

16 May 2024

Dear CEO/Director,

Implementing the Consumer Duty for closed products and services by 31 July 2024

The Consumer Duty (the Duty) sets higher standards for retail financial services customers. It is a core part of the FCA's strategy and gives effect to the cross-party mandate we were given by Parliament through the [Financial Services Act 2021](#).

Following publication of the [Finalised Guidance](#) in July 2022, the Duty came into force for open products and services in July 2023. We thank firms for the efforts they have put into their embedding work over the past two years. The Duty provides a valuable opportunity to improve confidence in the financial services industry and support innovation, healthy competition and growth. We have seen many firms embrace the shift the Duty brings, driving culture change and delivering good outcomes for consumers.

We gave firms an additional year to apply the Duty to closed products and services. This extension is designed to help firms with large numbers of closed products manage implementation at the same time as continuing to advance and learn from their work on open products and services.

In advance of the rules coming into force for closed products and services on 31 July 2024 we are writing to firms to support them in their final preparations. This letter sets out:

- application of the Duty to closed products and services;
- priority issues that are particularly acute or widespread in closed products and services;
- action prompts to ensure firms are prepared for the 31 July 2024 deadline for closed products and services (our [website](#) gives examples of good and poor practices for open products and services); and
- a reminder, in Annex 1, of the definition of closed products and services and an overview of the rules.

When the Duty comes into force for closed products and services firms need to make sure, and be able to show us, that they are acting to deliver good customer outcomes. We will be proportionate to the harm – or risk of harm - to consumers, prioritising the most serious breaches and acting swiftly and assertively.

We expect firms' senior management to carefully consider the contents of this letter and take steps to ensure their firm is compliant with the Duty by the deadline. We understand firms in some sectors may have no or very few customers with closed products and services, but we are circulating this letter widely to help firms consider broader distribution chains.

Application of the Duty to closed products and services

Firms must review closed products and services against all aspects of the Duty before 31 July 2024 and then on an ongoing basis. Boards will need to satisfy themselves that their firms have prepared adequately for the 31 July 2024 implementation deadline.

The Duty applies in full to closed products and services from the deadline. It does not apply to the past actions of firms. Instead, it applies to the ongoing actions of firms from 31 July 2024. For example, communications issued by the firm from 31 July 2024 for a closed product or service will need to comply with the Duty's higher standards.

However, there are some differences in the way the rules apply compared to products and services that are open for sale or renewal.

Importantly, the products and services outcome does not apply in the same way for closed products and services. For example, as there would be no further sales for a closed product or service, there are no requirements for firms to have a target market or distribution strategy, as there are for open products and services.

We cover other issues, such as how firms should consider fair value for closed products and services, and how the Duty applies where there are vested rights, below. In addition, see Chapter 3 of our [guidance](#) for firms on how the Duty applies to closed products and services.

Priority areas for firms to consider

With less than 3 months to go until the closed product deadline, we highlight below 5 key themes firms should already be considering. While these issues are not unique to closed products and services, they are likely to be more widespread or acute. This list is not exhaustive, but draws on our supervisory insights, together with feedback given to us through our engagement with firms, trade bodies and other stakeholders:

1. gaps in firms' customer data
2. fair value
3. treatment of consumers with characteristics of vulnerability
4. gone-away or disengaged customers
5. vested contractual rights

Life insurers are expected to be particularly affected because of their large books of closed products and the associated volume of product reviews, fair value assessments, and communication testing needed prior to the deadline. We understand data gaps, gone-away customers and vulnerability are likely to be some of the most challenging themes for the insurance sector and we have referred to specific issues and action prompts below.

We set out our expectations on implementing the Consumer Duty for [Life Insurance](#) last year and included this in our [insurance market priorities 2023-2025](#) letter. These expectations still apply. By now, firms should have taken action to prioritise reviewing products and services with higher risk of consumer harm and Boards should be monitoring this closely.

In addition, we have undertaken a Thematic Review over 2023/2024 to examine firms' product governance arrangements, including delivering fair value that covered pure protection products. We have shared this review's initial observations with all manufacturers and will publish the final report in the coming months. The findings set out in the final report may be relevant to the consideration of the value of products under the Consumer Duty. The review's findings may help firms when looking at their closed-product books covered by the Duty.

The prompts build on our previous communications and supervisory engagement with your firm. They are not a complete list, and we expect your firm to consider anything else that may be relevant.

We want to thank those firms that are on track to comply with the Duty for closed products by 31 July 2024. For those with work to do, there is time to make any changes necessary. That includes ensuring both that your firm is compliant for its own activities and that it shares relevant information with other firms in its distribution chain to enable them to comply.

