrate why they consider that the relationship between the price and benefits is reasonable.
- 7.18** As with the entire Duty, the price and value outcome rules apply based on what is reasonable. The nature of the value assessment and the data and insight firms use to inform that assessment will vary depending on the type of product or service, and the size and complexity of the firm.
- 7.19** When carrying out value assessments, firms may group similar products together where the customer base, complexity and risk of consumer harm are sufficiently similar. Firms should not group products or services if it could impair their ability to assess each product or service adequately.
- 7.20** Firms providing a product or service that has no financial cost should still consider if their customers are incurring non-financial costs, and whether those costs are reasonable in relation to the benefits of the product. Where a 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.
- 7.21** We do not expect firms to base assessments of value on external factors largely out of their control. For example, an investment trust might be trading at a premium to its net asset value due to broader market conditions. This, by itself, would not represent poor value for money. Instead, we expect firms to consider the value of the charges they control, including any ongoing charges, within the context of the net asset value.
- 7.22** As set out in Chapter 6, firms must consider whether they meet the definition to be a manufacturer under the Duty and, if so, if they would be a principal or secondary manufacturer. Manufacturer firms must comply with relevant rules in relation to fair value.
- Principal manufacturers must comply with the rules under the price and value outcome.
  - For secondary manufacturers, rather than complying with the price and value outcome rules, those requirements are replaced by the specific obligations for secondary manufacturers. These focus on the need to consider the substance and

impact of their contribution to the overall price and value of the product or service. Where a principal manufacturer requests it, secondary manufacturers must share information relating to their contribution to the product's price or value

## What this means for firms

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### Benefits received by consumers

- 7.23** Principal manufacturer firms must assess the benefits consumers can reasonably expect from a product or service when designing products and services to meet the needs, characteristics and objectives of the target market.
- 7.24** Different products and services will offer different benefits, which will have an impact on the assessment of value. For instance, some consumers may rate quality in terms of the additional benefit they get from a product. Consequently, they might be willing to pay more for a product that provides this compared to other products with fewer benefits. An example would be premium current accounts where consumers receive greater support, cash-back or add-on insurance products for a monthly fee. This may be considered fair value for the target market where there is a reasonable relationship between the benefits received and the price paid.
- 7.25** Characteristics such as the quality of the product or service, level of consumer service, potential pay-out or return, how well it meets consumers' needs, or other features that consumers find valuable, all determine the benefit against which the price of the product should be assessed. For example:
- a simpler product with fewer features might offer fewer benefits than one with greater coverage
  - a firm offering enhanced customer support, such as a greater level of ongoing support to customers or higher quality customer interactions, will provide more benefit to customers
  - greater availability and convenience of consumer access will also be a benefit to customers

#### Example

Enhanced home insurance that covers additional risks or provides enhanced customer service often costs more than a standard policy and this is likely to be reflected in the price.

Retail consumers do not all need to claim under the additional coverage, or make use of the additional customer services, for the product to provide fair value. However, firms must ensure that there is a reasonable relationship between the price charged and benefits and that there is a reasonable probability of a consumer in the target market claiming when the policy was designed and sold.

Firms may also wish to consider the data required under the general insurance value measures reporting rules in SUP 16.27. This provides useful high-level indicators of customer experience of a product. The data can help to indicate whether the product provides fair value.

## The price charged to consumers

**7.26** When considering the price charged, manufacturer firms must consider all the costs and charges a consumer may pay for the product or service over time. For example, firms must consider the following points.

- The charges consumers pay at the start and end of a contract. Where different distribution arrangements result in different prices for consumers, manufacturers must consider these as well. They must ensure, where reasonable, that their distribution arrangements do not cause the product to become unfair value.
- All fees and charges which consumers may incur over the life of the product or service. These may include contingent charges, like fees as a result of late payments/arrears. For example, for consumer credit products, like personal loans or credit cards, firms must consider all interest, fees and charges a consumer may incur, including late payment/arrears charges. This is especially important if the target market includes consumers with poor credit rating.
- Where products and/or services are intended to be sold together as part of a package, firms need to consider the value of each component and the overall value of the package.

### Example

Our Strategic Review of Retail Banking Business Models found that many ~~small and medium enterprises~~ (SMEs) may be paying high charges on Business Current Accounts (BCAs) due to the perceived difficulty of switching bank accounts and the complexity of charging structures on these accounts. Our report found that this is a complex market, where prices can be opaque, and some SMEs might not be benefiting from competition.

Under the Duty, we would expect firms to consider the fair value of their BCAs for SMEs. They will also need to ensure that prices are transparent and clearly sign-posted so that consumers are able to understand what they are paying and compare it to alternatives. This is an essential condition for consumers receiving fair value. Retail banks may also consider cognitive and behavioural biases of their customer base when carrying out value assessments, ~~by~~ for example, recognising that consumers in their market may have low engagement when using their products or services.

### Example

A firm provides ~~buy now pay later~~ Buy Now Pay Later products at 0% interest over 18 months. Its core revenue comes from the commission it receives from the retailer on the value of the goods sold. However, it also charges default fees, and these can build up to a considerable level. Its target market includes consumers who are on low incomes or who have poor credit ratings. A high number of consumers default and the firm receives considerable revenue from default fees.

Under the Duty, we would expect firms to consider whether elements of the pricing structure could cause foreseeable harm and be able to demonstrate that the overall costs that consumers are likely to pay, including potential default fees,

are reasonable relative to the benefits. We note that consumers might not give sufficient consideration to the risks and consequences of default when being offered such products, and this can increase the risk of them receiving unfair value.

**7.27** In some cases, the price a firm charges may be high because it reflects the underlying costs to the firm. This may be the case, for example, where customers represent a higher credit or insurance underwriting risk. In such cases, the price charged to these customers may be higher than for other customers representing a lower risk. However, firms must still be able to demonstrate that the benefits were reasonable relative to the price.

**7.28** When designing charges and charging structures, firms also need to consider how their target market is likely to use the product or service. As discussed below, in the section on different outcomes for different groups, firms must also consider the likely price different groups will pay through the expected term of the product relative to the benefits they receive.

### Example

Under our Duty, firms imposing a very high charge for customers with high credit risk must be able to satisfy themselves that the price paid is reasonable compared to the benefits the customer receives. Firms have flexibility to decide which metrics to use to satisfy themselves that their products provide fair value.

They will also need to consider other relevant elements of the Duty. For example, they should consider whether customers are likely to be more at risk of accepting such terms due to characteristics of vulnerability or their lack of other credit options, and whether the high cost of repayment of the loan might increase the risk of customers getting into payment difficulties. The firm could consider the credit risk of their customer base and market rates for comparable products as relevant factors, but firms should consider whether high prices to mitigate losses from high rates of default enables lending which exposes consumers to a high risk of harm.

### Example

Our supervisory work has highlighted practices by some mortgage firms that have the potential to lead to significant harm to borrowers in financial difficulty. This happens if the ongoing payments a borrower makes are less than the accruing interest, causing the outstanding balance to escalate. The effect can be exacerbated where firms add unpaid fees or charges to the balance which also accrue interest. Where the customer fails to get back on track for a significant period, they may ultimately lose their home if they are unable to pay the amount owed at the end of the mortgage.

These issues are more apparent where interest rates are higher, for example in parts of the second charge market, and where fees and charges are accounted for separately. We have seen examples where a firm will accept token payments from a borrower to forgo action but where the long-term appropriateness of this

for a customer's individual circumstances is not considered and the implications of making payments at the level agreed are not adequately explained.

Under the Duty, a firm will need to act in a way that avoids the foreseeable harm caused by an escalating balance, and equip consumers to make effective, timely and properly informed decisions. Firms will also need to ensure the loan represents fair value for consumers. This means considering whether their pricing practices result in poor value for any cohort of customers in their target market, including any that may be at a higher risk of further charges or likely to be subject to forbearance. As well as considering the fairness of interest rates charged, firms will need to be able to demonstrate that the total price paid for the product, including any fees and charges that they (or others) may apply, represents fair value.

**7.29** Firms also need to consider whether consumers will incur other costs which may not be financial. Non-financial costs may include:

- the time and effort it takes to access, assess and act to buy, amend, switch or cancel a product
- firms' use of consumer data where consumers knowingly or unknowingly 'pay' with their data, privacy or attention

**7.30** Firms should not impose unreasonable non-financial costs. For example, unclear or misleading information could make it hard for a customer to assess their options. If a firm imposes unreasonable barriers to assessing or accessing the benefits of a product or service, it may be that many customers do not act to realise their financial objectives. In effect, this increases costs relative to the benefits of a product or service.

**7.31** The Duty does not allow firms to put unreasonable exit charges on their products. Such charges are unlikely to be fair value, may cause foreseeable harm and are unlikely to support customers in fulfilling their financial objectives. Firms should be able to demonstrate that exit charges are fair and are reflective of their underlying costs for terminating a contract.

### Example

We have seen evidence of customer data being monetised to derive income and benefit for firms. Some firms routinely engaged with third party providers by buying and selling customer data. We found that firms were unable to articulate how the customer was receiving fair value in the provision and use of their personal data.

Firms should make explicit consideration of consumers' data if this is being monetised. While we do not necessarily expect non-tangible costs and benefits to be monetised, we do require firms to make at least a qualitative consideration of how this affects the overall value proposition for the consumer.

### Example

Money remitters should consider the fairness of their charges and fees to all consumers of their money remittance services. Examples of points to consider in assessing whether the service provides fair value include: the extent to which the services meet consumers' reasonable expectations, any limitations on the money remittance service, and vulnerability characteristics amongst some consumers in the target market.

## Guidance for distributors

- 7.32** Distributors must ensure their own charges for distributing the product or service represent fair value. All firms in the distribution chain are responsible for the value of the prices that they control and are not required to re-do or challenge other firms' value assessments.
- 7.33** Distributors must obtain relevant information from manufacturers to understand the value a product or service is intended to provide and to enable them to understand whether their distribution arrangements (including any remuneration it or another person in the distribution chain receives) would result in the product or service ceasing to provide fair value to retail customers.
- 7.34** This means that the distributor will need to consider the cumulative impact of the remuneration added by each person in the chain on the overall value of the product to the customer. This is important as fees charged by different firms along the distribution chain might together result in a higher overall fee that does not represent fair value for consumers. This is likely to be particularly relevant where there are long or complex distribution chains with multiple fees added by multiple parties. This risk may be less likely in markets with less complex and flatter distribution chains, such as in the mortgages sector, where there are unlikely to be multiple charges added across the value chain.

### Example

- **Mortgage lender:** The firm must be able to demonstrate that their product and any associated charges provide fair value for the target market. This includes making consideration of the overall charges that the customer might pay, including any that might be levied as a result of the firm's distribution strategy. Firms should factor such average intermediary fees in their value assessments and must also ensure that distributors have the necessary information to carry out their own assessment of value.
- **Mortgage broker:** The firm must obtain information from the manufacturer such as 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 firm must also ensure that its own fees and charges are fair value and that payment of these does not result in the product or service ceasing to be fair value overall.

### Example

Where different firms are involved in the distribution chain for an investment product, they all have responsibility to consider fair value as part of avoiding foreseeable harm and helping support customers in pursuing their financial objectives.

- **The fund manager:** The firm must assess whether their charges levied are justified in the context of the overall value of the product.
- **The platform provider:** The firm must set fair value charges for using the platform. In some cases, the platform provider will be the final firm in the distribution chain. As such, the platform provider will need to consider the overall impact of the remuneration added by each person in the chain on the value of the product to the consumer.
- **The financial adviser:** The firm must consider if its advice charges provide fair value. In addition, it must consider the relationship between the overall cost to the customer (including all product and distribution charges in the distribution chain) and the expected benefits from the product.

**7.35** Where the distributor is a financial adviser, they must ensure that they recommend a proposition that is fair value for the customer.

**7.36** Where a principal manufacturer sets the final price that the retail customer receives, including distribution charges (ie, through commissions) then they are responsible for ensuring that the product provides fair value. The distributor does not need to carry out a value assessment – though they must confirm that the manufacturer has carried out a value assessment and review the information shared by the manufacturer to understand the benefits for the target market before they distribute.

**7.37** We note that a product or service may not have been approved in accordance with the obligations under the price and value outcome if it was developed by a firm outside the UK. In this case, distributors must comply with the obligations on distributors under the rules for this outcome. They must take all reasonable steps to understand the benefits of the product or service to the target market, any limitations of the product and whether their or any other charges added along the line cause the product to become unfair value.

### Example

We published [Guidance to firms in the general insurance sector on our expectations for firms to manage the distribution chain](#). We conducted a multi-firm review to assess how firms responded to the guidance. One firm assessed its remuneration arrangements and decided that some were too flexible when allowing intermediaries to set their commission. This created the potential for poor value and consumer harm. The firm made changes to its remuneration arrangements as a result. This is a good example of a firm acting in good faith and seeking to avoid foreseeable harm.

## Different outcomes for different groups

- 7.38** We have conducted work looking at [fair pricing in financial services](#). In line with this, we consider that firms charging different prices to different groups of consumers are not necessarily in breach of the Duty. The fair pricing work sets out a framework of factors we consider when assessing whether price discrimination is fair. Firms may also like to consider this when reviewing their approach to charging different prices to different groups of customers.
- 7.39** The price and value outcome rules do not require firms to charge all customers the same amount. Differential pricing between new and existing customers in the form of clear, transparent up-front discounts for either set of customers is not prohibited by the Duty. However, where firms charge different prices to separate groups of consumers, they must consider whether the price charged for the product/service provides fair value for customers in each pricing group, while having regard to whether any customers who have characteristics of vulnerability may be disadvantaged.
- 7.40** As we found in our market study of [general insurance pricing practices](#), price walking some groups of consumers can lead to them making significant overpayments which do not provide fair value. This would not meet the requirements of the Duty.

### Example

Most mortgages have an initial incentivised rate (either fixed or variable) that reverts to a variable rate after a period of time. The standard variable rate (SVR) is the most common reversion rate. When considering whether a mortgage offers fair value, firms should consider the overall price of a mortgage including any initial discounted rate, fees and charges and the reversion rate applicable at the end of a fixed rate period. This does not require firms to move away from designing products that revert to a variable rate (such as an SVR), and fair value can still be delivered by an approach in which introductory rates are lower than the rates that borrowers later pay.

