the payments association

# Embedding the Consumer Duty

SEPTEMBER 2022

# What is the Consumer Duty?

The **Consumer Duty**, led by the FCA, requires firms to demonstrate that customers' interests are at the heart of their business. The wide reach of the Duty brings business strategy, customer journeys/ support/communication, product management and development, partnerships and data under the microscope.

Regulatory intent is clear, the Duty should reduce harm, and improve customer propositions, satisfaction and trust. The Duty is founded on the principle to deliver good outcomes to retail customers placing them in a position where they can make effective decisions based on easy-to-understand and timely information. Currently not included in the Duty, but under review, is the private right of action which gives individuals the right to take legal action for breach of the Duty. If adopted, this would sit alongside the right of customers to complain and seek redress through the financial ombudsman.

The Duty is measured on outcomes and there are rules that cut across a business to drive a strong customer-centric culture. Data and analytics play a key role in demonstrating good outcomes, so firms need to gather, store and undertake ongoing analysis of quantifiable and auditable evidence of customer understanding and care. Equally important is evidencing the action taken upon identification of customers not receiving good outcomes.

The Duty sets a high, ongoing, customer-centric bar across the whole business, and meeting this bar must be demonstrated and attested annually by the Board. Duty implementation plans are expected to be agreed upon and, if requested, shared by 31 October 2022 in readiness for the 31 July 2023 deadline for products that are on sale. The deadline for closed products is 31 July 2024. ■

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"The Duty demands an intellectual and monetary cost, and its permeating nature demands that gap analysis and programmes should already be underway or started immediately."

**Max Savoie**
**PARTNER,SIDLEY AUSTIN LLP**

# Firms and customers in scope

Regulated firms are in scope of the Consumer Duty, including electronic money institutions, payment institutions and registered account information service providers that serve retail customers, either directly or indirectly as part of a supply chain.

Each firm is responsible for its own compliance, but reflecting complex value chains, those with indirect customer access are proportionally accountable in the event of poor outcomes. Partnership agreements must set out mutual responsibilities and clarify the extent of the Duty liability in the distribution chain.

The definition of retail customers reflects the FCA sector sourcebook, for payment services the definition reflects PSR 2017, personal consumers, micro-enterprises and small charities. See **Appendix One** for a breakdown of customers in scope by sector and activity. ■

> “Partnership agreements must set out mutual responsibilities and clarify the extent of the Duty liability in the distribution chain.”

Bottomline

“Some firms will need to consider segmenting their approach to retail and non-retail customers, or to apply the Duty to all of their customers.”

**Jon Rushton**
**GENERAL MANAGER, BOTTOMLINE PAYMENT SERVICES**

# How will the Consumer Duty be measured?

The Duty has two core components, cross-cutting rules and four expected outcomes.

**Cross-cutting rules** drive culture and apply to all aspects of a business and conduct, they require that firms:

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

**There are Four Expected outcomes** to demonstrate that customers are at the heart of the business:

- The products and services outcome
- The price and value outcome
- The consumer understanding outcome
- The consumer support outcome

Based on the cross-cutting rules and expected outcomes, the FCA will measure improvement in:

- **Fair value:** Customers pay a price for products and services that represent fair value; it is expected that products and services giving poor value are no longer sold
- **Products and services:** Customers are sold and receive products and services that have been designed to meet their needs
- **Treatment:** Customers receive a good service, enjoying high levels of satisfaction
- **Confidence:** Increased customer confidence with the provision of the right information to make effective, timely and properly informed decisions

## The products and services outcome

Key to a firm's success are its products and services and the Duty requires that firms ensure that products and services are fit for purpose. Evidence of customer understanding and satisfaction together with causal analysis and redress should feature strong product development, launch and management.

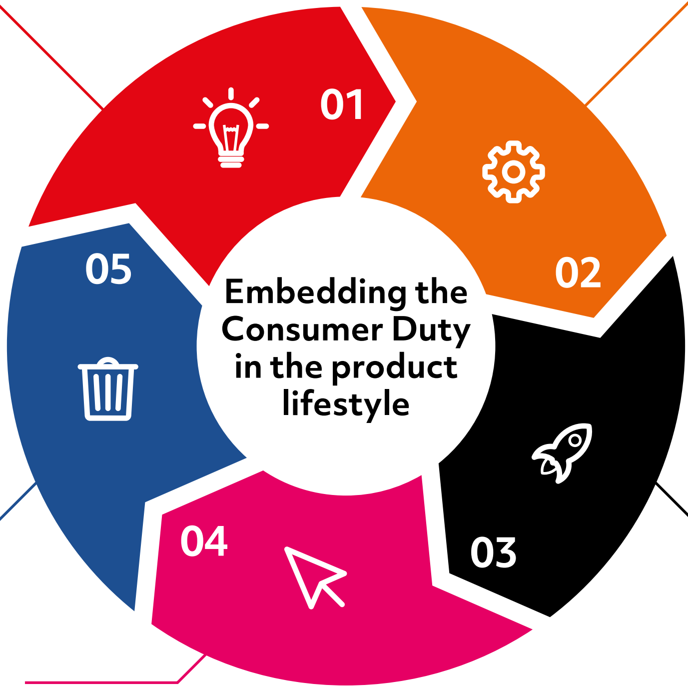
Products must be fit for an identified target market; for sales beyond the identified market e.g., cross sales or a change in the distribution channel, firms must consider the impact on the end customer and with a lens on foreseeable customer harm.

