

It's Your Duty to Be (Consumer) Dutiful

July 2023



The FCA Consumer Duty is just around the corner

With the FCA's Consumer Duty coming into force on 31 July 2023 (for new and existing products and services) and its focus on becoming a more assertive regulator, we take a look at the FCA's expectations for businesses to:

- treat customers fairly
- ensure good outcomes
- demonstrate appropriate compliance

and, in particular, consider what this means in the context of vulnerable customers.

- Has your firm assessed its culture, strategy and objectives?
- Is appropriate monitoring of the treatment of vulnerable customers in place?
- Is the firm focused on achieving good outcomes?
- Can you demonstrate that responsibilities under the Duty have been met?

In July last year, the FCA set out the final rules and guidance for the new "Consumer Duty" ("Duty"). On 31 July this year, the first phase comes into force for new and existing products that are open to sale or renewal, with the second phase for closed products and services coming into force on 31 July 2024. The introduction of the Duty promises to be one of the biggest shake-ups to financial services regulation in over 15 years and will put retail customers at the heart of any planning for financial services and products.

The Duty forms part of the FCA's transformation to becoming a more assertive and data-led regulator. It will enable them to quickly identify practices that don't deliver the right outcomes for consumers and take action before practices become entrenched as market norms.

The FCA has made it clear that they expect Boards/Governing Bodies and senior management to have collective responsibility and accountability, in line with the Senior Managers and Certification Regime, to ensure good outcomes for retail consumers central to their firm's culture, strategy and business objectives. Firms will be required to demonstrate compliance with the required good outcomes throughout the product journey and the FCA is committed to taking "robust action" where harm or risk of harm to retail customers justifies such action and use "enforcement and intervention powers more actively", which may include interventions and investigations, as appropriate.

Are You Ready to do YOUR Duty?

Implementation of the Duty comes off the back of the FCA's ongoing and **increasing concerns** that retail customers in financial services markets don't always get what they need and, in some cases, are mis-led and offered products and services which are difficult to understand, not fit for purpose, or don't represent fair value. Whilst the Duty applies to products offered to **retail customers**, it also applies across the distribution chain from product and service origination through to distribution and post-sale activities and includes all firms involved in the manufacture, provision, sale and ongoing administration and management of a product or service to an end retail customer.

Worryingly, some products and services offered by firms are being exploited to the detriment of their customers and don't deliver good outcomes, with **those in vulnerable circumstances at the greatest risk of harm**. The significance of the pandemic, its ongoing impact, and the cost-of-living crisis have led to detrimental effects on personal income. Debt levels are rising and there has been a significant increase in the number of people who are "financially under-served" and are struggling to access credit or fair value services as a result.

One of the key aspects of the Duty is the focus on achieving good outcomes for retail customers, by ensuring that products and services are designed to meet their needs, provide fair value, help achieve financial objectives, and do not cause them harm.

The Duty is supported by **three cross-cutting rules** which require firms to:

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

and **four rules and guidance relating to consumer outcomes** in relation to:

- Communications
- Products and Services

- Customer Service
- Price and Value

In particular, **the FCA wants to ensure that firms don't seek to exploit customers' lack of knowledge, behavioural biases or vulnerability.**

For some, the FCA's focus on vulnerability may seem new and others may feel that they are fully aware of what "vulnerable" means in the context of their business and customers. In this Thought Leadership paper, we consider the expectations of the FCA's Consumer Duty insofar as vulnerability is concerned and take a deeper dive into the requirements.

Did you know?

Approximately 23% of UK adults experienced some form of financial vulnerability ([Link](#))

Do you **REALLY** understand vulnerability and implications under Consumer Duty?

The FCA's approach to improving outcomes for vulnerable customers goes back almost 10 years and the roll-out of the Consumer Duty demonstrates clearly that the FCA is putting considerable focus on this important subject. In July 2021, the FCA's CEO, Nikhil Rathi, set the regulatory clock ticking when he announced the consultation on a Consumer Duty. In his speech, he made it clear that he intended to focus on the application of rules and guidance, particularly as they relate to vulnerable customers in the digital world.

