

CONSUMER DUTY CLIENT BRIEFING

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January 2024

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YEARS

FOREWARD

The first phase of the Consumer Duty went live on 31st July 2023, in relation to open products. The second phase of the Duty is scheduled to go live on 31st July 2024 for closed products.

We will update this document each time there is a material change to the Duty, or as there is more information that firms need to consider, such as information shared from the FCA webinar “Consumer Duty: Next Steps” which took place on 6th December 2023.

New content will be updated throughout this document, where it applies and is appropriate. New content and considerations will also be summarised in the next section by way of a timeline.

CONSUMER DUTY TIMELINE

TIMELINE

31/07/23	Consumer Duty went live for open products. Implications for collections activity are detailed in this document
06/12/23	<p>FCA Webinar – “Consumer Duty – Next Steps”. Focus existing compliance for open product implementation, together with on readiness for the second phase of the Consumer Duty, for closed products. Two key focus areas – Closed products and Board reports</p> <p>All products where Consumer Duty is live</p> <ul style="list-style-type: none"> • The Consumer Duty is not “once and done” – firms must continually monitor customer outcomes and proactively adjust if good outcomes are not maintained • Annual Board reports must endorse a culture that delivers good outcomes, outline how the Board is working with executives to ensure this happens. The FCA will be reviewing board reports to assess firms culture in the adoption of Consumer Duty. • Firms must use existing, and devise new, data to ensure good outcomes can be proactively evidenced • Vulnerability is and continues to be a priority • Firms must ensure they properly consider, and focus on, financial difficulties as part of the vulnerability process • Examples of good practice observed around vulnerability include wholesale reviews of business models relating to vulnerable customers, removal of productivity metrics, centralisation, specialist staff <p>Closed 'Legacy' Products</p> <ul style="list-style-type: none"> • Already signs that firms are finding the road to compliance is more challenging than for open products • Firms need to be compliant with the duty by 31/07/24
31/7/24	<ul style="list-style-type: none"> • Closed product Consumer Duty live date

TIMELINE – ARUM THOUGHT LEADERSHIP

15/01/24	This document
	<p>Links to Arum articles</p> <ul style="list-style-type: none">• <u>Consumer Duty: Meeting the closed product requirements</u>• <u>Consumer Duty: what's next?</u>• <u>Call of Duty: A round up of what happened on the first day of the Consumer Duty</u>• <u>TCF vs Consumer Duty – What's the gap between the two?</u>• <u>How to ensure you're compliant with the new FCA Consumer Duty</u>• <u>What you need to know about the FCA's newly published Consumer Duty</u>

EXECUTIVE SUMMARY

- When it came into effect on 31st July 2023, the Consumer Duty delivered a 12th principle, the Consumer Principle, mapped to four distinct outcomes
- The FCA has stressed that it expects to see a cultural shift in how firms focus on consumers
- The regulator will expect firms to monitor the outcomes their consumers are experiencing, consider whether they are consistent with the Consumer Duty, and act when they identify issues or concerns
- Costs for firms are large, both for implementation costs and ongoing annual costs to comply with the new regulations
- Firms must focus on achieving good outcomes in a collections context, with a high expectation that firms can evidence that the help provided a good outcome at the time, but then continued to provide a good outcome over time

The Consumer Duty is really a package of measures, rather than a single duty. The FCA introduced a new Consumer Principle that requires firms to act to deliver good outcomes for retail consumers.

Now a firm must act in the best interests of retail clients.

The FCA considers that the Consumer Principle sets a higher standard than Principles 6 and 7, and so it states that where the Consumer Principle applies, Principles 6 and 7 will no longer apply.