“Fleet of foot businesses need to balance quick decision-making and execution with robust quantifiable evidence showing that the Duty principles have been observed. ”

**Teresa Connors**
**MANAGING DIRECTOR, PAYMENT MATTERS**

Placing the customer at the heart of a business demands testing and analysis of likely and actual customer outcomes throughout the product lifecycle.  Action taken as a result of testing must also be documented and quantifiable.

The infographic below gives examples of activity to support the Product and Services Outcome.




**Ideation**

- Identify, validate and document target markets including vulnerable customers
- Evidence overall fair value including distribution & renumeration strategy within business case
- Validate Duty responsibilities and accountabilities for all partners in value / distribution chain
- Undertatke risk assessment to identify potential harms and agree solutions to resolve

**Development and Testing**

- Evidence / explain if / why soft launch not needed / progressed
- Document qualitative and quantitative testing and measurement against design principles and expected outcomes, inclduing changes to protect against potential harms
- Prove testing of customer communications for appropriateness, clarity and understanding to ensure communications are not misleading

**Launch**

- Monitor all aspects of launch against expected outcomes, if needed take swift action to address any shortfalls in experience / expectation
- If required, develop regulatory notifications and approval requirements e.g. material change of business plan, significant change in outsourcing/safeguarding arrangements

**Monitoring and Refining**

- Assess and document operational resilience, undertake stress test analysis and options to mitigate harm
- Using MI (inc qualitative data) from a range of sources e.g. complaints, sales and social media  identify any shortfalls and deliver improvements
- Conduct periodic / ongoing documented assessment of all aspects of the product against the Duty

**Retiring Products**

- Deliver a fair and measurable wind down / migration plan which includes harm assessment
- Prove that customer communications are clear, undersood and delivered by approrpriate channels, especially for vulnerable customers

## Value chains - manufacturers and distributors

Payment value chains can be complex and supported by multiple visible and invisible partners.

End-to-end value chains will be scrutinised to ensure that all providers are proportionately accountable for good outcomes and to lessen the cumulative effect of customer harm.

The Duty sets out requirements for two roles: manufacturers and distributors.


**Manufacturers**
Manufacturers are firms that create, develop, design, issue, operate or underwrite a product or service. Manufacturers must assess if the price of a product/service provides fair value. At a bare minimum, consideration should be given to:

- The nature of the product or service, including the benefits that customers may reasonably expect and their quality
- Limitations within the product/ service
- The expected total price customers will pay
- Characteristics of vulnerability in the target market

**Distributors**
Distributors are firms that offer, sell, recommend, advise or provide a product or service. Duty requirements include:

- Fair distribution channels
- Obtaining information from the manufacturer to fully understand the product or service, its target market and the intended distribution strategy
- Regular review of distribution arrangements to ensure appropriateness and, if issues are identified, take appropriate action to resolve and prevent further harm

Distributors must be satisfied that distribution arrangements are providing fair value. In addition to working with the manufacturer to understand the intended value, the impact of distribution and remuneration models on value must be assessed.

## Price vs value

Fair value goes beyond price; poor value can be created by unsuitable product features that lead to foreseeable harm or poor communications and support. The price and value outcome measure is holistic and centres on the price a customer pays in relation to the overall benefits they can reasonably expect from a product.

E-money and payment firms which do not directly interact with consumers can still have an impact on value. Clearly communicated pricing structures are important but a customer's willingness to buy a product or service should not be interpreted as evidence of fair value.

A clear example from the FCA of an area that needs to be carefully considered in terms of foreseeable harm and price vs value is BNPL. Firms must demonstrate fair overall pricing and value especially when sold to customers with low incomes or poor credit ratings. ■

# Tools to prove embedment of the Consumer Duty

Proving embedment and ongoing compliance relies on data and analytics.  Potential sources of data include:

| Source of Data | Insight |
|---|---|
| Customer retention records | Underlying reasons for attrition, including poor treatment. |
| Review of legacy products/pricing/ fees and charges | Compare outcomes with customers on other products. Providers must not exploit loyalty or customer inertia. |
| Behavioural insight analysis | Comparing different channels could signal if improvement to policies, processes and systems is needed. |
| Training and competence programme review | Identify (and address) any shortfalls in expectation. |
| File reviews and monitoring of calls | Identify if customers are receiving good outcomes (particularly useful for sales processes) |
| Customer feedback | Analysis, from a range of sources including complaints and social media, to identify trends and demonstration of resultant action taken. |
| Complaints | Identify trends involving poor consumer outcomes, then undertake root cause analysis and address them. |
| Review benchmarking of  the four expected outcomes | Periodic reviews with documented results and actions taken. |
| Compliance reports | Identify any shortfalls and address them. |
| Testing customer experiences | Mystery shopping, auditing, focus groups and deep dives to identify and address any shortfalls. |


"Proving embedment requires robust data collection, storage and analysis.  Regardless of the tools used to monitor and ensure compliance, the paramount requirement is to provide evidence of ongoing monitoring and quick resolution of issues identified."

