A new Consumer Duty

Consultation Paper
CP21/13***

May 2021

How to respond

We are asking for comments on this Consultation Paper (CP) by **31 July 2021**.

You can send them to us using the form on our website at: www.fca.org.uk/cp21-13-response-form

Or in writing to:

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Financial Conduct Authority
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1 Introduction

1.1 We want to see a higher level of consumer protection in retail financial markets, where firms are competing vigorously in the interests of consumers. We are proposing to introduce a new 'Consumer Duty', that would set higher expectations for the standard of care that firms provide to consumers. For many firms, this would require a significant shift in culture and behaviour, where they consistently focus on consumer outcomes, and put customers in a position where they can act and make decisions in their interests.

1.2 The Consumer Duty would require firms to:

- ask themselves what outcomes consumers should be able to expect from their products and services
- act to enable rather than hinder these outcomes
- assess the effectiveness of their actions.

1.3 In essence, we want to see firms putting themselves in their customers' shoes, asking themselves questions such as 'would I be happy to be treated in the way my firm treats its customers?', or 'would I recommend my firm's products and services to my friends and family?'.

1.4 The Consumer Duty would add to the range of regulatory tools we use to meet our strategic objective of making markets work well. It would bring together our consumer protection and competition objectives, and help create an environment where consumers are better equipped to achieve good outcomes from financial services. To enable this, all firms would need to ensure that their products and services are fit for purpose and offer fair value, and that their communications and customer service enable consumers to make and act on well-informed decisions.

Scope of these proposals
These proposals apply to firms in relation to their regulated activities.

Our proposals relate to products and services sold to 'retail clients'. This is a very wide term that includes all clients other than professional clients (such as large corporate entities and government bodies) and eligible counterparties. So in most cases, where we regulate the provision of financial services to SMEs, these proposals would apply.

Our proposals extend to firms that are involved in the manufacture or supply of products and services to retail clients, **even if they do not have a direct relationship with the end customer**. We refer to the markets covered as 'retail markets'.

In this Consultation Paper we use the terms 'consumer' and 'customer' to mean retail clients who are within the scope of these proposals, including those the firm does not deal with directly. We use 'consumer' when talking about the wider group of those who use financial services. We use 'customer' when talking about an individual firm's customers or potential customers.

Why we are proposing a Consumer Duty

1.5 We know that due to the way that financial services markets operate, consumers don't always get the products and services that meet their needs or the outcomes they might reasonably expect. Consumers' ability to make good decisions can be impaired by various factors. These include their weaker bargaining position, asymmetries of information, lack of understanding or behavioural biases (as explained in Chapter 2 of this paper). And firms may not always compete effectively to drive up quality and bring down costs in consumers' favour.

1.6 These market conditions can be exploited by firms to consumers' detriment, and the negative impact on consumers and their ability to make good decisions can be exacerbated by their circumstances. For example, where consumers are using digital and online services, these can provide greater choice and convenience, but can also introduce complexity and risk.

1.7 And consumers who are in vulnerable circumstances are at greater risk of harm. In this consultation paper (CP) we highlight that firms should take additional care to ensure vulnerable consumers achieve outcomes that are as good as those of other consumers. This reflects our recently published guidance on the fair treatment of vulnerable consumers.

1.8 We see many good practices by firms in retail sectors. There are many firms that are already delivering the right outcomes for consumers – good products and services at fair prices, supported by high standards of customer service and clear communications. However, we also encounter too many firms that are not adequately considering the needs of their customers, or prioritising good consumer outcomes as an objective of their business activities. As set out in Chapter 2 and throughout this paper, we continue to see practices that cause consumer harm, including:

- firms providing information which is misleadingly presented or difficult for consumers to understand, hindering their ability to properly assess products/services
- products and services that are not fit for purpose in delivering the benefits that consumers reasonably expect, or are not appropriate for the consumers they are being targeted at and sold to
- products and services that do not represent fair value, where the benefits consumers receive are not reasonable relative to the price they pay
- poor customer service that hinders consumers from taking timely action to manage their financial affairs and making use of products and services, or increases their costs in doing so
- other practices which hinder consumers' ability to act, or which exploit information asymmetries, consumer inertia, behavioural biases or vulnerabilities

1.9 Where these occur, consumers suffer harm. They may:

- find it harder to make an informed or timely decision
- buy products and services that are inappropriate for their needs, of inadequate quality, too risky or otherwise harmful
- incur greater monetary and non-monetary costs
- receive sub-standard treatment during their relationship with a firm
- find it harder to switch or get a better deal

Clearer, higher expectations

1.10 Over the years we have used our range of regulatory tools – from market studies, to rules and guidance, and supervisory and enforcement actions – to set out and drive home our expectations of firms and improve consumer outcomes in markets. We will continue to act where we see harm, but we want to see firms avoiding this harm by 'getting it right in the first place'.

1.11 To enable this, the Consumer Duty would set clearer and higher standards for the culture of firms and the conduct we expect of them. This would require all firms to focus on the actual outcomes experienced by consumers, and act in a way that reflects how consumers actually behave and transact in the real world, better enabling consumers to access and assess information, and to act to meet their needs and financial objectives.