- 7.41** Firms can also differentiate products or services; for example, insurance firms can still have bronze, silver and gold cover products with different levels of benefits offered to the consumers. But firms will need to consider whether it is reasonable to have different types of product or service, especially if the benefits offered to the consumers do not vary significantly between them. Similarly, the Duty does not prevent firms selling similar products, but under different brands and with different pricing structures, as long as each provides fair value.
- 7.42** When firms have different products serving similar target markets, they should consider if customers with one product are more likely to incur fees and charges, or appear to be receiving outcomes that are not as good, as customers in equivalent products.

### Example

Servicing fees can be charged as a percentage of the value of a product. For example, there might be a percentage charge in relation to the size of a loan,

investment or savings. In this case, some consumers may pay substantially larger fees than others, even though the costs of providing the service and the benefits consumers receive may be similar. In such circumstances, firms must consider whether the relationship of the price consumers in different groups pay is reasonable relative to the benefits they receive.

Similarly, sometimes firms may charge fixed fees on their products. For example, multiple fixed fees on customers with small amount of funds invested might result in overall poor value. In such circumstances, firms must consider whether their charges provide fair value for their target market.

**7.43** Firms should also consider how different groups of consumers are affected as some groups may be more at risk of harm. Consumers with characteristics of vulnerability, for example, may be more susceptible to receiving poor value. Firms need to take extra care when dealing with consumers with characteristics of vulnerability, as set out in the rules for the Duty and also in our [Guidance on the fair treatment of vulnerable customers](#). Firms should be able to evidence to us that the price of the product or service represents fair value for different consumer groups, including those with characteristics of vulnerability.

**7.44** Firms should be particularly careful where groups that share protected characteristics (as defined in the Equality Act 2010) may be disadvantaged. Firms should satisfy themselves, and be able to evidence to us, that any differential outcomes represent fair value, and are compatible with their obligations under the Equality Act.

### Example

In some situations, a firm may choose to revise its strategy for pricing across different customer groups. For example, a firm might move away from flat pricing to credit-risk based pricing for its products. In such scenarios, we would expect firms to communicate these changes to their customers in a clear and upfront manner, and also ensure that the new pricing strategy reflects fair value for different cohorts in their customer base.

## Data and monitoring

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**7.45** Chapter 11 sets out our overall expectations that firms monitor and review the outcomes that their customers are experiencing. In this section, we highlight elements of monitoring that are specifically relevant to price and value.

**7.46** As well as assessing value at the design stage, firms must review value throughout the product's or service's life.

**7.47** They must consider how regularly to perform ongoing value assessments based on relevant factors. These factors may include the nature and complexity of the product or service, any indicators of customer harm, the distribution strategy and any relevant external factors.

**7.48** Firms must get all necessary information to enable them to understand and monitor consumer outcomes. Firms should consider their record keeping obligations in the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) and in line with these, should consider what records they should maintain of their value assessments. We expect that firms are able to clearly demonstrate how any product or service provides fair value.

**7.49** In carrying out the value assessments, firms should collect and analyse appropriate management information (MI). They should collect MI to monitor that the fair value assessments remain valid over a foreseeable period. Firms should also record factors considered in their value assessments and should be able to provide evidence if we request it.

**7.50** Firms must take appropriate action where their review identifies that a product or service does not provide fair value. This may include amending the benefits or price of a product or service so that it provides fair value, withdrawing the product, or where consumers have suffered harm, providing redress.

### **The types of data/ monitoring firms could use**

**7.51** Firms could use the following types of data to monitor that they are meeting expectations under this outcome:

- the expected price paid by customers, including associated fees and charges and those incurred further down the distribution chain
- profitability data, including revenue and profit margins
- customer complaints and root cause analyses
- surveys, net promoter scores, social media rating analysis, focus groups, mystery shopping or other customer research
- data about customer usage and behaviour, such as transactional data, retention rates or relevant A/B testing of variation in product or service design
- operational data which might affect value such as on app or website outages or service call abandonment rates
- feedback from other firms in the distribution chain including, manufacturers, intermediaries, appointed representatives or other third parties regarding the value of the product
- the cost of providing the product or service, including credit risk
- market conditions, such as the interest rate environment or rates for comparable products

### **Key questions for firms**

**7.52** In the table below, we set out examples of the type of questions firms can expect to be asked in their interactions with the FCA in relation to this outcome. We would also expect the Duty board champion and the Chair to use this type of question to guide discussions by the firm's board or equivalent governing body.

#### **Key questions for firms**

- Is the firm satisfied that it is considering all the relevant factors and available data as part of its fair value assessments? Has it gathered relevant information from other firms in the distribution chain?

- What insight has the firm gained for its value assessments by benchmarking the price and value of its products and services against similar ones in the market? Have the price and value of its older products kept up with market developments?
- Can the firm demonstrate that its products and services are fair value for different groups of consumers, including those in vulnerable circumstances or with protected characteristics?
- If the firm is charging different prices to separate groups of consumers for the same product or service, is the firm satisfied that the pricing is fair for each group?
- What action has the firm taken as a result of its fair value assessments, and how is it ensuring this action is effective in improving consumer outcomes?
- What data, MI and other intelligence is the firm using to monitor the fair value of its products and services on an ongoing basis? How regularly is it reviewing this material, and what action is it taking as a result?

## What this does not mean

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**7.53** The price and value outcome rules do not:

- Operate as a price cap. Firms continue to have flexibility in the way that they set prices. We are not seeking to cap the prices or margins of products and services.
- Prevent firms with an innovative product or service that provides additional benefits to customers charging more for it. It is not our intention for the price and value outcome – or any aspect of the Duty – to hinder innovation.
- Prevent firms from adopting any business models which may have different prices for different groups of consumers, or prevent cross subsidies between different products or services. However, firms should be able to justify the fair value of each product or service offered to each customer group, considering both consumers with characteristics of vulnerability and consumers with protected characteristics under the Equality Act 2010.
- Require firms to point consumers to a potentially better or cheaper product or service offered by another firm (unless there are Handbook requirements to do so, for example to signpost debt advice). However, firms may want to consider the market rates and charges for comparable products or services in their fair value assessments.

## Interaction with existing rules

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**7.54** There are rules on 'fair value', and 'value assessments' elsewhere in the Handbook. These rules are specific to the sectors but have similar objectives to this outcome. Where existing rules require manufacturer and distributor firms to assess whether the price of their products and services provides fair value and to review this regularly, they will comply with the price and value outcome. However, the Duty as a whole is broader

than these requirements, so firms still need to consider if they meet all other aspects 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. The price and value outcome rules do not apply in relation to non-investment insurance. Instead, firms must meet the requirements in PROD 4. The price and value outcome rules are also disapplied for authorised fund managers in relation to products, subject to relevant provisions in COLL 6.6, COLL 8.5 or COLL 15.7.
- 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.

**7.55** Firms that are subject to the rules in PROD for financial instruments and structured deposits (PROD 3) are also required to meet our rules and expectations under the price and value outcome. While PROD 3 requires firms to consider whether costs and charges are compatible with the needs, objectives and characteristics of the target market and whether the charges undermine expected return, the price and value outcome requires a broader and more holistic assessment of fair value. This includes assessing whether there is a reasonable relationship between the total price paid by retail customers and the overall benefits they receive, taking into account financial and non-financial factors, any product limitations, and the impact of characteristics of vulnerability. Firms may use the product governance and review processes required under PROD 3 rules to inform their assessment of fair value under the price and value outcome. In doing so, firms are reminded of their cross-cutting obligation to avoid foreseeable harm and should apply the Duty's outcome-focused lens.

**7.56** Firms complying with the value for money rules in pensions in the Conduct of Business Sourcebook (ie COBS 19) are still required to meet our expectations under the price and value outcome. However, they must use assessments carried out by their Independent Governance Committees (IGCs) or Governance Advisory Arrangement (GAAs) to inform their assessment of whether their products provide fair value. If a firm disagrees with the assessment carried out by an IGC/GAA, they are required to explain why they disagree with the assessment and must set out how their product provides value for money using the framework provided in COBS 19. Firms that do not sufficiently explain why they disagree with the IGC/GAA's assessment or do not take remedial action are at risk of breaching the Duty.

**7.57** Firms subject to price caps, such as the caps for high-cost short-term credit and for claims management activities on financial services claims, are still expected to consider if their charges represent fair value. The price caps represent the maximum that can be charged and consumers can still receive poor value when charged within our set price caps.

## Summary

**7.58** Below we give examples of actions that are likely to be consistent or inconsistent with the Duty.

Actions likely to be inconsistent with the Duty	Actions likely to be consistent with the Duty
A firm has pricing practices which give no consideration to whether the product or service offers reasonable benefits to customers in relation to the total price paid by them.	A firm carries out a value assessment and documents how the prices of products or services provide fair value to customers in the target market.
A firm alters products or services after launch without consideration of the impact this could have on customers, so a product or service that started out as fair value may no longer continue to meet the requirements.	A firm considers if changes to the products or services benefits have any significant impact on fair value to customers in the target market and either withdraw or amend products or services if they are poor value.
A firm does not regularly review whether its products or services provide fair value and so does not identify a potential issue when it becomes reasonably foreseeable. The firm misses the chance to mitigate the harm before it can materialise, and customers suffer harm.	A firm proactively assesses fair value and identifies a potential issue during its regular review of a product or service and takes appropriate steps. Customers suffer no harm in practice.
A firm has many different products with different charges/fees/prices but with similar levels of benefits to consumers. Some of the charges are high in relation to the benefits provided, and some products do not offer fair value.	A firm considers the reasonableness of its product range and whether each product provides fair value to the customers in the target market.
A firm has significantly lower prices for new customers than existing customers. The firm does not consider the impact on different groups of customers and longstanding customers receive poor value.	A firm has different charges for different groups of customers. Customers in all groups receive fair value with a reasonable relationship between the benefits they are likely to receive and the price they pay.
A firm has a product that is priced based on risk, it provides fair value to some groups of customers, but one group pays costs that are disproportionate to the benefits they receive.	A firm has a product that is priced based on risk, all groups of customers receive fair value and the price they pay is reasonable relative to the benefits they receive

## 8 The consumer understanding outcome

### Overview

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- 8.1** Consumers can only be expected to take responsibility where firms' communications enable them to understand their products and services, their features and risks, and the implications of any decisions they must make.
- 8.2** We want firms to support their customers by helping them make informed decisions about financial products and services.
- 8.3** We want customers to be given the information they need, at the right time, and presented in a way they can understand. This is an integral part of firms creating an environment in which customers can pursue their financial objectives.
- 8.4** Our consumer understanding outcome rules retain the obligation under Principle 7 for firms to communicate information in a way which is clear, fair and not misleading. But they also build on, and go further than, Principle 7 by requiring firms to:
- support their customers' understanding by ensuring that their communications meet the information needs of customers, are likely to be understood by customers intended to receive the communication, and equip them to make decisions that are effective, timely and properly informed
  - tailor communications taking into account the characteristics of the customers intended to receive the communication – including any characteristics of vulnerability, the complexity of products, the communication channel used, and the role of the firm
  - when interacting directly with a customer on a one-to-one basis, where appropriate, tailor communications to meet the information needs of the customer, and ask them if they understand the information and have any further questions
  - test, monitor and adapt communications to support understanding and good outcomes for customers
- 8.5** These rules apply:
- to all firms involved in the production, approval or distribution of consumer communications, regardless of whether the firm has a direct relationship with a customer, and includes where a firm produces or approves financial promotions or other advertisements, sales-related communications and post-sale communications
  - at every stage of the product or service lifecycle, from marketing, to sale, and post-sale service
  - to all communications, whether verbal, visual or in writing, from a firm to a customer, including a potential customer, regardless of the channel used or intended to be used for the communication

- 8.6** We expect firms that approve financial promotions on behalf of others to meet the expectations of this outcome where they are relevant to their role. This means that these firms must act reasonably in the circumstances to ensure the communications they approve equip customers to make effective, timely and properly informed decisions. In January 2022, we published a consultation paper on strengthening our financial promotion rules, which includes a section explaining the relationship between these rules and the Duty.
- 8.7** This outcome, along with the entire Duty, applies based on what is reasonable, depending on the nature of the product, the characteristics of the customers, and the role of the firm. Clearly there will be differences in the capabilities of a firm depending on its size and complexity. One question all 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. For example:
- communications advising customers on how to switch or complain should be at least as clear as those used to sell the product, with both being clear and understandable under this outcome
  - where firms conduct consumer testing of communications to determine an effective approach to maximise sales, they should use testing capabilities of equivalent standard to test other aspects of consumer understanding to ensure good customer outcomes

## What this means for firms

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- 8.8** This section explains how we expect firms to meet the expectations we have set out above.

### Equipping customers to make effective decisions

- 8.9** Firms should 'put themselves in their customers' shoes' when considering whether their communications equip customers with the right information, at the right time, to understand the product or service in question and make effective decisions. An effective decision will usually be one that maximises the likelihood of a customer achieving a good outcome.
- 8.10** Firms should act in good faith and avoid designing or delivering communications in a way that exploits consumers' information asymmetries and behavioural biases. We have seen consumer harm arise where communications encourage customers to make decisions without full possession of relevant information, for example on costs and exclusions in relation to a particular product or service. For instance, our investment platforms costs and charges review identified poor practices in relation to charging information, including:
- a lack of a succinct comprehensive list of charges being clearly signposted
  - information being spread out across different webpages
  - too many links to different sections and pages
  - omission of a clear statement of the interest applying to any cash held or the information being 'hidden away' in legalistically worded terms and conditions

### **Example – poor practice**

In the past we have seen communications from banks that encouraged customers to focus on the daily cost of an overdraft (which appeared small) rather than the significant cumulative cost of borrowing.

This is unlikely to be acting in good faith towards customers or giving them the right information to make properly informed decisions.

### **Example – poor practice**

Ahead of regulating the sector, we saw examples of misleading product information in the funeral plan sector. Our review of product information given to customers suggested that it was often too heavily focused on the benefits that plans provide, and did not give a balanced picture of plan limitations, costs (eg of the increased cost of paying by instalment) or risks (eg that plans may not provide the funeral service).

We expect firms to act in good faith and produce communications that provide a fair summary of the risks and benefits that their products and services provide, to enable customers to make effective decisions and advance their financial objectives.

### **Example – poor practice**

We have also seen examples of online sales journeys where information is presented in a way that exploits consumers' behavioural biases and encourages customers to take out, or make payment for products, using credit. For example, by defaulting into taking out credit over other options, giving much greater prominence to a credit option, or making other options harder to find or access.