The Consumer Principle is underpinned by a set of cross-cutting rules that explain how firms should act to deliver good outcomes, and so are designed to elaborate on the FCA's expectations. The cross-cutting rules will require firms to:

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

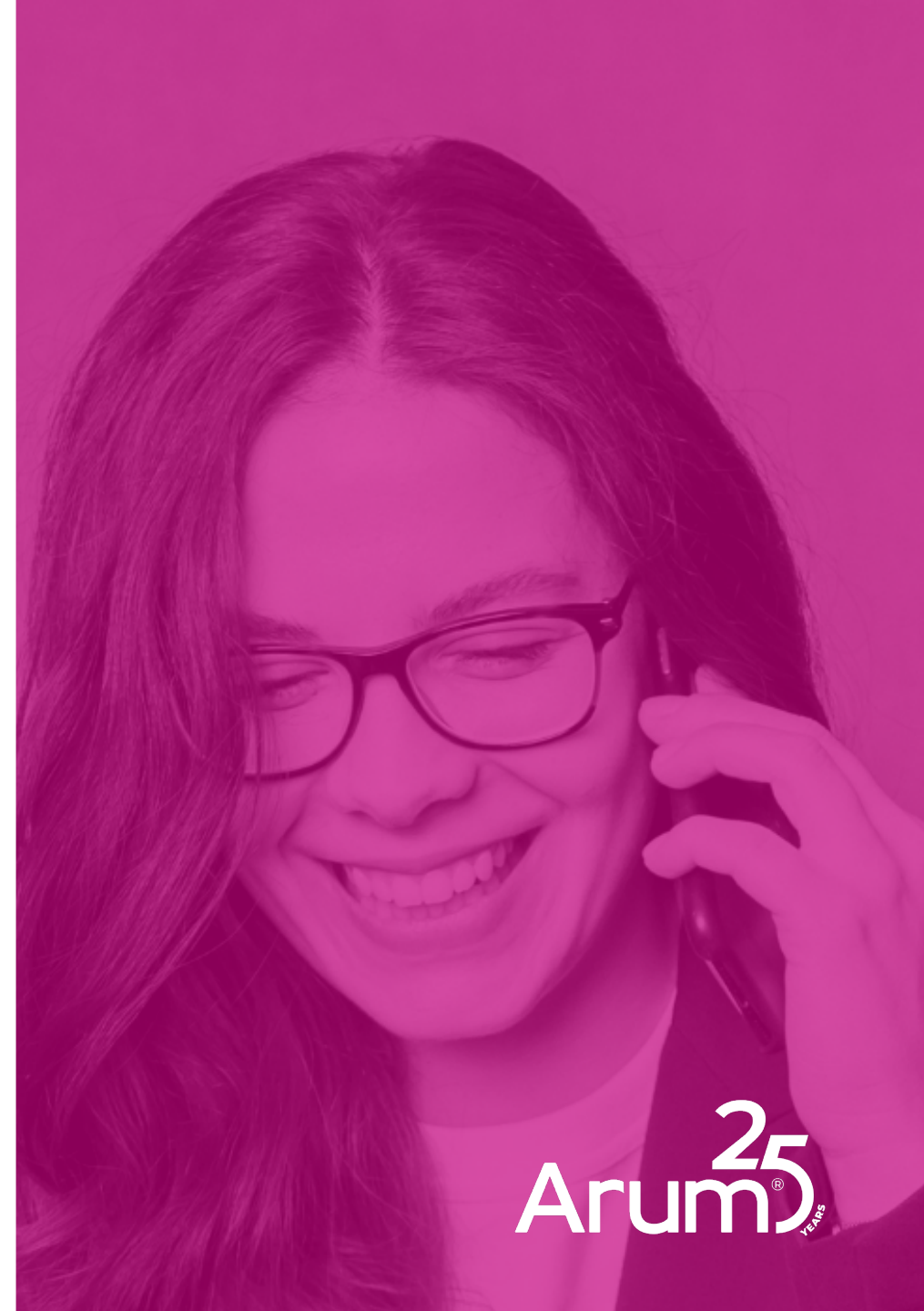
EXECUTIVE SUMMARY

IN SUMMARY

- Treating consumers fairly has long been a key regulatory requirement, but the Consumer Duty requires firms to be more proactive and to focus on the outcomes they achieve for their consumers. For example, the existing Principle 6 states that “firms **must pay due regard** to the interests of consumers and treat them fairly”, whereas the language of the Consumer Principle is that firms “**must act**”.
- The FCA expects Boards to review at least annually, an assessment of whether the firm is delivering good consumer outcomes in line with the Duty. All staff (except ancillary staff) will be held individually accountable for complying with the Consumer Principle and the cross-cutting rules via the Senior Managers and Certification Regime (SM&CR), to the extent that is reasonable and proportionate to their role. The rules and guidance underpinning the Duty will also give the FCA additional avenues for enforcement.
- Across the four outcomes there is a focus on vulnerable consumers. This is in line with the FCA’s existing guidance on the fair treatment of vulnerable consumers, but it elevates the FCA’s expectations to the status of rules.

The following slides talk about the Consumer Duty in more detail, and we have provided our view on the collections impact

THE CONSUMER DUTY – WHAT THIS MEANS FOR FIRMS



WHAT THIS MEANS FOR FIRMS

Principle 12 focuses on consumer outcomes and requires firms to:

- Pro-actively seek to deliver good outcomes for consumers generally and put consumers' interests at the heart of their activities
- Focus on the outcomes consumers receive, and act in a way that reflects how consumers actually behave and transact in the real world, better enabling them to access and assess information, and to act to pursue their financial objectives
- Ensure they have sufficient understanding of consumer behaviour and how products and services function to be able to demonstrate that the outcomes that would reasonably be expected are being achieved by those consumers
- Where they identify that good outcomes are not being achieved, act to address this by putting in place processes to tackle the factors that are leading to poor outcomes, and
- Consistently challenge themselves to ensure their actions are compatible with consumers' interests and financial objectives

Firms must **embed a focus on acting to deliver good outcomes in each of their business functions.**

This ranges from high-level strategic planning to individual consumer interactions, as well as products and services development, sales and servicing, distribution, and support.

