Consumer Duty Implementation: Good Practice and Areas for Improvement

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Background

On 20 February 2024, the United Kingdom's Financial Conduct Authority ("**FCA**") published guidance (the "**Guidance**") on the implementation of the Consumer Duty.

The Consumer Duty came into force for "open" products and services (i.e. new and existing products or services that are open to sale or renewal) on 31 July 2023. While the FCA welcomes the improvements made by many firms to deliver better outcomes for their customers, it notes that some firms are "*lagging behind*". The FCA has therefore published the Guidance to:

- remind firms of the consumer outcomes required by the Consumer Duty;
- set out recent good practice to deliver these outcomes; and
- highlight areas for improvement where firms have more to do.

Culture, governance and monitoring

The FCA wants "*consumers to have confidence in retail financial services markets, with healthy competition based on high standards and firms focused on delivering good customer outcomes*".

The FCA notes in the Guidance that good practice to meet this outcome included (i) altering the company purpose to prioritise customer outcomes, (ii) using data and metrics to monitor service levels, and (iii) driving required changes at every level of the business (including at Board level) rather than just being driven by risk and compliance teams.

Areas for improvement included not acting in accordance with the above good practice, as well as firms waiting for the FCA to identify issues, rather than proactively addressing these.

Consumers in vulnerable circumstances

The FCA wants "*vulnerable consumers to have outcomes as good as other consumers*".

Firms acting in accordance with good practice tailored their products / services, systems and communications to address the needs of vulnerable customers. Some firms were also able to make effective use of trained staff by centralising operations relating to vulnerable customers or passing on problematic trading patterns to those specific teams, to address the issues.

On the other hand, the FCA identified firms who neglected to track vulnerable customers and had data gaps. The Guidance cautions against poor practices when identifying vulnerable customers, including unnecessary requests for evidence or repeated disclosures of needs.

In the investment market in particular, the FCA saw firms not prioritise identification of and support for vulnerable customers, noting that "*in some cases, this does not even appear to have been considered*". This is despite the recent Dear CEO letter to wealth and stockbroking firms, which noted that 50% of customers will be classed as vulnerable at some point.

Products and services

The FCA wants "*consumers to be sold products and services that are designed to meet their needs, characteristics and objectives*".

The FCA notes that firms were able to minimise harm and ensure products are sold correctly by: (i) tailoring availability and defining precise target markets, (ii) refining data tracking measures to avoid harm when non-target customers buy products, (iii) improving development processes with a greater focus on good customer outcomes, and (iv) simplifying offerings so consumers can identify what they need.

Some firms were also able to understand their role in the distribution chain. For example, the FCA noted that an investment firm was able to identify a small number of institutional clients with retail customers in the chain and offer alternative investment options more suited to them.

The FCA identified customer harm where products / services were poorly designed or were distributed widely to customers for whom they were not tailored. Firms need to improve information sharing and better understand their role across supply chains to ensure positive outcomes, even where the firm does not have a direct relationship with retail customers.

Price and value

The FCA wants "*consumers to get products and services which offer fair value*".

The FCA notes in the Guidance that effective firms evaluated the total cost of products and services relative to benefits, to ensure fair value for consumers. They reduced costs by updating pricing models, enhancing benefits, and removing excessive charges. Such firms also assessed fair value across the distribution chain – ending agreements with distributors or limiting pricing markups, if needed. Furthermore, they utilised effective monitoring processes and could discontinue products with potential for poor customer outcomes.

Firms struggled with this outcome where they were unable to justify the fair value to customers. For example, some firms relied solely on an assessment of similar product offerings in a market or did not have any qualitative data to support their reasoning. Other deficiencies included adding fees along distribution chains, charging for unused services, and insufficient information sharing within distribution networks, in order to properly assess value to the end consumer.

Consumer understanding

The FCA wants "*consumers to understand the information they are given and make timely and informed decisions*".

Firms improved communication with customers by simplifying language, enhancing website accessibility, updating materials, and employing proactive strategies based on data insights. They also tested customer understanding by monitoring the impact of certain communications on behaviour.

Conversely, firms undermined consumer trust by promoting high-risk or complex products that did not align with customers' risk profiles. Clear communication of charges and adherence to the Consumer Duty in financial promotions are essential for maintaining trust and ensuring good outcomes for consumers.

Consumer support

The FCA wants "*consumers to be provided with support that meets their needs*".

Offering tailored support and creating additional touchpoints allowed firms to ensure fair support for new and existing customer. Some firms also maintained effective monitoring processes by identifying areas for improvement and ensuring even outsourced support continued to meet the Consumer Duty standard.

Insufficient support arose as a result of firms failing to train staff for complex conversations, use of risky "gamification" practices to encourage short-term trading, overlooking specific customer circumstances, and lacking robust systems to protect against fraud / cyber-attacks.

Next steps

Firms should consider these findings and continue to make improvements in line with good practice. Any gaps in implementation should also be identified and addressed.

The findings may be useful for firms when considering what changes they need to make to meet the 31 July 2024 implementation deadline for "closed" products and services – existing contracts with retail customers entered into before 31 July 2023, that are not marketed or distributed to such consumers (including by way of renewal).

For more information, please reach out to the Proskauer Regulatory Team at UKReg@proskauer.com.

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