Firms must act in good faith and ensure that the options available to consumers are presented in a clear and fair way, and they must go further by ensuring that their choice architecture isn't designed to influence consumers to select a particular option that benefits the firm but may not deliver a good outcome for the consumer.

### **Example – poor practice**

An e-money firm launches a new payment account product.

It notes within its terms and conditions that protections under the Financial Services Compensation Scheme (FSCS) do not apply to this product. However, it fails to draw this important information to customers' attention or explain the implications of this in a way that customers in the target market for the product are likely to understand.

This makes it difficult for customers to make effective and properly informed decisions about whether to purchase the product.

- 8.11** Communications should be understandable by the intended recipients and enable them to evaluate their options by assessing the benefits, risks and costs associated with those options, and how those options relate to their needs and financial objectives.
- 8.12** Firms should consider how the way in which information is presented, including any navigation required, can help to improve or inhibit understanding. Firms should ensure that key information is clear, visible and accessible – not hidden within a large volume of material, or hard to find on a website.
- 8.13** We expect firms to adopt good practices that generally enhance the clarity of communications. This will support consumers in making effective decisions by selecting products that help them pursue their financial objectives. For example, communications can be more effective when they meet the following points.
- **Layering:** This is where key information is provided upfront with cross-references or links to further detail and can be particularly effective online. The key information is likely to include any action required by the customer and any consequences of inaction. If the customer needs to make a choice about a product or service, the key information is likely to include the key features, benefits, risks and costs of that product or service. This is important as [research by the Financial Capability Lab](#) has highlighted that consumers often rely more heavily on the first piece of information they encounter when making decisions. Our research carried out as part of the [Asset Management Market Study](#) found that consumers are less likely to read information that is hidden or requires them to seek it out.
  - When layering, firms should ensure the information they provide is coherent. So, for example, if a firm is providing a package of information to a customer and highlights key product features in a cover letter, those features should be described in a way that is consistent with other documents. If this is not the case, the overall package of information will not be coherent – and this will undermine customers' understanding. Firms should also layer information in a way that is effective. For example, providing some, but not all, information upfront on costs or spreading this information across several documents is unlikely to support consumer understanding. A better approach could be to put all relevant information about a particular issue in one place or layer it in a way so that it is all inter-linked.
  - **Engaging:** Communications should be designed in a way that encourages consumers to engage with them. This is particularly important where the communication is prompting the consumer to act. The key information should be easy to identify. For example, by means of headings and layout, bullet points, display and font attributes of text. Design devices such as tables, graphs, diagrams, graphics, audio-visuals and interactive media can also improve the effectiveness of communications by making them more engaging. For example, [research by the Behavioural Insights Team](#) found that using a question-and-answer format to present key contractual terms improved consumer understanding by 36%. And summarising key terms and illustrating them with explanatory icons – to reduce the amount of information given in one go – increased consumer understanding by 34%.
  - **Relevant:** Firms should consider the appropriate level of detail for each communication. They should take into account what customers need to know, the kind of decision to be made by their recipients where applicable, and where

confusion could arise. For example, information on a simple, low-risk product intended for mass market consumers, such as a personal current account without an overdraft, is likely to involve a different style of communication than would be appropriate for a complex investment or pension product. Firms should avoid unnecessary disclaimers. Key information can be overlooked if detail is provided that is unnecessary for a particular communication, and information overload can deter consumers from engaging with communications. Shorter, concise communications are more likely to be read and understood. Lengthy and technical communications can confuse or overwhelm readers. Firms should help consumers to navigate the information they provide, explaining relevant context and any jargon or technical terms in a simple way. Recent work, such as by Plain Numbers, has demonstrated how seemingly small changes to communications can substantially increase comprehension among consumers. We expect firms to ensure they bring the most important information to the attention of consumers in an accessible way.

- **Simple:** Effective communications will present information in a logical manner. Where possible, jargon or technical terms should be avoided. Where the use of jargon or technical terms is unavoidable, firms should explain the meaning of key terms in plain and intelligible language that consumers are likely to understand. This will also help to build consumers' trust. Absolute costs and standardised terms can help to keep communications simple and aid consumer understanding, helping them to compare different options available to them. Our previous work on Smarter Consumer Communications identified that consumers need simple and clear information and explanations. Examples from our own research show that simplifying text in letters encouraging consumers to claim redress can increase consumer response rates and risk warnings that clearly describe the risks can help consumers better understand the risks associated with high risk investments.
- **Well timed:** Firms should communicate with customers in a timely manner and at appropriate touch points throughout the product lifecycle, such as at contractual breakpoints, giving them an appropriate opportunity to take in the information and, where relevant, assess their options. This will help to put customers in a position where they can make effective decisions on an informed basis.

### Other disclosure requirements

- 8.14** 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 therefore continue to comply with these requirements.
- 8.15** 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.
- 8.16** 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, signposting more detailed information that consumers may want to consider or may be helpful for reference at a later date.
- 8.17** Some disclosure requirements provide a framework or template for firms to present key information about their products and services, but there can be 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.

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

**8.19** 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. Therefore, in some instances, firms may have less flexibility over what they communicate to consumers.~~ set out what, when and how firms should communicate information to consumers. In these cases, firms will have less flexibility over the content of the disclosure document. Where firms do have discretion in how information is designed or presented, they should consider how the standards of the Duty apply to those activities.

**8.20** Where a firm's role is limited to the manufacture of a retail product or service and it complies with applicable disclosure requirements (such as the CCI regime), this will generally represent the primary means by which it supports the consumer understanding outcome.

#### **Example – poor practice**

A firm provides a product sales pack to a customer, including cover letter, summary sheet, and full terms and conditions.

The cover letter explains the cost of the product during an introductory offer period; the summary sheet explains the cost of the product at the end of the offer period; and the full terms and conditions explain the costs of cancelling the product. This information is not clearly signposted.

The customer therefore needs to read and digest all three documents to find and understand the total costs associated with the product. This makes it difficult for the customer to identify and understand key information needed to make an effective decision.

Firms should help consumers navigate the information they provide. For example, by putting all information on a particular issue in one place or signpost or layer it in a way so it is all interlinked.

#### **Example – poor practice**

An insurance product has been updated over the course of several years, but the documents for this product have not been reviewed as a whole to make sure they continue to explain the product's features in a way that supports consumer understanding.

The policy summary sets out upfront what is covered by the insurance and some specific exclusions to this cover. However, some newer, but equally important, exclusions are covered elsewhere in the full policy conditions.

This makes it difficult for customers to assess the scope of the insurance and understand when they will, and will not, be covered.

### **Example – poor practice**

There are other mandatory disclosures which require firms to produce a summary of their products, including the main features and risks.

Firms have discretion to decide which features and risks to highlight and how to explain them.

A firm produces this summary without considering the Duty, including the requirements under the consumer understanding outcome.

The summary is complex and full of jargon and technical terms. This makes it difficult for consumers to understand the product and therefore assess whether it meets their needs.

### **Example – good practice**

In response to the Covid-19 pandemic, we issued guidance setting out our expectations that credit firms should offer consumers payment deferrals if they experience financial difficulties as a result of coronavirus (Covid-19).

Where payment deferrals were granted, firms were still required to send notices of sums in arrears under the Consumer Credit Act 1974 which included signposting to free debt advice and support. This might have had the potential to confuse some consumers.

We explained that, where statutory notices were required to be sent, firms should provide suitable explanations or context within these statutory notices if they considered that they might otherwise lead to confusion.

This contextual information helps consumers understand even in cases where complex or technical information needed to be communicated.

### **Example – good practice**

The summary box for savings accounts in our Banking Conduct of Business (BCOBS) rules requires firms to state the rates of interest that apply and provide 'an explanation of the circumstances in which each of the different rates applies.'

A firm has a savings product where various rates of interest apply in different circumstances.

The firm identifies through its testing activity that consumers in the target market for the product struggle to understand the various rates of interest and the different circumstances in which each rate would apply.

The firm therefore simplifies its product, reducing the number of interest rates and conditions applicable to each rate. This enables consumers to more easily understand the product and make effective decisions.

### **Ensuring information is provided on a timely basis**

- 8.21** Product and service features can change over time, for example, introductory rates come to an end or variations are made to contracts. Customers' circumstances can also change over time. Both factors can result in products and services that no longer meet their needs and objectives.
- 8.22** Firms should be mindful of this and communicate at appropriate points, including any relevant changes, to prompt customers to consider if products and services continue to meet their needs and objectives. For example, they could send out prompts before the end of an introductory offer period – as is already the case under our rules in the mortgage market. But even where there are existing rules in place, firms should consider if there is more they can do to deliver good outcomes by enabling customers to make effective decisions and pursue their financial objectives. For example, sending retail banking customers clear communications explaining the impact of branch closures and alternative services currently available to them or that the firm will put in place.
- 8.23** This is particularly important for longer-term contracts where there is greater scope for circumstances to change. For example, if a firm's monitoring activity identifies that customers are frequently asking the same questions or there are issues commonly causing confusion, it may be appropriate to proactively communicate more broadly with its customers to clarify the issues.
- 8.24** In some cases, this may mean that firms need to communicate more often than they currently do. Conversely, firms should also consider the effect of communicating too frequently, and possibly diminishing the impact of important communications on which action is required. Firms should use the findings from their testing and monitoring of communications to inform their approach.
- 8.25** A firm should provide relevant information at an appropriate stage in the customer journey, giving the customer the opportunity to review the communication before deciding whether to act. This will help enable customers to make effective decisions and pursue their financial objectives.
- 8.26** For example, the customer journey may be short, with little time between a customer selecting a product and completing the application to purchasing it. Firms should provide the customer with the appropriate information on the product (eg costs and default terms) early in the customer journey, in salient and easy to read ways (eg not emphasising the benefits of a product while hiding the costs in fine print), so the customer has sufficient time to take account of this in their decision making.

### Example – good practice

In January 2019, we published the first tranche of our rules and guidance following our Retirement Outcomes Review rules and guidance following our Retirement Outcomes Review.

This introduced additional trigger points for firms to send pension 'wake-up' packs. At age 50, customers are sent a summary document that includes key information such as pot size and generic risk warnings. This is followed by a full 'wake-up' pack at age 55 and every subsequent five years, which sets out the different options available when accessing pension savings.

These changes are intended to give customers timely, relevant and adequate information about their retirement options to enable them to make an informed decision.

This type of approach is consistent with the aims of this outcome. By providing relevant information at appropriate points during the product lifecycle, it gives customers the opportunity to assess their options in good time – enabling them to make effective decisions and pursue their financial objectives.

## The communication channel used

- 8.27** Communications should be effective regardless of the channel of communication used – whether face-to-face in branch, on the telephone or online, for example. Digital communications should be compatible with different mediums, for example computers, tablets or smartphones.
- 8.28** Firms should also ensure they meet our expectations regarding the provision of different channels of communication, as set out under the consumer support outcome. A firm must ensure that, regardless of the channel used for communication, the information provided enables customers to assess whether the options available to them meet their needs and objectives and evaluate any relevant risks.
- 8.29** For example, respondents to our Smarter Communications Paper suggested that consumers are less likely to read lengthy disclosure documents when applying for a product on a smartphone. So, if a firm is marketing to customers via mobile devices, it should consider the volume of material that customers are likely to meaningfully engage with through this channel. A firm might also consider requiring customers to interact with the firm via another channel before making a decision such as buying a product or service, where the other channel is likely to facilitate a fuller consideration of important information.
- 8.30** Each communication should be considered individually and must comply with the relevant rules. This may be difficult when information is being communicated using certain media with space limits. As explained above, firms should consider using a layered approach, prioritising certain information and supplying additional information later or through other means. If this approach is followed, firms must still comply with the relevant rules and must ensure all relevant information is provided in an appropriate way before a customer makes a decision.

### Example – good practice

A bank identifies where its customers do not have sufficient funds in their accounts to make regular direct debit payments.

The bank sends its customers a short, effective communication through its mobile app or via text message – clearly identifying that it is from the bank – to make customers aware, allowing them time to deposit the funds needed to make payments and avoid additional charges.

This firm acted in good faith in this scenario and used its communication channels effectively to tailor messages that helped customers avoid foreseeable harm.

## Tailoring communications

- 8.31** When designing a product or service, firms are required to define a target market. When communicating about the product, firms should consider the characteristics of the consumers within its target market and tailor communications to meet their information needs. For example, the target market for a complicated investment product may have different information needs than the target market for a simple, mass market product.
- 8.32** When firms are developing communications that are not linked to a particular product or service, they should take into account what they know, or could reasonably be expected to know, about the sophistication, financial capabilities and vulnerability of the intended recipients of the communications and tailor them to meet their information needs as appropriate.
- 8.33** Firms should take particular care when communicating with consumers in vulnerable circumstances, taking account of their needs. They should follow our [Guidance for firms on the fair treatment of vulnerable customers](#).
- 8.34** Firms may wish to consider taking an inclusive design approach to their communications. Inclusive design is a methodology that involves understanding the range of customer needs and designing products and services to be accessible and benefit as many customers as possible. Fair by Design and the Money Advice Trust have produced a [practical guide for firms on inclusive design](#).
- 8.35** 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. Our Financial Lives Survey also found 17.7 million adults (34%) have poor or low levels of numeracy involving financial concepts. So, if a firm is developing communications in relation to a simple mass-market product, for example, 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 in relation to a complex product with a more sophisticated target market, it may be reasonable to do so in a different way.
- 8.36** This is consistent with [guidance by the Government Digital Service](#) which instructs individuals to write on GOV.UK web pages for a nine-year-old reading age. Firms may wish to consider external support and guidance available on how this can be achieved, such as [Fairer Finance's](#) work on [readability](#). We acknowledge it can sometimes be challenging to simplify communications about financial products and services in this

way, but we expect firms to acknowledge the characteristics of their customers and take reasonable steps to support their understanding.

- 8.37** Firms also have a legal duty under the Equality Act 2010 to anticipate the needs of disabled customers and provide reasonable adjustments to enable them to use the service. This can include providing information in an accessible format. For example, it may be reasonable to provide information in braille, audio or another format rather than by letter, for a customer with a visual impairment.
- 8.38** We do not expect firms to tailor all communications to meet the individual needs of each customer or to ensure that each customer understands all of their communications. However, in scenarios where a customer requests specific information or it becomes apparent to the firm that the customer requires specific information or further explanation, for example during dealings with the customer on a one-to-one basis, we expect firms to respond to this and act reasonably in the circumstances to deliver good outcomes by providing this information in a way the customer is likely to understand.
- 8.39** In markets where the provision of advice is a regulated activity, the information provided should not amount to advice unless the firm has an advisory role. Instead, their communications should aim to equip customers with relevant information to make effective decisions in a way that does not amount to the provision of regulated advice.