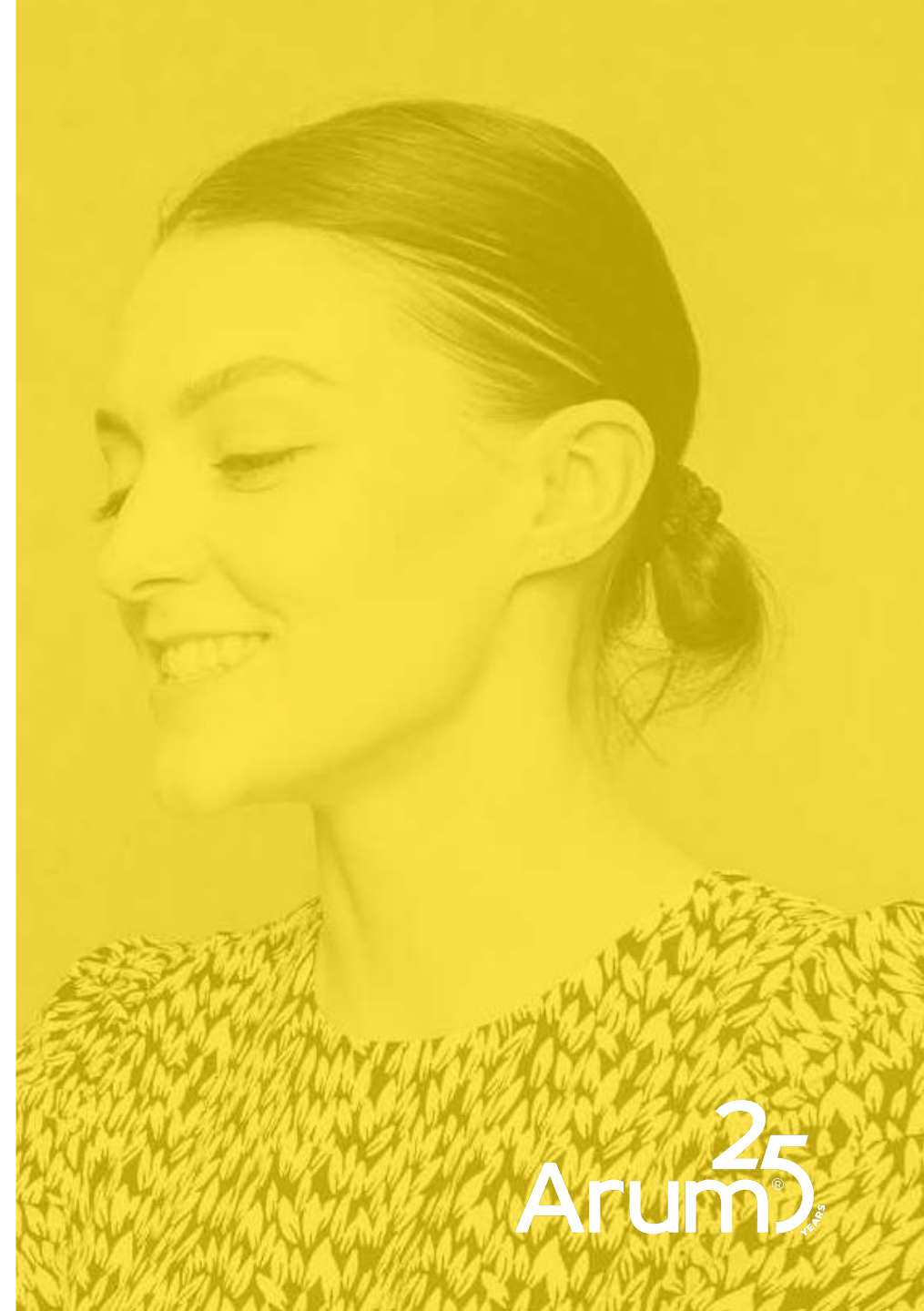
WHAT THIS MEANS FOR FIRMS

- A key part of the Consumer Duty is that firms assess, test, understand and are able to evidence the outcomes their consumers are receiving. Without this, it will be impossible for firms to know that their products and services are performing as they and the consumers would have expected and in a way that is consistent with the Consumer Duty
- Firms have to be able to identify poor outcomes and take appropriate action to rectify the causes of poor outcomes and continuously learn from their growing focus and awareness of the outcomes that their consumers experience in practice
- Firms can expect at every stage of the regulatory lifecycle to be asked to demonstrate how their business models, the actions they have taken, and their culture are focused on good consumer outcomes
- A firm's governing body should review and approve the firm's assessment of whether it is delivering good outcomes for its consumers which are consistent with the Consumer Duty and agree any action required, at least annually
- Firms will need to identify relevant sources of data to enable them to assess whether the outcomes that their consumers are experiencing are consistent with their obligations under the Consumer Duty
- Through the monitoring of consumer outcomes, firms are expected to:
 - Identify and manage any risks to good outcomes for consumers
 - Spot where consumers are getting poor outcomes, and understand the root cause
 - Have processes in place to adapt and change products / services or policies / practices to address any risks or issues as appropriate
 - Be able to demonstrate how they have identified and addressed issues leading to poor outcomes