"... the reality is that they are often up against shrewd operators, offering enticing returns, cloaked in financial and legal semantics"

(Nikhil Rathi, CEO, FCA 15/7/21)

What does it mean?

The definition of a vulnerable customer is defined in the FCA's **guidance** as **"someone who, due to their personal circumstances, is especially susceptible to harm, particularly when a firm is not acting with**

appropriate levels of care". From a legal perspective, firms may also have to comply with other legal and regulatory obligations for vulnerable consumers, one of the key pieces of legislation being the [Equality Act 2010](#).

Characteristics of vulnerable customers may result in them having different or additional needs, which may limit their ability or willingness to make decisions or choices or to represent their own interests, and this can result in greater risk of harm if things go wrong.

It's also important to note that not **ALL** customers with characteristics of vulnerability **WILL** be vulnerable. Firms should take care when using the "vulnerable" term and direct their focus to understanding what harm or disadvantage customers may be vulnerable to and how they respond. Firms will need to take additional care to ensure that they meet the needs of consumers at the greatest risk of harm and who require more support and adaptations than other customers. However, the FCA also expects firms to act early to

Firms must understand the impact of vulnerability on the needs of consumers in their target market and customer base, by asking themselves what types of harm or disadvantage their customers may be vulnerable to, and how this might affect the consumer experience and outcomes.

Let's be very clear, the characteristics of vulnerable customers are many and it is important that firms are aware of the situations and circumstances which result in a customer being or becoming vulnerable. Indeed, the FCA recognises that **ALL** customers are at risk of becoming vulnerable and that risk can increase by characteristics of vulnerability, aligned to four key drivers:

- Health
- Life Events
- Resilience
- Capability

The guidance provides details of particular characteristics associated with these drivers, such as:

- Retirement
- Physical disability
- Mental health conditions
- Learning difficulties

and many more...

It is important that firms understand these characteristics and are able to **demonstrate** the actions they take in support.

prevent risk of harm emerging or growing and this is likely to require very careful focus and management.

What does the FCA require?

Ensuring consumers have an appropriate degree of protection is central to what the FCA does, and this includes the protection of vulnerable customers and ensuring that they experience outcomes as good as those for other consumers and receive consistently fair treatment.

The FCA expects that firms provide their customers with a **level of care that is appropriate** given the characteristics of the customers and that they understand that levels of care may be different to those required for other customers. **Regardless, firms are required to ensure that ALL customers are treated fairly, consider carefully the behavioural and personal consequences of vulnerability and the way in which these consequences may impact engagement and decision-making of vulnerable customers.**

The FCA's work on improving outcomes for consumers in vulnerable circumstances aligns with its work on diversity and inclusion.

In order to meet the FCA's expectations in relation to vulnerable customers, firms will need to understand how they can generate comparable outcomes for their customers, regardless of how they choose to interact with the firm and they must also understand not only "WHO" they are communicating with, but also the "WHAT" and the "HOW" they are communicating. This could lead to a proliferation of communication content, approaches and/or reconfiguration and re-drafting depending on more specific client circumstances or specific vulnerabilities. Furthermore, firms must also proactively consider the degree to which their communications, intentionally or otherwise, take advantage of consumers, behavioural biases and which may potentially result in poor customer outcomes.

To achieve stated outcomes, firms will need to conduct more testing with retail customers to objectively assess the degree to which their communications are designed to the desired effect and empower customers to make informed decisions. This outcome is likely to produce literature, disclosure and associated terms and conditions and could lead to a challenging trade-off between useful features and benefits of the underlying products or services, which cannot be easily articulated, so that customers can readily understand them.

This does not mean that firms need to identify the individual needs of **each** customer, but to consider the **range of needs in their target market** and factor this in to how they design and sell products and services and support their customers.

The FCA wants customers in vulnerable circumstances to receive outcomes as good as those that other customers receive.