#### **Example – poor practice**

Firms should design communications with customers in mind rather than focussing solely on what is most commercially efficient.

We have seen cases where firms have sent a single and extremely long communication to all customers, covering a range of issues, with customers left to work out which bits of the communication are relevant to them.

Firms should consider if they can better segment or target communications to make them more relevant to the intended recipients, rather than adopting a 'one size fits all' approach.

This does not mean that firms must tailor all mass communications to meet the needs of each individual customer. But, where appropriate, they should consider the information needs of different groups of customers and communicate relevant information in a way that supports understanding. This will help customers to make effective decisions and pursue their financial objectives.

#### **Example – poor practice**

One customer was unable to read large print and did not know braille. They informed their bank of this and asked to receive communications by email, to allow them to use software to turn the emails into speech.

However, the bank continued to send the customer communications on paper, and not by email.

This firm did not tailor its communications taking into account the known characteristics of the recipient, which it became aware of when interacting directly with the customer on a one-to-one basis.

The firm did not act reasonably to avoid causing consumer harm or enable them to pursue their financial objectives.

### **Example – good practice**

A firm is developing a communication to send to customers in arrears.

It identifies that the recipients of this communication may be in financial difficulty and therefore at increased risk of harm if the communication is overlooked or misunderstood.

The firm ensures the communication takes this into account by including a prominent message in plain English inviting customers to get in contact with the firm if they need help to understand the communication or would like to discuss their options or the support available.

### **Example – good practice**

A firm is developing a communication about a simple product designed for the mass retail market.

It drafts the content, where possible, to support the understanding of customers with low literacy or low numeracy skills involving financial concepts.

It signposts a clear way for customers with a hearing or visual impairment to request communications in a format that meets their needs.

## **Testing communications to support understanding**

- 8.40** Firms may consider their communications to be understandable, but that may only reflect the views of those involved in the design and sign-off of their communications – often legal, compliance and other financial services professionals.
- 8.41** Effective communications are those which can be understood by the customers they are targeted at, not just those involved in their development. Therefore, firms should test communications where appropriate. This testing should check communications can be understood by customers, so they can make effective decisions and act in their interests.

**8.42** Firms will have different capabilities depending on their size, resources, and activities. So, their approach to testing will vary. As set out above one test firms can apply is that, where they 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.

**8.43** The rules under this outcome require firms to test communications where appropriate. When considering if testing is required, firms should take into account factors such as:

- the purpose of the communication and, in particular, if it includes key information designed to prompt or inform a decision, and the relative importance of that decision
- 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 customers)
- the information needs and vulnerabilities of the intended recipients, including whether the recipients are likely to include significant numbers of individuals with low financial capability who may be less likely to understand the communication, and
- the scope for harm if the information being conveyed were misunderstood or overlooked by customers
- whether it is more important to communicate information urgently to support good outcomes, rather than carrying out testing before the communication is sent to customers

**8.44** Testing should usually be carried out in advance of communicating the information to customers. For example, when firms are developing sales literature or telephony scripts in relation to a new product. However, we recognise that there may be scenarios where firms need to respond to incidents at pace and therefore balance considerations in relation to testing – and the associated elapsed time – with the need to intervene urgently to protect customers from harm. It also may not be possible to test certain communications, such as ad-hoc conversations during customer service calls.

**8.45** Where firms judge it is appropriate to carry out testing of communications, customers' level of understanding could be tested directly by conducting randomised controlled trials or A/B tests; or can be better understood through research approaches such as customer surveys and focus group sessions. As explained above, firms' approach to testing will reflect their capabilities and resources, and Box 1 below gives an illustration of the trade-offs between strength of evidence and resources required for some of the methods available, but we expect all firms to be able to demonstrate they have an approach that delivers good outcomes. This should enable firms to avoid causing foreseeable harm to customers and help customers to be confident they understand products and services and are able to choose those that meet their needs.

**8.46** Firms should develop an approach to testing that provides assurance that customers 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

- 8.47** 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.
- 8.48** 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. An approach which extracts or signposts key information during testing only for it to be buried within a large package of information in practice will not be effective or meet our expectations.
- 8.49** Whether firms need to test mandatory disclosures will depend on the role the mandatory disclosure plays in the firm's overall approach to ensuring customers understand key information or risks, including whether the firm is providing additional layered material.
- 8.50** As part of testing, firms should consider which questions or outcomes will elicit accurate measures of understanding in an objective way. For example, if the goal of a communication is to convey the cost of a product, an objective follow-up comprehension question would be 'what was the cost of the product?' If the goal was to explain certain product choice options, an objective question would be 'please explain the options available to you' or to ask them to choose the product that would be most suited to them and to explain why.
- 8.51** Firms should aim to carry out testing with a group of customers that is representative of the intended recipients of the communication. For example, they should consider the diversity of their customer base or target market, including different characteristics and potential characteristics of vulnerability. Firms should be mindful that testing will be less useful if a firm does not use a group that is representative of the intended recipients.
- 8.52** It will be more appropriate for firms to test communications where they are responsible for the production of the communication or for adapting it after testing. This might be the product manufacturer if it provides communications for distributors to use, or the distributor if it develops its own communications in relation to a manufacturer's product.
- 8.53** Where a manufacturer is responsible for producing and adapting communications but does not have a direct relationship with customers, its testing activity might consist of randomised controls trials or other approaches, such as focus groups with a representative sample of customers.
- 8.54** Where a distributor uses communications produced by a manufacturer and therefore does not carry out testing activity, it should provide relevant feedback to the manufacturer. For example, this could include cases where its interactions with end customers suggest that certain elements of the communications are causing confusion. This will enable the manufacturer to adapt the communications to improve consumer understanding.
- 8.55** We appreciate that not all customers will engage with, or fully understand, all aspects of communications about financial products and services, or always make decisions in their interests. The aim is therefore for firms to take steps to satisfy themselves,

through the appropriate use of testing and evidence, that their communications are likely to be understood by their intended recipients.

- 8.56** By testing significant communications with customers, firms are also able to learn from the findings and adapt communications to improve customer comprehension and support good outcomes. Firms should embed processes of continuous improvement based on robust evidence of customer understanding. The learnings from testing carried out on a communication could usefully inform the approach to take for other similar communications, but firms should be mindful of differences in the content of communications, products and intended recipients, and therefore should not overly rely on this approach.
  
- 8.57** Firms may wish to train consumer communications champions in the principles of good customer communications. These consumer champions can independently review communications from a consumer angle, and help firms develop and maintain best practice.
  
- 8.58** Firms' testing activity may also help to identify products or services that could cause harm to customers, allowing them to take steps to mitigate this risk – which could include modifying sales processes or simplifying products where testing demonstrates widespread customer misunderstanding about them.

**Box 1**

Methodology	Outputs of this approach	Likely complexity and resource requirements
Experimentation in the form of <u>randomised controlled trials</u> or A/B tests with real customers or <u>online experiments</u> (with participants in a 'laboratory' setting): comparing understanding of communications by customers between randomly allocated 'control' and 'treatment' groups.	A direct measure of the level of understanding of a communication, compared to another. This can be the best way to measure how well a communication is working and would allow the firm to understand baseline levels of understanding and to make and test improvements upon this.	Requires specialist knowledge of experimental design and statistical analysis and a large enough sample of customers or participants to be able to make the comparison in a statistically sound way.

Methodology	Outputs of this approach	Likely complexity and resource requirements
<p>Surveys: asking a sample of customers for feedback and responses via a questionnaire (online or on paper).</p> <p>This could also be integrated into sales processes with follow-up surveys to test understanding. Consideration would need to be given to the likely selection bias this might introduce (whereby the customers who respond may be systematically different from those who do not).</p>	<p>Objective measures of consumer understanding through well designed questions as well as self-reported beliefs and thoughts about a communication.</p>	<p>Good survey design and sampling methodology requires specialist expertise, but it is likely to be less resource intensive than running experiments and can potentially be done on smaller samples of customers. This can be relatively quick and easy to administer, especially if carried out online.</p>
<p>Interviews: structured interviews are effectively verbally administered surveys. Unstructured interviews involve follow-up and elaboration of questions and can be used to explore the views, experiences, beliefs and motivations of individual participants.</p>	<p>Objective measures of consumer understanding through well designed questions and good interview technique as well as self-reported beliefs and thoughts about a communication. This approach can illicit more in-depth understanding of beliefs, for example, than a survey.</p>	<p>Requires expertise in sampling and interview design and technique. Structured interviews can be relatively quick and easy to administer. Unstructured interviews can be more time consuming. In general, interviews are likely to be more time consuming to administer than a survey.</p>
<p>Focus groups: interviews with customers in a group setting that capitalise on communication between research participants in order to generate data.</p> <p>Focus groups using employees could also provide useful feedback and challenge on pilot communications.</p>	<p>This approach can give a breadth of understanding of the thoughts and experiences of users. It is more likely to elicit subjective opinions than objective answers to questions.</p>	<p>This can be a convenient way to collect thoughts and opinions from several people simultaneously. It requires expertise in interview technique and managing group dynamics.</p>

**Example – good practice**

A bank is developing a communication marketing a new product to send to a cohort of its customers, some of whom are likely to be in vulnerable circumstances.

As part of the development process, it hires a specialist agency to test the communication through a randomised controlled trial and suggest changes to meet the communication needs of its customers.

It subsequently adapts the communication, increasing the size of certain key text, simplifying the content with infographics and using a colour scheme friendly to people with conditions such as dyslexia. It also prominently includes a contact number, inviting customers to call if they would like to discuss the communication or obtain it in a different format.

This mitigates the risk of harm that could arise if customers do not understand the information provided, for example if they fail to act on it or take out a product that does not meet their needs. This approach supports customers in making effective decisions.

### Example – good practice

A manufacturer is developing a sales communication in relation to one of its products.

The manufacturer does not have a relationship with end customers of the product so tests the communication with a small focus group of customers representative of the target market for the product.

The manufacturer adapts the communication based on the feedback from the focus group and provides it to distributors to use during the sale of the product.

A distributor then sends out the communication but, through monitoring the impact of the communication, identifies a trend of customers being confused about certain elements of the cost of the product – which is covered in the communication. The distributor provides this insight to the manufacturer.

The manufacturer makes further changes to the communication to clarify the cost of the product and support customer understanding.

## Data and monitoring

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- 8.59** Chapter 11 sets out our overall expectations that firms can understand and evidence the outcomes that their customers are experiencing. In this section we highlight elements of monitoring that are specifically relevant to the consumer understanding outcome.
- 8.60** Firms should monitor whether their communications are supporting customer understanding and helping their customers make effective, timely and properly informed decisions.
- 8.61** The testing of significant communications, as outlined above, will help with this. But we also expect firms to consider the impact they expect communications to have,

monitor whether this is the case in practice, and carry out further investigation where this is not the case, to identify and remedy any issues to support good customer outcomes.

- 8.62** For example, if there is a notably lower response rate than could reasonably be anticipated following a communication prompting customers to take action, such as to switch product or claim redress, this may indicate that the communication has not supported customers' understanding by providing them with the information they need to make an effective decision.
- 8.63** Firms should ask themselves whether their customers are acting in accordance with their communications. So, for example, if a firm issues a communication asking customers to return certain documentation – are they returning the right documentation in practice? If not, this might again indicate that the communication has not been understood.
- 8.64** Firms should collect and make use of relevant management information (MI) to monitor the impact of communications and identify areas that warrant further investigation. For example, communication response rates, take-up rates of products where communications prompt customers to switch or take them out, or complaints information – which might directly show that customers are unhappy with a firm's communications approach, or indirectly show that communications are not effective in supporting customers to make informed decisions, for example where there is a trend in relation to complaints about the mis-sale of a product. Even where claims or complaints are not upheld, this may indicate a potential gap in customer understanding for firms to address.
- 8.65** Firms should also monitor the impact of communications during customer journeys. For example, whether customers access additional information in relation to risk warnings when taking out investments – and whether they act on this information. If a firm's monitoring activity does not show that some customers are dropping out of the sales process after viewing, or engaging with, risk information, especially in the case of high-risk investments, this may indicate that their communications are not effective in helping to deliver good outcomes.
- 8.66** Firms should also monitor events or any changes that might impact the content of communications and ensure they remain relevant and up to date with accurate and pertinent information that supports customers in making effective decisions.
- 8.67** 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 customers, it must promptly notify the issue to the relevant firm in the distribution chain, such as a manufacturer. Firms should also notify the FCA if they become aware that another firm in the distribution chain is not complying with the Duty.
- 8.68** If, through testing or monitoring of communications, firms identify widespread misunderstanding or issues which mean that the communications are not delivering good outcomes, they should take appropriate action. For example, adapting communications to make them more easily comprehensible by the intended recipients. If a communication about a complex product is commonly misunderstood and cannot easily be adapted to support customer understanding, a firm may consider other action such as adapting the sales process or simplifying the product.

- 8.69** We expect firms to exercise judgement and adopt a reasonable and proportionate approach to monitoring communications and taking action where issues are identified. Firms should have appropriate governance processes in place to oversee this process and consider keeping a record of any relevant actions taken.

**Example – good practice**

A firm that sells products to customers with a lower ability to withstand financial shocks, and which distributes its products via brokers, also contacts consumers directly to talk about their circumstances and understanding of the product.

Another firm, where the sale is on an execution-only basis, contacts the customer to check that they wanted the product in question and to let them know advice is available.

These firms use proactive communication to monitor the understanding of customers in vulnerable circumstances. This helps to ensure consumer harm is avoided and that customers are supported in making effective decisions.

**Example – good practice**

A firm seeks feedback from its customers on the first anniversary of a product purchase. The survey responses highlight that a high number of customers say that they have paid unexpected fees in the first year.

In this situation, we would expect the firm to act reasonably to avoid causing harm to customers by reconsidering how understandable their initial product communications are and making appropriate changes to enable customers to understand the fees and make effective decisions.