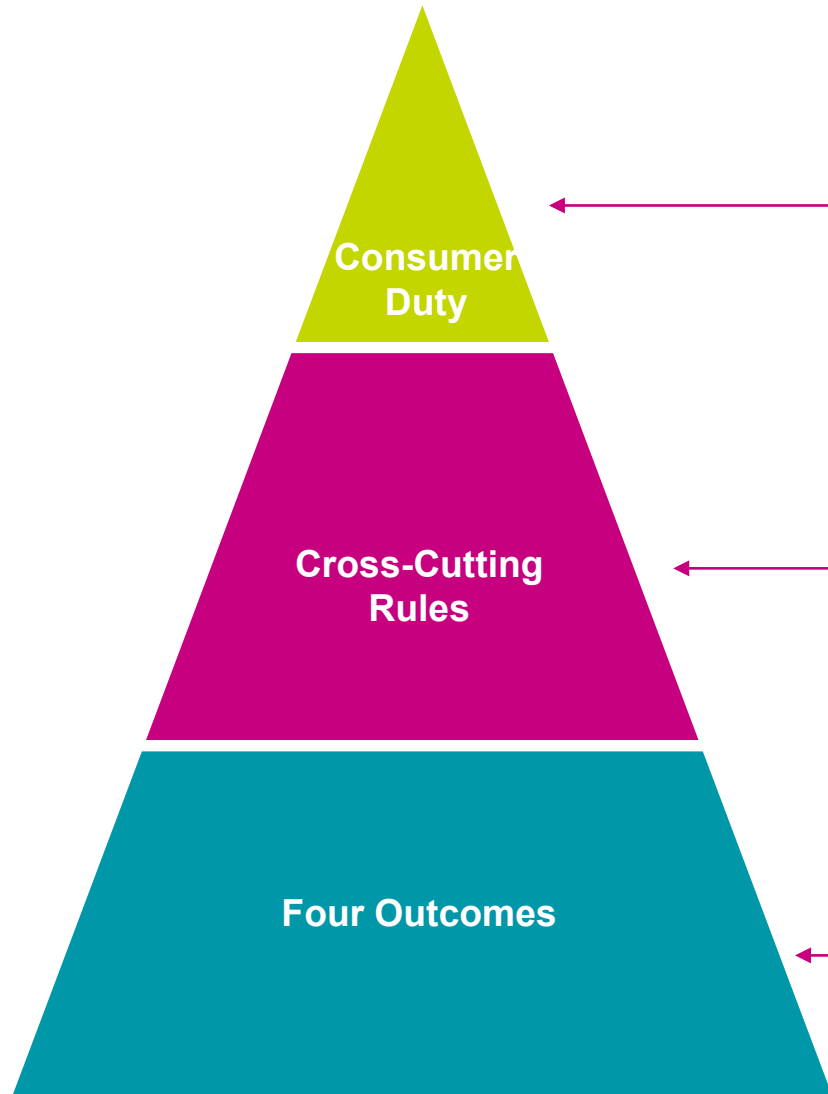
WHAT THIS MEANS FOR FIRMS

- If required firms are expected to be able to explain how they reached a decision on the most appropriate intervention, demonstrate how it has delivered good outcomes and, if not, what they have done further to address the issue
- The Consumer Duty is intended to improve outcomes for all consumers and expects firms own monitoring to identify where distinct groups of consumers receive worse outcomes than other groups
- Where firms identify an area where they are not delivering good outcomes for their consumers or a distinct group of consumers, firms are expected to have processes in place to investigate the cause(s) and address any problems
- This is particularly important where consumers with characteristics of vulnerability and groups sharing protected characteristics (as defined in the Equality Act 2010) may be disadvantaged. Firms need to satisfy themselves, and be able to evidence, that these different outcomes are compatible with the firm fully meeting the standards required by the Consumer Duty for all its consumers

THE CONSUMER DUTY



CONSUMER DUTY



New Consumer Principle – 12

A firm must act to deliver good outcomes for retail consumers

Cross-Cutting Rules

Firms must:

1. Act in good faith toward retail consumers
2. Avoid foreseeable harm to retail consumers
3. Enable and support retail consumers to pursue their financial objectives

Four Outcomes

1. Products & Services
2. Price & Value
3. Consumer Understanding
4. Consumer Support

Key Points

- Creates a “**paradigm shift**” in firm’s treatment of retail consumers.
- Concept of “**reasonableness**” will require firms to demonstrate greater judgement in determining how their actions, processes etc. deliver good outcomes
- Principles 6 and 7 not applied where Principle 12 applies
- **All conduct rules staff required to act** to deliver good outcomes for retail consumers
- Underpinning the Duty with rules / guidance will give FCA additional routes for enforcement