The Duty applies in a proportionate way, based on the standard that could reasonably be expected of a prudent firm. Firms must consider what is reasonable in the relevant circumstances in relation to the nature of the product, the characteristics of the customers in the target market and the firm's role in relation to the product. The Duty is outcomes focused and does not impose "a one size fits all" approach. Where risks are low, there is less need for firms to take additional actions, but the onus is on firms to ensure that outcomes are reasonable and appropriate.

Firms will need to think more widely about the purpose of their communications, and the outcomes they are focused on, to meet expectations under the Duty. Where firms must communicate complex information to comply with other disclosure requirements, they should consider what additional steps they can take to support consumer understanding e.g. by adopting a layered approach to provide context or explaining key information upfront in a simple way – such as in a cover letter, signposting more detailed information that consumers may want to consider or which they may find helpful for reference at a later date.

Culture

It is imperative that firms embed fair treatment of vulnerable customers as part of their culture, not just on the frontline, but **across ALL areas**, including product development. In turn, the FCA requires senior leaders to create and maintain a culture which enables and supports staff to take responsibility for reducing the **potential** for harm to vulnerable customers. This extends to the inclusion of fair treatment for such customers in firms' policies and procedures throughout the entire customer journey.

The characteristics of vulnerability can be complex and may overlap and firms are required to understand the characteristics present in their customer base and target market.

Assessing Culture

When assessing the culture of a firm, the FCA considers what *drives* the behaviours in a firm and addresses those drivers which are likely to cause harm, including:

- the firm's purpose, as understood by its employees
- the attitude, behaviour, competence and compliance of the firm's leadership
- the firm's approach to managing and rewarding people (e.g. staff competence and incentives)
- the firm's governance arrangements, controls and key processes (e.g. whistleblowing or complaint handling)



Can your firm demonstrate how it has carried out an assessment of its customer base and target market?

Monitoring Treatment of Vulnerable Customers

To ensure adherence with the requirements, the FCA intends to monitor firms' treatment of vulnerable customers through its supervision and enforcement processes, and firms must be able to demonstrate how their business model, actions they have taken, and culture ensure fair treatment.

Firms will be required to provide the FCA with information they use to monitor how they are achieving fair outcomes for vulnerable customers and that these are as good as those for other customers. In addition, the FCA will seek input from vulnerable customers through market research and engagement with their [Consumer Network](#) to better understand their treatment and any difficulties they have dealing with firms.

Achieving Good Outcomes for Vulnerable Customers

To achieve good outcomes for customers, the FCA requires firms to:

- understand the needs of their target market / customer base
- ensure their staff have all the right skills and capabilities to recognise and respond to the needs of vulnerable customers
- respond to customer needs throughout product design, flexible customer service provision and communications
- monitor and assess whether they are meeting and responding to the needs of customers with characteristics of vulnerability, and make improvements where this is not happening

A useful graphical summary is provided in the [guidance](#) and firms must consider carefully the ensuing actions they put into practice e.g. creating a vulnerability policy.

The clock is ticking .. tick...tock....

The FCA issued two consultation papers in 2021, followed by [final guidance](#) in July 2022 requiring firms to review the end-to-end journey and experience of customers across its products, services and communications, with a view to considering areas for change where necessary and implementing any required remedies.

The focus doesn't stop there, and firms must also look within and consider opportunities for change across key areas such as governance, accountability, product design, pricing, distribution, servicing, staff training, MI and more, whilst the clock continues to tick.

Is your firm ready?

Are your staff ready?

A Wake-Up Call

Don't leave it to the last minute ...

The FCA has made it clear that it intends to take an assertive approach and firms must be ready to meet the new requirements, with Boards (or equivalent management bodies) expected to take full responsibility for delivery, oversight and challenge. It's important to note that firms must be prepared to share their plans with FCA supervisors and be prepared for their challenge too.

Firms must consider the needs of customers in their target market specifically and focus on the **customers they actually serve**, not a hypothetical average.

In addition, firms are expected to provide a level of support that meets consumers' needs throughout their relationship with the firm. This means firms' customer service should enable consumers to realise the benefits of the products and services they buy and ensure they are supported when they want to pursue their financial objectives.