**The types of data/monitoring firms could use**

- 8.70** Firms could use the following types of data to monitor that they are meeting expectations under this outcome:

- the findings from any testing of their communications
- customer response rates to communications which prompt action
- broader analysis of whether customers are following instructions in communications
- analysis of responses to communications during customer journeys, including responses and drop-out rates at each stage
- product take-up rates
- product switching rates
- claim rates, including analysis of declined claims
- relevant complaints data

## Key questions for firms

- 8.71** In the table below, we set out examples of the type of questions firms can expect to be asked in their interactions with the FCA in relation to this outcome. We would also expect the Duty champion and the Chair to use this type of question to guide discussions by the firm's board or equivalent governing body.

### Key questions for firms

- Is the firm satisfied that it is applying the same standards and testing capabilities to ensure communications are delivering good customer outcomes, as they are to ensuring they generate sales and revenue?
- What insights is the firm using to decide how best to keep customers engaged in their customer journey, whilst also ensuring its customers have the right information at the right time to make decisions?
- How is the firm testing the effectiveness of its communications? How is it acting on the results?
- How does the firm adapt its communications to meet the needs of customers with characteristics of vulnerability, and how does it know these adaptations are effective?
- How does the firm ensure that its communications are equally effective across all channels it uses? How does it test that?
- What data, MI and feedback does the firm use in its ongoing monitoring of the impact of its communications on customer outcomes? How often is this data reviewed, and what action is taken as a result?

## What this does not mean

- 8.72** These outcome rules do not require firms to:

- Tailor all communications to meet the needs of each individual customer.
- Always communicate with customers via all, or a particular, channel of communication. Firms should however communicate in a way that meets the needs of their customers, including those in vulnerable circumstances. Chapter 9 of this Guidance explains this in further detail.
- Test all communications. Firms should test communications, where appropriate, considering relevant factors including those we set out in our rules and guidance. Where firms judge testing is not required, they should still review communications to ensure they meet the other expectations of this outcome.
- Verify that all individual customers have in fact understood the information provided. Rather, firms should take appropriate steps to satisfy themselves that their communications are likely to be understood by their recipients. However, in certain contexts firms should ask the customer if they understand the information they have been given and if they have any further questions. For example, where the customer is receiving a personalised service or interacting on a one-to-one basis with a firm and being asked to make important or complex decisions.

## Interaction with existing rules

- 8.73** There are existing rules in many sectors about how and what information firms should provide to customers. Firms should continue to follow product-specific rules and guidance where applicable, as they remain necessary to achieve particular outcomes, such as demonstrating suitability or enabling customers to compare products across a market. But this should not stop firms thinking more widely about the purpose of their communications in promoting customers understanding, and the outcomes they bring about – and this may mean doing more than the existing rules require. See also the section above on other disclosure requirements.

## Summary

- 8.74** Below we give examples of actions that are likely to be consistent or inconsistent with the Duty.

Actions likely to be inconsistent with the Duty	Actions likely to be consistent with the Duty
Firms frame communications in a way that exploits customers' information asymmetries and behavioural biases.	Firms 'put themselves in their customers' shoes' and consider whether their communications equip customers with the right information, at the right time, to assess products and services and make effective decisions.
Firms make no attempt to help customers navigate the information they provide, making it difficult for customers to identify the key information and the options available to them. They rely solely on the tick box of 'I have read the terms and conditions'.	Firms adopt good practices that generally enhance the clarity of communications and, where possible, act to make communications more effective. For example, by layering information, making communications engaging, relevant, simple and timed well.
Firms design communication strategies based solely on what is most commercially efficient, rather than taking into account the information needs of their customers.	Firms aim to segment or target communications to make them more relevant to the intended recipients, rather than adopting a 'one size fits all' approach.
Firms do not consider the information needs of customers after the initial point of sale.	Firms are proactive in thinking about how best to engage and communicate with customers after the point of sale to support good outcomes.

Actions likely to be inconsistent with the Duty	Actions likely to be consistent with the Duty
<p>Firms do not adopt a reasonable approach to the testing of communications, either by failing to identify communications where testing would be appropriate, or by following an approach that does not provide a reasonable basis to conclude that their communications are likely to be understood by recipients.</p>	<p>Firms adopt an effective approach to the testing of communications, which provides assurance that important communications can be understood by the target recipients. They adopt a 'test and learn approach', adapting communications where appropriate with the aim of improving customer understanding to support good outcomes.</p>
<p>Firms do not consider the fairness and clarity of their contract terms, which could result in unfair terms that are not enforceable and/or unclear contracts that contain out of date material.</p>	<p>Firms draft and regularly review their contract terms to support good outcomes, and this review includes compliance with the Consumer Rights Act 2015.</p>
<p>Firms do not consider whether their communications contain misleading information or misleading omissions which would be likely to influence a customer's decision making.</p>	<p>Firms ensure their practices and communications are clear, fair and not misleading, and comply with the requirements of the Consumer Protection from Unfair Trading Regulations 2008.</p>

## 9 The consumer support outcome

### Overview

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- 9.1** Consumers can only pursue their financial objectives where firms support them in using the products and services they have bought. A product or service that a customer cannot properly use and enjoy is unlikely to offer fair value.
- 9.2** We expect firms to provide support that meets their customers' needs. The support firms provide should enable consumers to realise the benefits of the products and services they buy, pursue their financial objectives and ensure that they can act in their own interests.
- 9.3** Our consumer support outcome rules set overarching requirements in relation to the support firms provide their customers. They should be read in conjunction with other rules that cover specific elements of the servicing of customers, such as our Dispute resolution: Complaints (DISP) rules. They require firms to:
- design and deliver support that meets the needs of customers, including those with characteristics of vulnerability
  - ensure that customers can use their products as reasonably anticipated
  - ensure they include appropriate friction in customer journeys to mitigate the risk of harm and give customers sufficient opportunity to understand and assess their options, including any risks
  - ensure that customers do not face unreasonable barriers (including unreasonable additional costs) during the lifecycle of a product or service
  - monitor the quality of the support they are offering, looking for evidence that may indicate areas where they fall short of the outcome, and act promptly to address these, and
  - ensure they do not disadvantage particular groups of customers, including those with characteristics of vulnerability
- 9.4** There is a close relationship between the rules under the consumer support outcome and the consumer understanding outcome. Under the consumer understanding outcome firms should communicate with customers in a way that equips them to make effective, timely and properly informed decisions. Under the consumer support outcome firms should enable customers to act on these decisions without facing unreasonable barriers. Firms should keep their obligations under both outcomes at the front of mind in all their interactions with their customers.
- 9.5** This outcome, along with the whole Duty, applies based on what is reasonable, depending on the nature of the product, the characteristics of the customers, and the role of the firm. Clearly there will be differences in the capabilities of a firm depending on its size and complexity. One question all firms can ask themselves is whether they are applying the same consumer support standards to deliver good customer outcomes as they do to help generate sales and revenue. For example:

- firms should make it at least as easy to switch product, leave their service or make a change, as it is to buy the product or service in the first place
- the quality of any post-sale support envisaged in the customer relationship should be as good as the pre-sale support

**9.6** So, for example, firms should consider their call waiting times. Customers should not be waiting significantly longer for their call to be answered in relation to a post-sale issue than to take out a product or service.

**9.7** Firms should also make sure that the support they provide is effective, regardless of the channel used to provide support.

## What this means for firms

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**9.8** This section explains our expectations of firms.

### Providing support that meets the needs of customers

**9.9** The support that firms provide should enable customers to fully utilise the products and services they purchase and act in their interests. Firms should ensure their customers are adequately supported throughout the lifecycle of a product or service after the point of sale – in particular, if they want to make an enquiry, claim, complaint or switch provider.

**9.10** This means that firms should ensure their support processes avoid causing foreseeable harm and enable and support customers in pursuing their financial objectives. Consumer harm can arise due to failings in the support firms provide, such as:

- consistently poor or excessively slow service
- channels of support that do not meet the needs of customers, including customers dealing with non-standard issues, and customers with characteristics of vulnerability
- under-resourced customer helplines, for example where firms disproportionately focus on pre-sales, over after-sales, support
- phone systems, menus or webchats that are difficult to navigate
- badly designed websites that make it difficult for customers to find key information online
- uncertainty around how or where to access support, or poor hand-off processes, including where third parties are involved in its provision

#### Example – good practice

A credit lender has processes in place to ensure it consistently records customers' county court judgments as 'satisfied' on the Register of Judgments when the judgment has been repaid.

This helps to prevent harm that could arise if these customers were to be rejected for credit products or charged a higher interest rate on the basis of inaccurate information recorded against them.

Ensuring county court judgments are marked appropriately as satisfied is an important step that could have an impact on customers' financial health and wellbeing.

### **Example – good practice**

A claims management company sometimes chooses not to take on a customer's claim where it has concerns that the customer may not be able to pay its fee, or where the potential compensation due to the customer is likely to be below the claims management company's threshold for pursuing a claim.

However, the claims management company makes clear to all customers in these circumstances that there may still be merits to the claim which the customer could pursue directly or elsewhere.

This mitigates the risk that some customers do not continue to pursue their claim as they incorrectly assume they are not due compensation.

### **Example – good practice**

A firm declines a customer for credit as a result of its affordability assessment. This creates a risk of financial exclusion and harm, particularly if the customer is unaware of alternative options or where to get advice.

However, the firm considers the financial objectives of the customer and signposts them to appropriate information from an independent and reliable source – in this case, they could refer to [the MoneyHelper guide](#).

Under our rules, travel insurance firms must signpost customers with pre-existing medical conditions to a directory of specialist travel insurance providers. This approach is consistent with the aims of the Duty to deliver good outcomes for customers.

Firms, such as those in other insurance markets or in credit markets, should consider if there are useful sources of information they can signpost when they decline customers, using their knowledge of the reasons why customers are declined.

We expect firms to exercise their judgement when deciding what, if any, information would be appropriate to share in different situations.

Firms should be mindful of our rules around arranging and advice. As always, we expect firms to act within the constraints of their regulatory permissions. Firms can satisfy our expectations here without arranging or providing advice, for example by signposting to advice or exploring alternative options for the customer.

**9.11** We also expect firms to take active steps to responsibly and appropriately encourage customers to share information about their needs or circumstances, where relevant and in accordance with the cross-cutting obligations. This will practically help firms to understand the needs of customers in the target market.

**9.12** We do not expect firms to explore customers' circumstances exhaustively or to identify every customer with characteristics of vulnerability. We do, however, expect firms to support their staff to identify signs of vulnerability, for instance through training and resources, and to set up systems and processes that enable customers to disclose their needs, if they choose. See our guidance for firms on the fair treatment of vulnerable customers for more information about different ways that firms can achieve this.

### **Channels of support**

**9.13** 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.

**9.14** 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***

**9.15** 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.

**9.16** 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.

**9.17** We have included a poor practice example within the consumer understanding section of this Guidance which sets out a scenario where a customer, unable to read large print or braille, asked their bank to send communications by email to allow them to use software to turn the emails into speech, but the bank continued to send the customer 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.

**9.18** 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.

### Example – good practice

A customer with mental health issues had recently moved their bank account but lost control of their finances and incurred bank charges.

They were able to communicate easily and effectively with their bank through online web chat.

The bank's web chat adviser talked things through with the customer, making them feel genuinely understood and supported, and made sure they received appropriate forbearance.

This firm's consumer support is designed to meet the needs of customers, including those with characteristics of vulnerability. It has acted reasonably to avoid causing harm to the consumer and enable them to pursue their financial objectives.

### Example – good practice

One bank offers access to British Sign Language interpreters in-branch, via an app on branch tablets, and on its website, enabling customers to deal with their affairs from the comfort of their own home.

This service increases accessibility and effectively meets the communication needs of certain customer groups.

This firm's consumer support is designed to meet the needs of customers, including those with characteristics of vulnerability. It has acted reasonably to avoid causing harm to customers and enable them to pursue their financial objectives.

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

**9.19** 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.

**9.20** 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, firms should consider the following points.

- **Communicating the support available.** Firms must ensure their products and services are targeted appropriately and the limited channel(s) of support they offer are clearly communicated to customers – in line with expectations under the consumer understanding outcome – before the sale of the product or service, so that customers 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 or service 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.
- **Customers 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.
- **Customers 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 or service 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.

#### Example – poor practice

A firm uses an automated telephone system as part of its consumer support.

This automated system only provides options to progress with queries regarding a few commonly raised issues. It does not provide a route for customers to seek support regarding other issues.

As a result, some customers are unable to obtain the support they need or information on how to pursue this further.

This firm's consumer support does not work effectively.

#### Example – poor practice

A payments firm operates limited channels of support, which it clearly communicates to customers prior to purchase.

When accounts are frozen, the only way customers can communicate with the firm is through a chat function online.

However, questions often go unanswered, or it is unclear whether an issue is being dealt with. Sometimes multiple customer service advisers sequentially enter the same chat and ask the customer the same questions as the previous adviser. This results in customers becoming confused and disengaged.

The firm also does not have a process to provide adequate support to customers in the event of a digital outage.

This firm's consumer support does not work effectively.

### **Example – good practice**

A firm plans to introduce a new digital process for customers to report fraud and security concerns.

The firm trials the process with a group of its customers and asks for feedback. Some customers feel the process is not responsive enough and they are not confident that they have successfully notified the firm of their concern and it is being dealt with quickly.

The firm therefore continues to operate other channels and processes to report fraud and security concerns, while continuing to refine and improve its new digital process.

This firm ensures its support works effectively and meets the needs of its customers.

### **Example – good practice**

A firm changes its channel approach to sell products via its digital app.

The firm adapts its sales journey and literature to work in this medium, using layering and digital tools effectively. Customers are able to easily access and assess key information about the product using a mobile phone.

This firm ensures its consumer support is equally effective across the different channels it uses.

## **Appropriate friction and unreasonable barriers**

### **9.21**

Firms should review the design and delivery of their customer journeys and consider the purpose, and impacts, of friction points. In some circumstances, friction points or nudges can help to mitigate the risk of consumer harm and support good outcomes, but they can also create unreasonable barriers by making it more difficult for customers to act in their interests.

**9.22** What amounts to appropriate friction or an unreasonable barrier will depend on the circumstances. We expect firms to apply judgement and be able to distinguish between positive frictions or nudges that support good outcomes and harmful frictions that create unreasonable barriers (sludge practices). Firms should be mindful of the Duty's cross-cutting rules and act in good faith, avoid causing foreseeable harm, and enable and support customers to pursue their financial objectives.