CONSUMER DUTY

Existing Approach

- Principle 6: Firms must “*pay due regard to the interests of consumers and treat them fairly*”
- FCA has previously taken enforcement actions against some firms for failing to prevent “*foreseeable harm*”
- Principle 7: Communications must be “*clear, fair and not misleading*”
- General expectation that firms consider value of products and services. Specific requirements in some sectors e.g. general insurance (value measures) and asset management (fund value assessments).
- Duty of responsibility (s.66 FSMA 2000). Requirement to take “*reasonable steps*” to prevent breaches in area of responsibility.
- Consumers may bring court action in certain circumstances (e.g. under CRA). FCA can decide if “private persons” have right of action for breach of rules but not Principles

A proactive obligation on firms to act

Greater prominence of and emphasis on avoiding “foreseeable harm”

Strengthening of requirements on consumer communications

Expansion and strengthening of requirements regarding fair value

Accountability extended to meeting the standards of the Duty

Potential Private Right of Action (PROA)

Consumer Duty

- Principle 12 and Cross-cutting Rules: Firms “*must act*”.
- Cross-cutting Rule 2: Firms must “*avoid foreseeable harm to retail consumers*”
- In addition to being clear, fair and not misleading, communications must “*equip consumers to make effective, timely and properly informed decisions*”
- Products/services *must provide fair value*. Manufacturers must carry out value assessment. Distributors must be satisfied that distribution arrangements are consistent with providing fair value
- New rule requiring all conduct rules staff to “*act to deliver good outcomes for retail consumers*”. Obligations under Duty proportionate to seniority and role. Existing conduct rule 4 disappplied
- FCA to keep possibility of PROA under review in light of evidence of firms embedding of and compliance with the Duty

CONSUMER DUTY – DEBT FOCUS

CONSUMER DUTY – DEBT FOCUS

As stated earlier, there are no specific references in the Consumer Duty about collection practices, other than the requirement to deliver good outcomes.

We have taken our experience of collections and recoveries and looked at the collection of debt through the lens of the Consumer Duty.

The next slides look at each of the four outcomes through the lens of collections and recoveries and provides examples of practices that are consistent / inconsistent with the Consumer Duty.

OUTCOME 1 – PRODUCTS & SERVICES

Outcome 1 – Products & Services

FCA STATEMENTS (edited)

- Ensure that the design of a product or service meets the needs, characteristics and objectives of consumers in the identified target market
- Ensure that the intended distribution strategy for the product or service is appropriate for the target market
- Carry out regular reviews to ensure that the product or service continues to meet the needs, characteristics and objectives of the target market
- Consumers can only pursue their financial objectives and avoid foreseeable harm when products and services are fit for purpose.
- Firms, acting in good faith, should design and distribute products and services to meet this aim
- The Duty expects products should consider the needs, characteristics and objectives of consumers in **vulnerable** circumstances at all stages of the design process, including idea generation, development, testing, launch and review, to ensure products and services meet their needs

COLLECTIONS CONSIDERATIONS

- Poorly designed products / products not explained fully / product feature changes can lead to financial hardship and ultimately to an arrears situation. It is important that, operationally, the reason(s) for arrears are clearly understood, with any product based concerns being escalated to the appropriate business function
- Potential for a new product for arrears consumers in financial difficulties. This could be a product switch to a cheaper product or consolidation loan for example
- Decisions made about forbearance based on the limitations of a product are likely to be outside of what is expected under the Consumer Duty
- Vulnerable consumers, including those in arrears, where the vulnerability is known, should be monitored to ensure the product remains suitable for the consumer, with the potential to move to a more suitable product. Feedback to the appropriate business team if it is recognised that a product does not meet the needs of certain vulnerabilities

OUTCOME 2 – PRICE & VALUE

Outcome 2 – Price & Value

FCA STATEMENTS (edited)

- Consumers experience harm where they do not get value for money. A lack of fair value therefore causes harm and is unlikely to be consistent with consumers realising their financial objectives. Firms cannot act in good faith if they are knowingly selling poor value products or services
- The specific focus of the price and value outcome rules is on the relationship between the price the consumer pays to the overall benefits of a product (the nature, quality and benefits the consumer will experience considering all these factors)
- A product or service that doesn't meet the needs of the consumer it is sold to, causes foreseeable harm or frustrates their objectives is unlikely to offer fair value whatever the price. A product or service that has negligible or no obvious benefit for consumers is unlikely to provide fair value regardless of the price charged
- Where the product or service does not provide fair value to consumers, firms should take appropriate action to mitigate and prevent harm, for example, by amending it to improve its value or withdrawing it from sale