1. Gaps in firms' customer data

Firms must address any material gaps in customer data for closed products and services and be able to evidence that they are acting to deliver good outcomes. A key part of the Duty is that firms assess, test, understand and can evidence the outcomes their customers are getting.

Closed products and services may by nature be older, and the data firms hold about their customers may be incomplete, for example, due to challenges with complex legacy systems, back book purchases, and inadequate record-keeping practices at the time of sale.

Gaps in the policyholder data may make it difficult for firms to understand the needs of, or outcomes for, groups of customers. In these cases, firms should proactively challenge themselves to improve both the core data and the flow of data into monitoring. For example, firms should question if data issues are preventing them from providing the right support to vulnerable customers. They should also ask if data not being available for monitoring could lead to harm to groups of customers that would not be identified through the regular monitoring. Some of this may require longer-term strategic investment. We encourage firms to take active steps to ensure they have a plan to complete required system upgrades, and to ensure that there is a way to monitor customer outcomes in the interim.

Where a firm has material gaps in its customer records that affect its ability to comply with the requirements of the Duty, we expect it to be able to evidence that it has taken proportionate steps either to address the gaps, or to pro-actively work around these limitations to ensure it is achieving good outcomes for its customers.

Action prompts for firms

- Have you identified what are material data gaps for your firm?
- Have you explored different ways to identify and fill material data gaps, and to cleanse and update existing data?
- Where data is not available, what action can you take to ensure your firm is delivering good outcomes for its customers, both in advance of the 31 July 2024 deadline and ongoing?

2. Fair value

The fair value outcome applies to closed products and services on a forward-looking basis. Firms must assess and be able to demonstrate that they are providing fair value to customers in closed products and services.

Firms' actions from before the Duty came into force will be judged against the rules that applied at the time. From 31 July 2024, however, firms' closed products and services will need to be compliant with our expectations under the Consumer Duty price and value outcome. This includes that there is and remains a reasonable relationship between the price customers pay and the benefits of the product or service.

Paragraphs 3.10 to 3.17 of our [Finalised Guidance](#) sets out our expectations on assessing fair value for existing contracts made before the Duty came into force.

Action prompts for firms

- Have you applied your fair value framework consistently to open and closed products and services? You should justify any different approaches you have taken.
- Have you assessed the expected total price to be paid by or become due from retail customers? Is this reasonable relative to the potential benefits provided by the product or service to retail customers?

3. Treatment of consumers with characteristics of vulnerability

Firms must consider if any groups of customers who hold closed products and services are adversely affected by aspects of the product or service design – in particular, if customers with characteristics of vulnerability experience poor outcomes.

Our 2022 [Financial Lives Survey data](#) shows that almost half (47%) of adults show one or more characteristics of vulnerability.

Firms should be aware that the challenges they face working with closed products and services may create a particular risk of harm to customers with characteristics of vulnerability. For

example, challenges such as gaps in data, the age and complexity of many of these products, inflexible legacy systems, and the fact that consumers' circumstances and needs change over time can all drive risks of harm, particularly if firms are not acting with appropriate levels of care.

We recognise that customers within the life insurance sector with products and services may have different characteristics and needs than other groups of customers. They may face more challenges in making the right decisions due to the long-term nature of their policies.

Our [Guidance on the fair treatment of vulnerable customers \(FG21/1\)](#) is relevant and firms should already be meeting the expectations set out in it. A failure to act in accordance with this guidance that would have amounted to a breach of Principle 6 is also likely to breach the requirements set out under the Duty when it comes into force for closed products and services.

The Guidance gives examples of how some characteristics of vulnerability can make it difficult for consumers to use certain communication or support channels. The expectations we outline in the guidance apply both for open and closed products and services. We expect firms to respond flexibly to meet the needs of their customers with characteristics of vulnerability. So, firms will usually need to be able to provide support to their customers through different channels or by appropriately adapting their usual approach.

Action prompts for firms

- Is any enhanced action, monitoring or support needed for potentially vulnerable customers of closed products compared to open products?

4. Gone-away or disengaged consumers

Firms should identify less engaged and gone-away customers of closed products and services, and take appropriate action. This includes how firms support and communicate with these customers.

Firms can struggle to get in touch with customers, either because they don't have up-to-date contact details or because the customer does not want to be contacted or does not engage with the firm's communications. This issue may be more acute in closed products and services due to their age profile. This poses challenges for firms, and also potential harm for their customers (including customers paying for products they no longer need, want or are eligible for, and customers failing to take advantage of product features).

Gone-away customers are expected to be a particular issue for life insurance. Firms should challenge themselves to undertake appropriate tracing to find customers. Firms should consider the success of their current efforts and what could be done to increase the success of these exercises where a minimal number of customers have responded.