**9.23** Firms' consideration of friction points should also be informed by their monitoring activity, which will help them to understand how processes are working in practice and the outcomes they are delivering. We expect firms to be able to justify and evidence the customer benefits of additional steps in customer journeys. They should not be overly complicated or designed in a way that benefits firms but not customers.

### ***Appropriate friction***

**9.24** Firms should consider whether they need to build positive frictions into their processes to deliver good outcomes. Firms' commercial and marketing teams can be overly focused on how many clicks are required to purchase a product, how long it takes, and drop-out rates – leading to excessive streamlining of processes to ensure high conversion rates.

**9.25** But sales and other processes without appropriate friction or nudges can risk customers purchasing products that they do not fully understand or are not right for them. Customers should be provided with the right information and given appropriate time to make important decisions.

**9.26** Additional steps in customer journeys can therefore be in their interests. Where this is the case, the friction would not amount to an unreasonable barrier. For example, steps designed to prevent fraud or make sure customers are aware of the consequences of cancelling a contract can benefit customers. They can also help to prevent poor decisions. For example, when customers are making investment decisions, slowing the sales process may help avoid foreseeable harm, as highlighted in our communications around high-risk investments by immature investors.

### **Example – good practice**

A firm sells a high-risk investment product online on an execution-only basis.

As part of the sales process, it requires customers to watch an educational video on investment risks, the benefits of diversification and regulatory protections, before purchasing the product.

While some customers may consider this to be an unnecessary step, it has been designed for the purpose of supporting them in making informed decisions and to reduce the risk of harm that could arise if they purchase a product and it is not right for them.

Therefore, this is unlikely to amount to an unreasonable barrier under the consumer support outcome as the firm has acted to avoid causing harm to its customers, enabling them to pursue their financial objectives.

### Example – good practice

A payments firm considers how it can best design its processes to help identify suspicious payments and mitigate the risk of poor customer outcomes.

It embeds appropriate warnings and confirmation of payee messages into its processes. Confirmation of Payee is a name-checking service aimed at preventing both authorised push payment scams and accidentally misdirected payments. It works by checking whether the name of the account that a payer is sending money to matches the name they have given to their payment service provider.

This is an example of positive friction as the process is designed for the purpose of preventing consumer harm.

### *Sludge practices*

- 9.27** On the other hand, there can be commercial incentives for firms to create friction points (often called 'sludge') that deter their customers from taking action in their interests, such as making a complaint or switching product or provider. Even where firms do not set out to create sludge, they can fail to give adequate attention and provide appropriate support where customers seek to take action that does not benefit the firm. This is not consistent with the Duty.
- 9.28** Firms' consumer support should enable customers to get what they paid for, for example by making a claim under an insurance policy or withdrawing funds from a savings account, without facing unreasonable barriers. Firms should consider the steps they take to support customers wanting to buy their products and services and make it at least as easy to switch out of a product, leave their service or make a change, as it is to buy in the first place.
- 9.29** While prompts or incentives to retain a customer are acceptable, they should not unreasonably impact the ease with which a customer could switch or exit from a product or service should they choose to do so. Firms should carefully consider the effect of these practices on customers' ability to switch or to act in their interests more broadly.

### Example – poor practice

An insurance firm has a complex claims process which deters many customers from pursuing claims. This process includes a requirement for customers to provide hard copies of all evidence. The firm refuses to consider any requests from customers to waive this requirement.

A firm may have legitimate claims handling requirements, such as a need to give notice when the loss event occurs, or to provide adequate evidence of the loss. But the means of making a claim should be easy to find and the firm should not impose unreasonably restrictive, rigid or arbitrary administrative requirements on customers that create barriers to them making a claim.

This firm would be unlikely to be regarded as acting in good faith or enabling its customers to realise the expected benefit of the insurance product they have bought including making a claim without unreasonable barriers.

### Example – poor practice

A firm is increasing the interest rate on one of its savings products which will benefit customers who hold that product.

However, the firm requires customers to logon to its website, access their account and find a page with a discreet radio button that needs to be selected for the increased rate to be added.

The firm has designed this process as it knows through its behavioural analysis of its customers that many will not take these steps and therefore it will not need to pay additional interest to these customers.

A firm acting in line with the Duty would use its behavioural analysis as evidence of the need for a simpler approach to support good outcomes, enabling its customers to easily obtain the increased interest rate.

### Example – poor practice

During our work to assess the implementation of the [Coronavirus Tailored Support Guidance](#) we identified that some firms used digital tools when providing financial help. However, we found evidence of some 'sludge' practices which can add friction to the customer journey and, in some cases, may prevent customers from pursuing their financial objectives.

These practices included:

- customers using third party digital tools having to register and log on to more than one system or platform to complete the automated forbearance journey
- customers having to click on multiple boxes to reveal additional text to help inform their decision-making and customers using third party digital tools having to wait a day or more before receiving confirmation of their payment plan or if they need to provide further clarity

### Example – poor practice

A firm requires its customers to contact them by phone if they want to switch to a different provider. Once on the phone, customers are subjected to a lengthy process during which they are encouraged not to switch.

This type of practice would represent an unreasonable barrier under the consumer support outcome if it prevents customers from pursuing their financial objectives.

Where a product is taken out online, a visit to a branch should not normally be required to close the product. In general, this should be possible via the same process or means (ie online in this instance). Firms may also provide other options to close the product, for example by phone – provided it does not involve a process designed to deter customers from acting in their own interests, such as described above.

### Unreasonable additional costs

- 9.30** The support firms provide should not lead to the product costing more than customers expected up-front. Firms should avoid causing harm to customers by making sure that their consumer support does not impose unreasonable additional costs, including unreasonable exit fees or other charges, delays, distress or inconvenience.
- 9.31** We acknowledge that product terms and conditions can include contractual provisions relating to early termination – but firms should not impose unreasonable exit fees. In general, an exit fee is more likely to be reasonable if it is commensurate with the costs incurred by the firm due to the customer terminating the agreement early. Any material provisions relating to early termination, including exit fees, should also be clearly drawn to customers’ attention, as appropriate, in line with our expectations under the consumer understanding outcome.
- 9.32** Some delay, inconvenience or cost during interactions between firms and customers might not be unreasonable depending on the circumstances. The Duty does not set rigid standards of how long a customer should wait to talk to an agent, how long a call should last, or how long an issue should take to be resolved (except where prescribed in other rules, such as our DISP complaint handling rules which require firms to respond to a complaint within eight weeks).
- 9.33** There may be cases where delays in customers getting support would not be regarded as unreasonable. For example, a firm’s call centres may experience unforeseeable demands leading to long wait times, or a firm may need to prioritise dealing with certain claims over others at times of high demand. There may also be occasions when firms’ systems are down for routine maintenance, or an upgrade, and some services may be impacted or unavailable for a period.
- 9.34** As explained above, firms should ensure their post-sale support is as good as their pre-sale support. To make sure this is the case, firms should carefully consider insight obtained through their monitoring activities. If, for example, a firm can see a trend of calls being terminated by customers before they are answered and dealt with, this would suggest the firm is not providing an appropriate standard of support to its customers.
- 9.35** We note that, under our ~~Senior Management Arrangements, Systems and Controls~~ (SYSC) rules, firms must have systems and controls in place to effectively manage their businesses, and firms should also ensure they comply with our final rules and guidance for firms to strengthen operational resilience in the financial services sector as set out in PS21/3. So, firms should have reasonable processes in place to deal with strain on their operations when issues arise.
- 9.36** When issues or other scenarios impact the delivery of consumer support, firms should ensure that customers are kept informed of events, in line with the consumer understanding outcome.
- 9.37** Further, different levels of inconvenience or delay may be reasonable in different circumstances. For example, a delay that is reasonable for a customer looking to amend a standing order may not be reasonable for a customer trying to disable a credit card that has been stolen.

- 9.38** We expect firms to ensure that customers are not exposed to unreasonable additional costs as a result of how their products are serviced and we expect them to use proportionate resources to meet expected demand.

**Example – poor practice**

A retail banking customer telephones their bank in good time to transfer money from a savings account into a current account, to avoid going overdrawn.

The customer waits on hold for a long time, without good reason, and is unable to get through to an agent to make the transfer, despite trying to do so throughout that day. They were also unable to transfer the money online due to an issue with the firm's online banking service.

This results in the customer going overdrawn and incurring charges.

**Example – poor practice**

A claims management company pursuing employment claims is under-resourced, and customers' claims take longer than they should do to progress. Some take four or five months, which leads to claims timing out and customers losing out on compensation due to them.

The claims management company tries to take on as many claims as possible without the resource or processes to support this volume. Sometimes there is a wasted cost order imposed where the company has failed to draft the particulars of the claim properly before a tribunal deadline – this also results in a loss of compensation for some customers.

**Example – good practice**

An unforeseeable event causes a surge in demand for a firm's consumer support.

The firm has reasonable processes in place to manage unexpected surges in demand and diverts resource to deal with this, prioritising the most urgent and significant requests.

This means that some customers will experience a delay. The firm posts a prominent notice on its website and social media to inform customers of the situation, as well as a message when customers first contact its helpline. It sets out a process for customers to escalate urgent issues.

In this example, the firm has acted reasonably to avoid causing harm to customers and acted in a way that is consistent with the consumer support standards.

### Example – good practice

A firm notices a trend of customer service calls being terminated by customers before they are answered through its monitoring activity.

It diverts additional resource to handle these calls to ensure they are answered in a timely manner.

It also identifies those customers who terminated their call before it was answered and proactively makes contact with them to see if they require additional support.

## Dealing with representatives and other firms

### *Customer representatives*

- 9.39** Where a person is authorised by a customer, or by law, to assist in the conduct of the customer's affairs (such as where power of attorney applies), firms should provide the same level of support to that person as they would have provided to the customer. This does not mean that firms must treat this person as having the same characteristics of vulnerability as the customer they are representing, if the customer is in vulnerable circumstances. It means they should also receive an appropriate standard of support and not face unreasonable barriers when acting on behalf of the customer. We also expect firms to respond flexibly, and provide effective support, in light of any characteristics of vulnerability the person representing the customer may have.

### Example – poor practice

We have seen evidence in banks of past weaknesses in their bereavement procedures. Some weaknesses were apparent to representatives, in terms of over-complex and inconsistent processes and excessive demands on them. Others have been less apparent, with banks' over-reliance on manual processes contributing to errors and poor outcomes, including sums not being returned accurately and appropriately to beneficiaries.

Banks have been remediating customers affected by such errors or omissions, including updating account information and remedying any shortfalls where possible. They are also putting in place better processes going forward, to deliver simpler, more consistent and better controlled bereavement customer journeys, and better treatment and support of representatives in those sensitive circumstances.

### *Firms' dealings with other firms*

- 9.40** The consumer support outcome rules do not apply to scenarios where a regulated firm is dealing with another firm on behalf of a customer – for example, where a mortgage intermediary is dealing with a lender – this would constitute a normal business relationship between a manufacturer and distributor.
- 9.41** However, firms must not cause harm to customers due to shortcomings in the way they deal with other firms. Firms must deal with reasonable requests from other

firms in an effective way and in good time to enable other firms to comply with their obligations and provide effective support to customers.

#### **Example – poor practice**

An adviser recommends a customer moves assets to a new investment platform.

The adviser communicates the instruction to switch the customer's assets to the existing investment platform. However, as there is no commercial benefit to the existing platform in the customer making this switch, it fails to deal with this request in an effective and timely manner.

The adviser regularly contacts the existing platform to check on progress, but it is slow in responding, fails to explain the reason(s) for the delays and/or give an indication of when the switch will be actioned.

Unreasonable delays in the moving of assets between investment platforms are likely to result in poor outcomes for the end customer.

### ***Outsourcing***

- 9.42** Firms are responsible for their own activities and they must meet expectations under this outcome as far as they are relevant to their role. 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, including any relevant Duty obligations, to a third-party.
- 9.43** 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.
- 9.44** An outsource service provider that is a FCA authorised firm may be subject to the Duty in its own right where it carries on retail market business. The extent to which the Duty applies will depend on the nature of its role and the extent of that influence. More information on our expectations in relation to outsourcing can be found on our webpage [here](#).

### **Data and monitoring**

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- 9.45** Chapter 11 sets out our overall expectations that firms can understand and evidence the outcomes that their customers are experiencing. In this section, we highlight elements of monitoring that are specifically relevant to the consumer support outcome.
- 9.46** Firms should regularly monitor whether they are providing an appropriate level of support to customers to identify and mitigate the risk of consumer harm and ensure they meet the standard set out under this outcome.

- 9.47** This means that firms must ensure the support they provide enables customers to realise the benefits of products or services and act in their interests without unreasonable barriers, including unreasonable additional costs. This guidance explains when and how these issues may arise but, as explained above, we do not intend to set rigid standards in this area and firms should consider what these terms mean in the context of their business and design systems and processes to monitor this.
- 9.48** We expect firms to be able to demonstrate that they have thought about how to design and deliver consumer support that meets the expectations under this outcome and monitor that they continue to do so. For example, firms may have processes and ~~management information (MI)~~ to check that existing customers receive a level of support consistent with this outcome and are not overlooked in favour of supporting prospective customers.
- 9.49** Firms should consider information available on customer behaviour and feedback to identify whether customers, or particular groups of customers, are encountering unreasonable barriers, including unreasonable additional costs, as part of firms' consumer support provision.
- 9.50** Firms should also use the evidence they have about their customers' use of products or services and interactions with the firm to identify areas where their processes may create unreasonable barriers to customers, and act to reduce this.
- 9.51** However, firms should be mindful that customers do not always report issues when they arise. Research by the Institute of Customer Service carried out in January 2022 has found that in the banks and building societies sector, 18.6% of customers who experienced a problem with an organisation did not report it. In the insurance sector the figure is 17.5%. It is important therefore that firms do not inadvertently miss consumer support issues that may not be immediately apparent from some headline data sources.
- 9.52** Where a firm's consumer support is provided by an outsourced third party, either in whole or in part, we expect the firm to have systems and processes in place to monitor that the support meets the standard set out under this outcome. For example, the firm might collect relevant MI or conduct outcome testing activity to provide assurance that an appropriate level of consumer support is being delivered.
- 9.53** Where firms identify that their consumer support, or elements of the support they provide, do not meet the expectations under this outcome, we expect them to take appropriate action to remedy this. If this relates to consumer support provided by an outsourced third-party, they may work to improve the standards or choose to make alternative consumer support arrangements.
- 9.54** If, for example, a firm identifies that a systemic or recurring issue in the delivery of its consumer support prevented customers from utilising a product or service as anticipated, it should act in good faith and consider whether remedial action would be appropriate. This might include providing redress commensurate with the benefit that was difficult to utilise or proactively contacting customers to explain the issue and the steps they can take to fully utilise the product or service.
- 9.55** We recognise that, on occasion, individual customers will have a poor consumer support experience. Where this occurs, we expect firms to act in good faith and deal with this promptly and fairly, providing redress where appropriate, to deliver a good

outcome for that customer. See Chapter 5 for more detail about how firms should consider redress as part of our cross-cutting rules.