COLLECTIONS CONSIDERATIONS

- Similarly to Outcome 1 – collections operations should have processes in place to ensure that when they encounter consumers who have experienced harm / financial difficulty due to product pricing, it should be escalated to the relevant business unit

OUTCOME 3 – CONSUMER UNDERSTANDING

Outcome 3 – Consumer Understanding

FCA STATEMENTS (edited)

- Consumers can only be expected to take responsibility where the firms communications enable them to understand their products and services, their features and risk, and the implications of any decisions they must take
- Support their consumers' understanding by ensuring that their communications meet the information needs of retail consumers, are likely to be understood by the average consumer intended to receive the communication, and equip them to make decisions that are effective, timely and properly informed
- Ensure they communicate information in a way which is clear, fair and not misleading
- Tailor communications - including any characteristics of vulnerability, the complexity of products, the communication channel used, and the role of the firm
- Ensure information provided to retail consumers is accurate, relevant, and provided on a timely basis
- Tailor communications to meet the information needs of individual consumers and check the consumer understands the information, where appropriate, when a firm is interacting directly with a consumer on a one-to-one basis
- Test, monitor and adapt communications to support understanding and good outcomes for retail consumers

COLLECTIONS CONSIDERATIONS

- Digital capability / functionality in collections should be equal to the capability / functionality in other parts of the consumer journey
- Apart from risk scores determining arrears letter content, operational overlays such as a vulnerability indicator or other relevant information could be used to better tailor communications to different groups of consumers
- Contact strategies should be regularly tested around content / timing / frequency / channel with metrics based on contact reach and subsequent outcomes – A/B testing
- Extra care when communicating with vulnerable consumers
- Collections communications content should be tested that they are understood by the consumers they are targeted at and not just by those involved in the development of the content. There is a meaningful risk of harm if consumers do not understand what they are required to do
- Communications should be adapted if, through testing, it is evident there are common areas of misunderstanding, lack of engagement

OUTCOME 4 – CONSUMER SUPPORT

Outcome 4 – Consumer Support

FCA STATEMENTS (edited)

- Consider the support their consumers need and make sure their consumer service meets those needs
- Monitor the quality of the support offered looking for evidence that may indicate areas that fall short of the outcome, and act promptly to address
- Firms should ensure their support processes avoid causing foreseeable harm to consumers, e.g., consistently poor or excessively slow service,, under-resourced helplines, phone systems / menus / webchats that are difficult to navigate, badly designed websites,
- Should be as easy to switch product, make a change or leave a product or service as it is to buy the product in the first place
- Firms should ensure that the support they provide meets the needs of their consumer base and target market. This should include delivering support through appropriate channels that enable firms to respond flexibly to their consumers' needs and secure good outcomes
- Firms should consider how they might recognise and respond to the needs of vulnerable consumers. For example, this could include providing a call back service for consumers who might struggle with phone menus or the option to notify the firm of a change in circumstance via an app or live web chats. This may also include a face-to-face option for consumers who may be digitally excluded or have lost access to telephone services

COLLECTIONS CONSIDERATIONS

- Comprehensive process SLA's in place for all relevant processes. Reporting in place to monitor
- Effective capacity planning for all consumer touch points, linked to SLA's (including voice activities and other contact points)
- A comprehensive control and testing process should be in place, starting with Risk Control Self Assessment testing and a 3 Lines of Defence model
- Review of available systems to ensure they are easy to navigate by consumers
- Make available a range of channels and portals so that no groups of consumers feel they cannot access support
- Full review of vulnerable consumer policies and processes including identification of vulnerable consumers to tailor communications and that they aren't just treated as vulnerable when in Collections, remove barriers to communication vulnerabilities
- Effective monitoring of any outsourced processes

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