We understand there are some policies that are worth relatively small amounts (smaller Industrial Branch (IB) policies in with-profits funds, for example). In these cases, the cost of tracing may have a disproportionate impact on other customers in comparison to the

improvement in customer data. We still expect firms to take reasonable steps in this area but note the additional considerations around this.

The most appropriate course of action for a firm to take will depend on the specific circumstances and a balance of different factors, including the regulatory permissions it holds. It is important that firms carefully consider the actions they need to take, can evidence why they took the decisions they did, and how they track and act on the impact of these decisions, with the express purpose of delivering good outcomes for the customer.

Action prompts for firms

- Has your firm followed all reasonable and proportionate avenues to contact gone-away or unresponsive consumers? This might include enhanced tracing activities, including through specialist third parties.
- Has your firm assessed the effectiveness of its activities and channels to re-contact customers marked as gone away?
- What processes does your firm have in place to establish the appropriate course of action when it cannot successfully contact a customer?
- What processes does your firm have in place to establish the appropriate course of action when a 'gone-away' customer *does* contact your firm?

5. Vested contractual rights

Firms acting to address potential harm for customers in a closed product or service are not expected to give up any vested contractual rights – although they would be free to do so. Vested rights include pre-existing contractual rights to which a firm already has legal entitlement (e.g. annual fees that are due) and rights to payments falling due in the case of a contractually specified event such as exit charges.

To help decide if a contractual term amounts to a vested right, you should consider the contract length and whether either party can freely terminate the contract. 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 is not a vested right.

Where there is a vested right a firm does not wish to give up, the firm should consider alternative ways to prevent or manage any harms for existing customers. Firms might be able to take actions that do not require any contractual changes or 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
- helping a customer switch to a new product or service that does not have the same issues
- providing increased customer support to help customers avoid the risk of poor outcomes materialising

Action prompts for firms

- Where you have identified that your firm has vested rights and is causing foreseeable harm to the customers of a closed product or service, what alternative action could you take to deliver good outcomes for your customers and avoid the harm?

For more information:

- Read our [Finalised Guidance](#) and
- Visit our [Consumer Duty homepage](#) which has more information about the Consumer Duty, on-demand webinars and [podcasts](#), and the option to sign up for email updates.

If you feel your firm will not be substantially compliant by the July 2024 deadline, and/or if there are any significant issues that come to light you should contact us via your normal supervisory contact at the FCA as soon as possible. For the Supervision Hub please contact firm.queries@fca.org.uk.

For any areas of non-compliance, our expectations are that:

- Firms should be prioritising their reviews and taking actions in areas where there is the greatest level of harm / potential for harm. As part of this prioritisation, they should consider where such harm might be affecting vulnerable customers.
- Firms should have clear, timebound, resourced plans to address any gaps in implementing remedies where they have identified these are needed to ensure good outcomes.
- Firms should put in place clear mitigations to protect customers from known or possible harms in the period until they have fully implemented identified improvements.
- Firms' governing bodies should challenge their businesses on all the above.
- Firms should consider assurance work via an independent function, such as their internal audit function, on how they are implementing the Duty in due course.

Yours faithfully

Sheldon Mills
Executive Director of Consumers & Competition

Annex 1 – Definition and overview of the rules on closed products and services

For the purposes of the Duty, a closed product or service must meet both of the following criteria:

- 1) there are existing customers who took out a contract **before 31 July 2023**, and
- 2) the product or service hasn't been marketed or distributed (including by renewal) **on or after 31 July 2023**

Importantly, a product that was closed to new customers on or after 31 July 2023 is not a closed product for the purposes of the Duty. These products became subject to the Duty on 31 July 2023.

Examples of closed products and services might include: life insurance portfolios that have been acquired from other firms, a mortgage lender that has exited the equity release market but still has existing customers, an easy access savings account which is no longer on sale to new customers, or a 5-year structured product sold in 2022, with terms and conditions that aren't replicated into new launches.

An example of a closed service would be where a wealth manager used to have a mass affluent managed portfolio service as well as a separate high net worth service with different terms and conditions. Sometime before 31 July 2023, it chose to focus only on high-net-worth investors. It continues to manage portfolios for existing mass affluent customers but hasn't accepted any new mass affluent customers since the Duty came into force. The mass affluent service therefore meets the conditions to be a closed service.

Conversely, products and services that are unlikely to meet the closed product definition (and for which the Duty is therefore already in force) include: new issues of savings accounts or mortgage deals which have broadly the same terms and conditions but with different interest rates.

The Duty applies to both closed products and closed 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.