Key Dates

- *From the end of July 2023*, the Duty will apply to all new products and services, and all existing products and services that remain on sale or open for renewal
- *From the end of July 2024*, the Duty will come fully into force, and apply to all closed products and services. This extra 12 months will help those firms with large numbers of closed products

and will also help mitigate some of the wider concerns firms raised about the difficulty of applying the Duty to these products

And Finally ...

- In line with **Principle 11** (Relations with Regulators), firms should engage with the FCA if, as part of implementation of the Duty, they are considering withdrawing or restricting access to products or services in a way that will have a significant impact on vulnerable consumers or on overall market supply
- Firms must alert the FCA (required by **SUP 15.3.11R**) if they believe that they will not be able to complete all work necessary to be compliant with the Duty before the implementation deadlines
- The FCA expects firms to be compliant, but firms should also take a **risk-based approach** and prioritise the implementation work that is likely to have the biggest impact on consumer outcomes e.g. by reviewing first the most complex or risky products and the most significant communications
- The training that firms give to their staff should enable them to understand their obligations under the Duty and the individual conduct rules. The FCA has highlighted the importance of the Individual Conduct rules in the Guidance and explained how they expect this change to help to drive the necessary culture change
- It is important that all firms that can control retail customer outcomes should take responsibility for their actions, regardless of the relationship with the customer and including customers with whom a firm does not have a direct relationship
- Under the rules, customers will still have recourse in relation to the firm or firms whose actions or omissions led to harm

- If a firm becomes aware that another firm in the distribution chain is not complying with the Duty, it must notify the FCA
- A firm must also notify other firms in the distribution chain if it thinks they have caused, or contributed to, harm to retail customers
- All firms that can determine or materially influence retail customer outcomes should take responsibility for their actions, regardless of where they sit in the distribution chain

With the first phase of the Duty drawing ever closer and the clock counting down, take a moment to reflect and the opportunity to review the guidance and make sure that your implementation plans are on track, methodologies for assessing the compliance of products and services align with the Four Outcomes and are sufficiently evidenced and documented and responsibilities are clearly defined.

About the author



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About Plenitude

Plenitude is a niche consultancy, specialising in Financial Crime Risk and Compliance, and are appointed to the Financial Conduct Authority's Skilled Persons Panel for Financial Crime. With our deep subject matter expertise in Financial Crime Risk and Compliance, we can assist financial institutions in effectively addressing the upcoming Consumer Duty. By providing comprehensive advisory services, transformation expertise, and subscription products that offer enhanced insight into relevant laws, regulations, and risk indicators, we enable firms to diligently and rigorously mitigate financial crime risks while meeting their regulatory obligations and reducing exposure.

To learn more about how we can assist you with obligations under the new Consumer Duty, email us at enquiries@plenitudeconsulting.com

APPENDIX

Asset Management scenario – Products and Services

In the desire to offer products and services which meet the requirements of the *majority* of their customers, some firms choose to simplify their product offerings to appeal to the general requirements of the majority of their customers.

In such instances, Asset Managers may package their funds more simply and offer less attractive opportunities for investment to meet the generic needs of a wider group of customers and therefore not offer alternative products which may better suit the more niche needs of a smaller group of customers.

The Customer Duty will raise the bar and require firms to be more proactive and to communicate with customers regularly to let them know when better opportunities were made available and to provide advice, where required, without crossing advice-giving boundaries. Better consideration will have to be given to methods of communication since written forms may not always be the most appropriate.

Retail Baking scenario – Communication

Historically, the focus on the scale, complexity and individual nature of customer vulnerabilities may not have been adequately considered by firms when developing and rolling-out new products and services. Many firms standardised their product offerings without considering properly the needs of their customers, let alone taking into consideration the needs of vulnerable persons.

Once issued, some firms failed to review sales materials, products and services offered regularly and proactively to ensure that they continued to be relevant and appropriate for ALL of their customers e.g. customers with savings products weren't notified when new products were released offering better rates and terms.

More recently, firms have issued products which offered better rates of interest for certain groups of customers e.g. those engaging through digital channels, without considering vulnerabilities such as age, access to IT, learning difficulties.