### Example – good practice

A firm carries out analysis of the root causes of complaints it receives.

It identifies that many customers have made complaints about the difficulties they encountered when attempting to switch provider.

Lots of these complaints note that the firm's phone system direct them to a particular department to take this action, but they are then required to wait on hold for a significant amount of time, with no indication of when their call might be dealt with or the option of a call back.

Customers are often cut-off without being able to speak to an adviser, requiring them to call back and make multiple attempts to take action.

The firm subsequently investigates and makes changes to its phone system to improve the process. This mitigates the risk of consumer harm and better supports customers acting in their interests to pursue their financial objectives.

Although this firm provides a poor level of support to its customers, its monitoring approach represents good practice.

### The types of data/ monitoring firms could use

**9.56** Firms could use the following types of data to monitor that they are meeting expectations under this outcome:

- analysis of customers' use of products and services
- root-cause analysis of complaints
- customer persistency or retention information
- abandoned claim rates, unusually low volumes of claims or declined/successful claims analysis
- first contact resolution rates and average time to resolution
- speed to answer the telephone and average wait times, call abandon rates
- email and digital channel speed to answer
- internal quality assurance
- customer call listening exercises
- satisfaction surveys
- net promoter scores

### Key questions for firms

**9.57** In the table below, we set out examples of the type of questions firms can expect to be asked in their interactions with the FCA in relation to this outcome. We would also expect the ~~Duty champion and the Chair~~ to use these type of questions to guide discussions by the firm's board or equivalent governing body.

### Key questions for firms

- How has the firm satisfied itself that its customer support is effective at meeting customer needs regardless of the channel used? Does the firm test outcomes across different channels?
- What assessment has the firm made about whether its customer support is meeting the needs of customers with characteristics of vulnerability? What data, MI and customer feedback is being used to support this assessment?
- How has the firm satisfied itself that it is at least as easy to switch or leave its products and services as it is to buy them in the first place?
- How has the firm satisfied itself that the quality of any post-sale support is as good as the pre-sale support?
- What data, MI and feedback is the firm using to monitor the impact its consumer support is having on customer outcomes? How often is this data monitored, and what action is being taken as a result?
- How effective is the firm's monitoring and oversight of outsourced or third-party service providers, and is it confident that these services meet the consumer support standards?

## What this does not mean

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**9.58** These outcome rules do not require:

- Firms to always provide support to customers via multiple different channels. Firms should however provide support that meets the needs of their customer base and target market.
- Firms to provide support through a particular channel, although they should respond flexibly to the needs of customers in vulnerable circumstances and adhere to the general principle that it should be at least as easy to exit a product or service as it is to enter it.
- Firms to guarantee that their consumer support processes will never experience issues or delay. Firms should have reasonable processes in place to deal with strain on their operations when issues arise. Where individual customers do not get the support they need, we expect firms to deal with this promptly and fairly, providing redress where appropriate, to deliver a good outcome.
- Firms to streamline customer journeys to such an extent that they create the risk of consumer harm or remove steps that provide customer benefits. However, firms must be able to justify and evidence the customer benefits of additional steps or friction and they should not unreasonably elongate or complicate customer journeys for their own benefit.

## Interaction with existing rules

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**9.59** The Duty is compatible with, but does not replace, existing FCA Handbook rules that set specific requirements for the servicing of customers (eg providing information, complaints handling). This outcome sets overarching expectations in the area of consumer support and firms may need to go beyond existing rules covering

specific aspects of the servicing of customers in order to deliver good outcomes for customers.

## Summary

**9.60** Below we give examples of actions that are likely to be consistent or inconsistent with the Duty.

Actions likely to be inconsistent with the Duty	Actions likely to be consistent with the Duty
Firms disproportionately focus on supporting customers up to the point of sale, with little focus or support for customers after purchase.	Firms have processes that support customers throughout the product and service lifecycle: pre-sale, during sale and after-sale.
Firms streamline customer journeys as much as possible to maximise sales but to the detriment of customers making effective decisions.	Firms ensure there is appropriate friction in their customer journeys to support their customers in making good decisions.
Firms add unreasonable additional steps to their customer support processes that deter their customers from acting in their interests.	Firms design and deliver the support they provide in a way that enables customers to realise the benefits of the products and services they buy and act in their interests.
Firms have ineffective customer support processes and communication strategies to deal with unexpected surges in demand.	Firms have effective customer support processes and communication strategies to deal with unexpected surges in demand for support.
Firms have a rigid approach to the provision of customer support that doesn't effectively take into account the needs of their customer base, target market or customers with characteristics of vulnerability.	Firms design and deliver the support they provide to meet the needs of their customers. They adopt a flexible approach when dealing with customers with characteristics of vulnerability.
Firms have an ineffective approach to monitoring that fails to identify systemic issues with their customer support processes.	Firms regularly monitor the customer support they provide to make sure there are no systemic issues that create unreasonable barriers or costs for customers.

## 10 Culture, governance and accountability

### Overview

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- 10.1** The Duty sets a higher expectation for the standard of care that firms give customers. For many firms, this will require a significant shift in both culture and behaviour, so they consistently focus on customer outcomes, and put consumers in a position where they can make effective decisions.
- 10.2** Firms should ensure that the interests of their customers are central to their culture and purpose and embedded throughout the organisation.
- 10.3** The rules require firms to ensure their strategies, governance, leadership, and people policies (including incentives at all levels) lead to good outcomes for customers. The rules also make clear that we expect customer outcomes to be a key lens for important areas, such as Risk and Internal Audit.
- 10.4** A firm's board, or equivalent governing body, should review ~~and approve an~~ ~~assessment of~~ whether the firm is delivering good outcomes for retail customers which are consistent with the Duty, at least annually.
- 10.5** Individual accountability and high standards of personal conduct in firms will ensure that firms are meeting their obligations under the Duty.

### What this means for firms

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- 10.6** Culture is critical to delivering good outcomes for customers. There are four drivers of culture, and firms will need to ensure that acting to deliver good outcomes is central to each.
- **Purpose** – the firm's purpose should be consistent with the Duty. Staff should understand how the firm's purpose is relevant to delivering good outcomes for customers.
  - **Leadership** – the firm's leaders should be competent and accountable, and they should demonstrate commitment to delivering good outcomes for customers.
  - **People** – delivering good outcomes for customers should be reflected in the way in which people are managed and rewarded. They should be trained to be able to deliver good outcomes for customers.
  - **Governance** – the firm's controls and key processes should be set up in a way which enables it to identify where the firm is not delivering good outcomes for its customers, and it should have a strategy in place to understand and tackle the root causes and manage and mitigate poor outcomes.

## Governance and accountability

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- 10.7** The Duty requires firms to ensure that acting to deliver good outcomes is reflected in their strategies, governance, leadership and people policies, including incentives at all levels. Customer outcomes should be a central focus of their risk and internal audit processes. Firms must also ensure that their staff incentives, performance management frameworks and remuneration structures are designed in a way that is consistent with ensuring good outcomes for customers.
- 10.8** A firm's board or equivalent governing body is responsible for ensuring that the Duty is properly embedded within their firm, and we will hold senior managers accountable through the Senior Managers & Certification Regime (SM&CR), as explained below.
- 10.9** We expect a firm's board or equivalent governing body to ensure that the Duty is being considered in all relevant contexts, such as considering the impact of their governance and remuneration policies on delivering good outcomes for customers and ensuring that customer outcomes are a key lens for risk and internal audit functions.
- 10.10** ~~We expect firms may choose to have a champion at board (or equivalent governing body) level who, along with the Chair and the CEO, ensures that the Duty is being discussed regularly and raised in all relevant discussions. Although we don't expect firms to have a Duty champion, this role could help in challenging the firm's governing body and management on how it is meeting Duty expectations and focusing on consumer outcomes. The champion should be an Independent Non-Executive Director (NED), where possible. For larger organisations with group structures, we expect this champion to be at an appropriate level to ensure that the Duty is discussed in a meaningful way. This expectation applies reasonably, so we would not necessarily expect the same level of formality in smaller firms.~~

### Board reporting

- 10.11** ~~A firm's board, or equivalent governing body, should review and approve an assessment of whether the firm is delivering good outcomes for retail customers which are consistent with for business it carries out which is in-scope of the Duty, at least annually.~~
- 10.12** ~~The board, or equivalent governing body, should agree any actions required to address any identified risks, or any action required to address poor outcomes experienced by retail customers that the firm is responsible for. It should also agree whether any changes to the firm's future business strategy are required in relation to business it carries out in scope of the Duty.~~
- 10.13** ~~The extent of a firm's reporting is to be commensurate with their role and activities in the distribution chain.~~

### Format

- 10.14** ~~A firm's Consumer Duty board reporting can be incorporated into other board reporting and governance structures. Firms do not need to produce a stand-alone report. We do not intend for this to simply duplicate other board reporting a firm carries out to a different cycle, creating costs without benefits.~~
- 10.15** ~~Alternatively, a firm may find it useful to amalgamate Duty related reporting for its board in one place in a stand-alone report.~~

**10.16** We also recognise a stand-alone Duty board report may be disproportionate for very small firms where a report might otherwise be produced and approved by the same person.

### **Content**

**10.17** Regardless of a firm's size or approach, we expect firms to be able to demonstrate how their governance supports good outcomes for retail customers where the Duty applies.

**10.18** Boards, or equivalent governing bodies, should receive clear information to assess whether the firm is delivering good outcomes in line with the Duty and to provide opportunity for effective challenge.

**10.19** Firms should focus on their role and the activities they are responsible for, considering if and how they support good outcomes for retail customers.

**10.20** The Duty applies in a proportionate way, meaning the extent and depth of a firm's board reporting will depend on the extent of its retail market business, its role in the distribution chain, its size and capabilities, and the risk of harm the activities it is responsible for presents to retail customers. Reporting should focus on the key insights, actions and risks relevant to the firm's activities.

**10.21** So, for example, where firms have a more limited role in the manufacture and distribution of products and services to retail customers, we would expect their board reporting to reflect this, with a more streamlined assessment focused on the impact of their role and activities on consumer outcomes.

**10.22** Firms do not need to cover Duty obligations that are not relevant to their role in their board reporting, such as customer communications and support where these are provided by other firms in the distribution chain.

**10.23** Boards should consider:

- any appropriate monitoring the firm has undertaken to assess its role in supporting good retail customer outcomes, such as whether products and services are delivering expected outcomes in line with the Duty, any evidence of poor outcomes, including whether any group of customers is receiving worse outcomes compared to another group, and an evaluation of the impact and the root cause
- an overview of the actions taken to address any risks or issues
- how the firm's future business strategy is consistent with acting to deliver good outcomes for retail customers under the Duty where it applies

### **Frequency**

**10.24** Firms should be able to demonstrate that appropriate Duty related board reporting is occurring at least annually to support board assurance about ongoing compliance with the Duty where it applies.

**10.25** This should be combined with clear channels for timely escalation of material issues that arise outside of usual reporting cycles.

**10.26** Frequency of reporting should be reasonable and proportionate to the firm's activities in scope of the Duty, the nature and complexity of its products and services, its role in the distribution chain, and foreseeable risks of harm to consumers.

### **Our supervisory approach**

**10.27** This assessment Firms' board reporting will be part of the evidence we use to assess a firm's compliance with the Duty. We expect to be provided on request with Duty related reporting and any management information (MI) that sits behind it.

**10.28** In our supervisory work, we will take a proportionate approach, focusing on whether firms' governance and monitoring are effective in delivering good outcomes for retail customers in practice, where the Duty applies.

#### **Example – good practice**

Firm A's activities in scope of the Duty are limited to providing information about products and services to retail-facing distributors to support sales to retail customers. It uses existing reporting structures to provide a brief annual update to its board on how this activity is working in practice, summarising feedback from key distributors and areas where information has been supplemented, to help ensure end retail customers who are purchasing products get the information they need to make effective decisions. This enables the firm's board to oversee it is acting to deliver good outcomes for retail customers in a proportionate way where the Duty applies to activities it is responsible for.

Firm B manufactures and distributes a wide range of products and services exclusively to retail customers. The Duty therefore applies broadly to its business and a considerable amount of its usual board reporting and governance covers issues where the Duty has relevance. The firm decides to consolidate this reporting into an annual Duty report for its board to allow for a more holistic assessment of how its activities and business strategy are consistent with Duty expectations.

### **Key questions for firms**

**10.29** In the table below, we set out examples of the type of questions firms can expect to be asked in their interactions with the FCA in relation to their governance arrangements and the Duty. We would also expect ~~the Duty champion and the Chair to use~~ these types of questions to guide discussions by the firm's board or equivalent governing body.

#### **Key questions for firms**

##### ***Culture and Governance***

- Does the firm's purpose (whether publicly articulated or not) align with its obligations under the Duty? How is it embedded and understood throughout the organisation?
- How does the organisation's culture support the delivery of good outcomes for customers?
- How does the organisation ensure that individuals throughout the organisation – including those in control and support functions – understand their role in delivering the Duty?

- Are staff empowered and feel safe to challenge and raise issues where they feel the firm might not be acting to deliver good outcomes for customers? Are those challenges listened to, and where necessary, acted on?
- Is the Duty being considered in all relevant discussions such as strategy and remuneration? Are customers outcomes a key lens for Risk and Internal Audit?
- How is the firm ensuring that its remuneration and incentive structures drive good outcomes for customers?

