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Elston Insights

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Consumer Duty: what it means for advisers

- Creates new Principle & four key outcomes
- Builds on TCF and PROD rules for advisers
- New rules kick in from 31st July 2023

The FCA has now issued its Policy Statements and Finalised Guidance on Consumer Duty. From 31st July 2023, the new rules will come into force for existing products and services. From 31st July 2024, the new rules will come into force for legacy products and services.

The rules create a new Consumer Principle that requires firms to deliver good outcomes for consumers by "acting in good faith, avoiding cause of foreseeable harm, and enabling and supporting retail customers to pursue their financial objectives".

The four key outcomes

Rules will focus on four key outcomes for consumers around:

1) products and services;

2) price and value;

3) consumer understanding; and

4) consumer support.

Firms will need to understand how their activities deliver on those outcomes and provide evidence that they are understood and how they are being met.

Furthermore – these principles and rules will have to be considered with respect to the needs, characteristics and objectives of their customers, including those with characteristics of vulnerability, and how they behave at each stage of the customer journey.

In our view, the new rules build on original Treating Customers Fairly principles and Product Governance rules to ensure consumer outcomes are front and centre of every interaction between firms and their clients. Indeed the new Consumer Duty Principle (Principle 12) will replace Principles 6 & 7 (Treating Customers Fairly & Communications with Clients), where applicable.

The rules cannot be applied retrospectively, but will be applied going forward to existing and legacy products and services alike.

What does it mean for advisers?

The new rules will mean that the bar is raised on advisers being able to evidence that the impact of products or services they recommend to clients has been considered against the Consumer Duty and each of those four outcomes.

1. Product and Services Outcomes

Products and services should be fit for purpose and designed to meet the needs, characteristics and objectives of a target group of customers. Adviser firms that are all complying full with Product Governance rules (PROD 3.3) should already be delivering on this Outcome. Surprisingly, despite being in force since January 2018, some firms still do not have a clearly articulated Product Governance framework and review process in place, despite it being a requirement, not guidance. The new Consumer Duty rules mean that it's all the more important to embed PROD as part of a firm's investment proposition: a process we encourage and support. This will necessarily have an impact on the design of investment products.

2. Price and Value Outcome

Believe it or not, the regulator is genuinely not a price regulator, but is rightly obsessively focused on value for money. The price and value outcome will put this into sharp focus and will require advisers to ensure that there is a reasonable relationship between the price paid for a product or service and the overall benefit a consumer receives from it.

Having a clearly structured value assessment for advisers' own services would be a helpful starting point to document and evidence this.

Importantly, advisers are responsible for price and value outcomes they can control. For example, they will have to assess the price and value of their own service they provide to clients, not duplicate the work done by fund manufacturers (who already create Assessment of Value reports). However, advisers nonetheless should also consider those Assessment of Value reports from a Product Governance perspective.

3. Consumer understanding outcomes

Adviser firms should continue with any information and disclosure requirements they are obliged or elect to make in relation to recommended products or services.

However, they now need to go beyond that and think more broadly about the nature and purpose of their communications, and their impact on good outcomes. This will be particularly relevant when communicating complex information to comply with disclosure requirements, advisers should also consider what additional steps they can take to support consumer understanding, and make information clearer, accessible and understandable. Communications should enable customers to make effective, timely and properly informed decisions. We think advisers should think carefully about how and what they communicate to customers and how best to deliver clarity of information, whilst remaining comprehensive. In this respect, a layered approach to communication may help.

Again the onus will be on advisers to evaluate, assess and evidence the efficacy of their communications to clients, and also consider tailoring those communications for different characteristics of customer, including those with characteristics of vulnerability.

4. Consumer Support Outcome

Advisers should be able to demonstrate that their clients are able to access and benefit from the products and services offered by a firm, and ensure they are supported when they want to pursue their financial objectives.

We think as advisers are the most customer-facing part of the investment value chain, that for most firms, the provision of consumer support is integral to all they do.

Importantly, there is no prescription on how that support is delivered to customers – whether in person, by email, by video call, or webchat, but if the channels available are limited to a particular medium, then that should be clearly communicated, work effectively and be able to cope with non-standard issues. As adviser firms' priority is about helping consumers achieve their goals, we don't expect this to create material change for good practice firms, but we do expect additional requirements to evidence that this outcome is being achieved for a firm's respective client segments.

Preparing for the new rules

Firms that already have embedded Treating Customer Fairly and Product Governance into their business process and culture will have some incremental work to do, but will need to have more process, evidence, and documentation to ensure that policies are brought up to date to comply with the new rules.

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