**Alison Donnelly**
**DIRECTOR, fscom**

# Costs to consider when setting up and maintaining the Consumer Duty

The set up and maintenance costs to evidence that the Duty and customer care is part of a business' DNA will vary depending on whether systems are already in place, just need tweaking or if entirely new systems and processes need to be set up.

This table gives examples of costs to consider:

| Cost | |
|---|---|
| Gap analysis | Understand the Duty and assess where change is needed, across the business, to meet expectations |
| Products and services governance | Setting up or reviewing product and service governance processes, including ongoing governance |
| Changes to customer journeys | Improvement to journeys might be needed, complex products and services may also require additional resource to demonstrate customer understanding |
| Change project costs | Designing and implementing changes across the business, including product lifecycle, pricing and customer support |
| Price and value reviews | Ensuring that prices offer fair value for live and legacy products |
| Customer understanding | Review and potentially change communications and/or communication channels |
| Customer support | Adapting customer service processes and systems, this could include IT systems changes, staff training and/or new support channels |
| Training and development | Training staff to embed the principles of the Consumer Duty |
| Monitoring and evaluation of compliance | Cost also includes time spent by the Board, and where more than one firm is involved, partners to assess the overall proposition |
| IT systems | Capture, analyse and store data to help monitor and demonstrate embedment of the duty |

# Governance – Boards and SMCR

Responsibility for the annual review and attestation that the Duty standards are being met lies with the Board. To further cement a customer-centric culture, the Senior Manager Certification Regime establishes clear and personally accountable Senior Manager responsibility for adherence to the Duty.

**Boards**

The all-encompassing nature of the Duty drives a business-wide customer-centric culture. From a Board perspective, focus should be placed on strategy, governance, leadership and people policies, including incentives at all levels.

A Duty champion is expected as part of the Board (or equivalent governing body) who, along with the Chair and the CEO, will ensure that the Duty features in all relevant discussions.

Boards must have documented Duty implementation plans in place by 31 October 2022 in readiness for the 31 July 2023 deadline for live products.

Attested annually, the Board must declare if the business is acting to deliver good outcomes for its customers. The assessment should include:

- Results of monitoring to assess if products and services are delivering expected outcomes
- New and emerging risks to good outcomes
- Evidence from customers, including vulnerable customers, who are not achieving good outcomes and an evaluation of the impact and the root cause
- Actions taken to address any risks or issues
- Assessment of the business strategy to deliver good outcomes

Before signing off the assessment, actions must be agreed to address any shortfalls together with consideration to a change in business strategy.

> "The all-encompassing nature of the Duty encourages a business-wide customer-centric culture."

**SMCR**

Senior managers are personally accountable for delivering good outcomes under the auspices of the Duty of Responsibility and Conduct Rules. Senior Manager applications will consider evidence of an individual's understanding of and actions taken to comply with the Duty.

# Conclusion

The Consumer Duty will improve customer propositions and customer satisfaction. An outcome-based measurement mirrors the approach already in place across the majority of payment providers.

All payment firms, even those at arm's length from the end customer, are in scope of the Duty and are proportionately responsible and accountable for their role in the value chain.

Most payment firms have customer interests at the heart of their business, yet robust and auditable data is crucial to demonstrate that good customer care is within the fabric of the firm.

Providers face challenges when it comes to the resource and costs required to implement the Consumer Duty by 31 July 2023. For example, intellectual and monetary capital is needed to review, adapt or set up compliant governance and processes across the business.

The implementation deadline is less than a year away, Boards need to act now to ensure compliance and demonstrate that customers are at the heart of their business.

## Appendix One - A breakdown of firms in scope by sector and activity.

**Payment Service Providers or e money providers** - Payment Services Regulations 2017 (PSR 2017) consumers, micro-enterprises and small charities.

**Consumer credit** -the Consumer Duty applies to all regulated credit-related activities.

**Deposit-taking activities** - the Consumer Duty applies to consumers, micro-enterprises and charities with a turnover of less than £1m (in line with the banking customer test).

**Insurance** - the Insurance Conduct of Business Sourcebook (ICOBS). The Consumer Duty does not apply to reinsurance or contracts of large risk sold to commercial customers.

**Investments** - the Consumer Duty applies to business conducted with retail clients, as defined in the Conduct of Business Sourcebook (COBS).

**Mortgages** - the Mortgage Conduct Business Sourcebook (MCOB).

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