#### **Customer outcomes**

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

## **Senior Managers and Certification Regime**

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- 10.30** We expect the focus on acting to deliver good outcomes to be at the heart of firms' strategies and business objectives. This should be supported by individual accountability and personal conduct resulting from the Senior Managers & Certification Regime (SM&CR).
- 10.31** The SM&CR aims to establish healthy cultures and effective governance in firms by ensuring greater individual accountability at all levels and setting minimum standards of personal conduct.
- 10.32** The SM&CR Duty of Responsibility and the Senior Manager Conduct Rules establish clear senior management responsibility for complying with the requirements and standards of the regulatory system and that applies to the Duty as it does to other Principles and rules.
- 10.33** The Duty imposes expectations across the product lifecycle including design, distribution and delivery of products and services and each senior manager must take responsibility for the role they can play in delivering compliance with it.
- 10.34** Every senior manager should be clear about what they are responsible and accountable for, and how they are ensuring that the business of the firm complies with

the requirements of the Duty on an ongoing basis. Senior managers should expect to be asked about the role that they will play in delivering good outcomes for customers when they are seeking approval or engaging with us.

- 10.35** The individual conduct rules in the Code of Conduct sourcebook (COCON) set minimum standards of individual behaviour in financial services and apply to almost all employees in a firm except for ancillary staff.
- 10.36** Individual conduct rule 6 reflects the new, higher standard of the Duty, and the behaviour we expect of all conduct staff. It requires all conduct rules staff to 'act to deliver good outcomes for retail customers' where the activities of the firm fall within the scope of the Duty.
- 10.37** This individual conduct rule applies to the extent that it is reasonable and proportionate: the scope of a person's job and their seniority may affect the scope of their obligations under the rule. So, the more senior a person is and the more relevant their role is to the Duty, the more we expect from them in delivering good outcomes for customers.
- 10.38** Where firms, such as payment and e-money firms, are not subject to the SM&CR we still expect them to ensure that they have senior management oversight and accountability for the Duty, and to ensure that their staff are acting in accordance with the requirements of the Duty.

# 11 Monitoring outcomes

## Overview

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- 11.1** A key part of the Duty is that firms assess, test, understand and are able to evidence that the outcomes their customers are receiving activities they are responsible for are delivering good outcomes for retail customers. Without this, it will be impossible for firms to know that their products and services are working as they and retail their customers would have expected and in a way that is consistent with the Duty.
- 11.2** Firms have to be able to identify if they are responsible for poor outcomes and take appropriate action to rectify the causes of those poor outcomes. They must also continuously learn from their focus and awareness of how they contribute to the outcomes that retail their customers experience in practice.
- 11.3** Firms can expect at every stage of the regulatory lifecycle to be asked to demonstrate how their business models, the actions they have taken, and their culture are focused on supporting good customer outcomes for retail customers where the Duty applies.
- 11.4** Our rules therefore require firms to:
- monitor and regularly review the impact the activities they are responsible for are having on the outcomes their retail customers receive, to ensure that the products and services that firms provide are delivering outcomes consistent with the Duty
  - identify where they are causing customers or groups of customers to are not getting good outcomes and understand why
  - have processes in place to adapt and change products and services, or policies and practices, to address any risks or issues identified and stop it occurring again in the future. This includes notifying other firms in their distribution chain of relevant issues identified where appropriate (see guidance in Chapter 3A on firms' responsibilities).
- 11.5** A firm's governing body should review and approve the firm's assessment of whether it if the firm is delivering good outcomes for its customers which are consistent with the Duty and agree any action required, at least annually (see Chapter 10 for guidance on our board reporting expectations).

## What this means for firms

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- 11.6** Firms will need to identify relevant sources of data to enable them to assess the impact their role in the distribution chain has on whether the outcomes that their retail customers are experiencing, to ensure these are consistent with their obligations under the Duty (also see guidance in Chapter 3A on obtaining information from other firms to meet the Duty).

- 11.7** Through the monitoring of retail customer outcomes, we would expect firms to:
- identify and manage any risks they create to good outcomes for customers
  - spot where they are causing retail customers to receive poor outcomes and understand the root cause
  - have processes in place to adapt and change products and services, or policies and practices, to address any risks or issues as appropriate
  - be able to demonstrate how they have identified and addressed issues leading to poor outcomes
- 11.8** The action that firms should take when they identify problems will vary depending on a range of factors, including their role in the manufacture or distribution of products and services to retail customers. Potential interventions could include:
- adapting, amending or discontinuing a product or service
  - adapting product or service design, fees or charges
  - making appropriate changes to the firm's operations
  - updating customer support processes or distribution channels
  - modifying communications to make them more easily comprehensible
  - providing redress where customers have suffered harm (where appropriate)
- 11.9** If asked, we would expect firms to be able to explain how they reached a decision on the most appropriate intervention, demonstrate how it has delivered good outcomes and, if not, what they have done further to address the issue.
- 11.10** A firm's board, or equivalent governing body, should ~~review and approve an~~ assessment of whether the firm is delivering good outcomes for its customers which are consistent with the Duty where it applies, at least annually. ~~S(see chapter 10 for guidance on our board reporting expectations) further detail.~~
- 11.11** The Duty is intended to improve outcomes for all customers, and we would expect firm monitoring to identify where they are causing distinct groups of customers, such as customers with characteristics of vulnerability or customers who share protected characteristics (as defined by the Equality Act 2010 or equivalent legislation), to get worse outcomes than other customers. Where firms identify an area where they are not delivering good outcomes for ~~their~~ customers or a distinct group of customers, we would expect the firms to have processes in place to investigate the cause(s) and address any problems. It should be noted, however, that the Duty does not alter or replace firms' existing obligations under the Equality Act 2010 to avoid direct and indirect discrimination.
- 11.12** This requirement is not limited to characteristics of vulnerability and protected characteristics, although those are important. We expect firms to use their judgement and monitor to see whether they are causing any distinct groups of customers to~~are~~ receiving worse outcomes than others. Groups that firms could consider might include, for example, longstanding customers, customers from a particular geographical region or customers who buy a product through a particular distribution channel.
- 11.13** As with the whole Duty, one question firms can ask themselves is whether they are applying the same standards and capabilities to monitoring customer outcomes as they are to generating sales and revenue. For example, is the firm using the same levels of segmentation and analysis to monitor outcomes as they are to target sales?

- 11.14** Where a firm considers that distinct groups of customers receiving different outcomes is compatible with the Duty (an example might be when using risk-based pricing) it would need to be able to evidence this to us.
- 11.15** Firms should also assure themselves that they are complying with legal obligations, such as those in the Equality Act 2010 and data protection legislation.

## What firms should monitor

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- 11.16** Firms will need to collect information to monitor the outcomes that retail their customers are receive in relation to the firm's role and activities ing. Firms will need to be able to provide evidence of their monitoring and assessment of these outcomes and any resulting action, on request.
- 11.17** Customer outcomes are broader than the areas covered by the four outcome rules. They also include the overall outcomes that consumers receive when they buy a product or service, or interact with a financial services firm, such as whether they use the products or service as expected, the benefits that they receive, and whether they are incurring harm.
- 11.18** Firms will need to use their judgement to identify relevant sources of data to give them the insights they need to assess whether they are delivering good outcomes for customers. Below, and in the four outcome chapters of this gGuidance, we have included examples of the types of data firms can use.
- 11.19** Firms will need to produce and regularly review MI on customer outcomes. This MI should be appropriate to the nature, scale and complexity of their business, considering the size of the firm, the products and services they offer, and the customer base they serve. It should focus on the activities they are responsible for to enable them to understand if and how they are contributing to good outcomes for retail customers and help them to identify any issues they need to address.
- 11.20** Clearly, there will be significant differences in the capabilities of firms. In general, we would expect firms with more sophisticated data strategies to have more detailed monitoring strategies. One question firms can therefore ask themselves is whether they are using the same MI capabilities they use to inform other elements of their business, such as product development or sales, to also monitor outcomes.
- 11.21** Firms will need to develop a strategy to gather the relevant information and data to inform their decision making and assessment of whether they are delivering good outcomes for customers and to meet their governance obligations. We expect firms to continually review and develop their frameworks.
- 11.22** While complaints data can be a valuable source of information, firms should develop MI that goes beyond complaints data to gain better insight and assurance on customer outcomes.
- 11.23** In some areas, firms may monitor outcomes for all their customers product holders, such as product usage, while other types of monitoring, such as distributional analysis or file reviews will be based on a risk-based sample.

- 11.24** Some forms of monitoring will be more frequent than others. For example, where this is relevant to their role in the distribution chain, we would expect firms to gather and review customer support data, transaction data and complaints data on an ongoing basis whereas file reviews, sludge audits and focus groups are more likely to be carried out at regular intervals or on an ad hoc basis.
- 11.25** The Duty applies in a proportionate way, and we do not expect firms to collect large amounts of quantitative data where this does not provide useful insight on whether the activities a firm is responsible for are delivering good outcomes for retail customers. We recognise more qualitative monitoring activities, such as periodic meetings with key partner firms in the distribution chain, can provide more useful insight for firms and better help them meet their Duty obligations rather than extensive quantitative surveys issued widely.
- 11.26** The requirement to monitor the impact of their activities on retail customer outcomes does not interfere with the requirement for firms to comply with the relevant data protection legislation. Monitoring should be carried out in compliance with these obligations.
- 11.27** There is no prescribed format for the way in which firms evidence their monitoring of customer outcomes, but we expect firms to maintain records so that they can be provided to us on request.
- 11.28** Firms should also maintain records of the issues that they identify, and the action that they take to address those issues. Firms need to be able to explain how they reached a decision on the right intervention, and to demonstrate how that intervention ~~has delivered better~~ delivers good consumer outcomes ~~(and, if not, what they have done further to address the issue).~~
- 11.29** We expect firms to comply with existing FCA rules for record-keeping. For example, our existing record-keeping requirements set an expectation that firms have records that are sufficient to enable us to monitor the firm's compliance with the requirements under the regulatory system.
- 11.30** Where firms are outsourcing or using a third-party provider, ~~the usual regulatory principle applies. Firms are responsible and accountable for all that they remain responsible for meeting their regulatory obligations. This includes having regulatory responsibilities applying to outsourcing and third-party arrangements. This means that firms will need to have arrangements in place with their outsourcers to capture~~ obtain any data necessary ~~to enable them~~ to monitor whether they are delivering good outcomes.
- 11.31** Where firms are outsourcing or using a third-party provider and that provider is an authorised firm carrying out a regulated activity, such as debt collection, both the firm who are outsourcing the activity and the third party will need to monitor whether they are delivering good outcomes for their customers.
- 11.32** Where a firm is subject to existing requirements which meet our expectations under the Duty, such as in relation to the products and services outcome or the price and value outcome, and those existing rules include monitoring requirements, firms may follow the existing monitoring requirements to meet the monitoring requirements for those outcomes. That monitoring should form part of the wider assessment of whether firms are delivering good outcomes for ~~their~~ retail customers.

## The types of data/information firms could use

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**11.33** The type of information firms use will vary depending on their role in the distribution chain and the activities they are responsible for, their size, client base, and the types of products or services they offer. Firms should tailor the information to these factors, ensuring that they have sufficient information to be able to identify whether their actions are delivering good customer outcomes.

**11.34** Types of information firms may want to collect include:

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

- **Reviewing whether processes and policies are effective** in delivering good outcomes for customers.
- **Drawing on external sources of data about consumer outcomes.** The Financial Lives survey, for example, contains granular data about the financial lives of different groups.

**11.35** When considering which information to collect, firms should also consider how that information will enable them to assess whether they are causing certain groups of consumers, such as those with characteristics of vulnerability or those who share protected characteristics, are to receive worse outcomes.

### **Monitoring outcomes for consumers with characteristics of vulnerability and protected characteristics**

**11.36** We want consumers with characteristics of vulnerability to experience outcomes as good as those for other consumers, and we want consumers who share protected characteristics to experience good outcomes that are consistent with the Equality Act 2010. Effective monitoring and evaluation by firms is crucial to achieving this.

**11.37** Firms should produce and regularly review MI on the outcomes they are delivering for customers with characteristics of vulnerability. MI should be of sufficient quality and depth for firms to be able to identify which products and processes are working well, and which might be causing detriment and need changing to improve outcomes.

**11.38** Firms that deal with retail customers directly should support their staff to identify signs of vulnerability, for instance through training and resources, and to set up systems and processes that enable customers to disclose their needs if they choose to. This should enable firms to capture information about customer needs, such as communication needs or information about customers' characteristics of vulnerability. It is highly unlikely that firms will be able to meet the needs of all of their customers if they are not capturing such information.

**11.39** In order to satisfy our monitoring requirements, we do not require firms to systematically collect data or to collect new data about customers' protected characteristics, for example to ask customers about their ethnicity. However, where firms do already collect data about customers' protected characteristics, we expect them to use this data to monitor differences in outcomes between different groups, where possible.

**11.40** We recognise that using data about customers' protected characteristics in this way will not always be possible. As set out above, the requirement to monitor outcomes does not interfere with the requirement for firms to comply with the relevant data protection legislation. Firms should assure themselves that they are complying with legal obligations under the Equality Act 2010 or equivalent legislation and data protection legislation.

**11.41** Special category data needs more protection because it is sensitive. In order to lawfully process special category data, firms must identify both a lawful basis under Article 6 of the UK GDPR and a separate condition for processing under Article 9. These do not have to be linked.

- 11.42** See Appendix 1 of our Guidance for firms on the fair treatment of vulnerable customers for information about data protection considerations that firms should take into account.
- 11.43** There is a range of ways that firms can gain insight into the experiences and outcomes of customers who share protected characteristics, without requiring their customers to disclose this information. For example, firms could consider the following points.
- They could conduct research into the experiences and needs of a particular group of customers. For example, they could consider focus groups with older customers or a deep dive into their specific needs.
  - Working with a consumer organisation that represents a particular group of consumers could help a firm to gain insight into the needs and experiences of that group.
  - An audit of customer journeys could identify differences in experience or frictions that affect certain groups of customers but not others.
  - Firms could draw on the diversity of their staff. For example, a network of staff with a particular sexual orientation could provide insight into the experiences that this group has when dealing with financial services.
  - Firms might be able to use proxy data to infer outcomes experienced by different groups of customers. For example, it may be possible for firms to use customer name and post code as a proxy for ethnicity in certain circumstances. Firms would need to carefully manage any risks and be mindful of their data protection obligations when using proxy data.
- 11.44** We expect firms to be proactive when evidence emerges that they are causing consumers who share protected characteristics toare disproportionately experiencing harm or are vulnerable to harm. We expect firms to consider this evidence, review their relevant conduct and assure themselves that they are complying with the requirements of the Duty and obligations under the Equality Act 2010 or equivalent legislation.

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Pub ref: 2-009029

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