1.12 In the following chapters, we explain that the Consumer Duty would be a package of measures, comprised of

- a new **Consumer Principle** that provides an overarching standard of conduct
- a set of **Cross-cutting Rules** and **Outcomes** that support the Consumer Principle by setting clear expectations for firms' cultures and behaviours.

1.13 The Consumer Duty would give firms more certainty about the standards we expect of them and, correspondingly, the standards that consumers can expect of firms. Together this would help make competition work more effectively and markets deliver better consumer outcomes.

1.14 In summary, we want all firms to be putting consumers at the heart of their businesses, offering products and services that are fit for purpose and which they know represent fair value. We want financial services markets to be consistently effective in supporting the lives of consumers across the UK. Products, services, communications and engagement from firms should instil trust, enabling consumers to make effective and confident choices to advance their financial wellbeing and build positive futures for themselves and their families.

Who this Consultation Paper applies to

1.15 This CP is likely to interest:

- regulated firms, including electronic money institutions, payment institutions and registered account information service providers
- consumer groups and individual consumers
- industry groups / trade bodies
- policy makers and regulatory bodies
- industry experts and commentators
- academics and think tanks

Next steps

1.16 We want your feedback on our proposals and issues discussed in this CP. Please send your answers to the questions in the CP by **31 July 2021** using one of the methods in the 'How to respond' section on page 2.

1.17 In this CP we are proposing the introduction of new rules, including a Consumer Principle, and setting out our proposals for the scope and structure of these rules, what they should cover and the outcomes they should seek to deliver. But we are not consulting on the drafting of the rules themselves (except for the Consumer Principle). There are some issues, such as what should happen to the existing Principles where these new rules apply, where any rules should sit in our Handbook and whether a private right of action should attach to them, where we do not put forward specific proposals and are seeking further input to help us develop our views.

1.18 After considering your responses, we will set out the proposed text for any new rules or guidance to implement our proposals in a subsequent consultation, along with a cost benefit analysis. This will also include our further consideration of a private right of action and the impact of the introduction of the Consumer Duty on the existing Principles. Lastly, as we recognise that how we supervise and enforce any new rules will be key to the success of the Consumer Duty, we will also provide further details in the subsequent consultation of how we intend to supervise and embed the Consumer Duty.

1.19 We expect to publish the second consultation by 31 December 2021, and will make any new rules by 31 July 2022.

2 The wider context

Background

2.1 In our 2018 Approach to Consumers document, we explained how we use our resources to protect consumers. We also committed to periodically review and adapt our regulatory toolkit, including how we use it and the impact of our interventions, to ensure they are achieving good outcomes for consumers.

2.2 In July 2018, as part of that commitment, we published a Discussion Paper on 'A duty of care and potential alternative approaches' (DP18/05). This paper acknowledged the concerns voiced by some stakeholders that our regulatory framework, including our Principles, may not be sufficient, or applied effectively enough, to minimise the level of consumer harm in retail markets. Some argued for the introduction of a 'duty of care' to reduce harm and support longer-term cultural change within firms. In contrast, other stakeholders suggested that existing FCA rules already provided sufficient protections for consumers and imposed the same requirements on firms that a duty of care would.

2.3 A key aim of DP18/05 was to enhance our understanding of concerns by seeking the views of a broad range of stakeholders. Before reaching for a solution (either in the form of a duty of care or otherwise), we wanted to do more to understand the causes of consumer harms in retail markets. This understanding helps us consider what options could most effectively bring about the outcomes we are seeking for markets to work well for consumers: where firms compete to offer products and services that are fit for their intended purpose and represent value for money; and consumers are better placed to make effective choices about which of these products and services best meet their needs.

2.4 In our subsequent Feedback Statement (FS19/02), we summarised the range of views from respondents to the Discussion Paper. Most respondents considered that the level of harm to consumers was too high, and there needed to be a change to better protect consumers in retail financial markets. But opinions differed widely on options for change.

2.5 Some respondents favoured a revision to the FCA's high-level rules, a small number favoured a statutory duty, and yet others suggested we should wait to see whether the changes brought in by the Senior Managers & Certification Regime (SM&CR) might be enough. In addition, most stakeholders felt we should consider changes to the way we use the existing regulatory framework. Some stakeholders believe that our current approach has been too rules-based and not sufficiently outcomes-focused. They suggested that we broaden our application of the Principles and increase our appetite for taking action based on the Principles alone. They also suggested we should be more transparent about our standards for good customer treatment, and how we act to secure these.

2.6 Having considered this range of views, in FS19/02 we concluded that we would:

a. review how we apply the regulatory framework – particularly how we apply the Principles in our authorisations, supervisory and enforcement functions, and how we communicate this to firms
b. consider the introduction of new/revised Principles to strengthen and clarify firms' duties to consumers
c. consider whether a private right of action for Principles breaches is appropriate, and what any unintended consequences of this might be

2.7 In this Consultation Paper, we set out the next stage of our thinking, together with a package of proposals. We acknowledge that it has taken some time for us to progress to this consultation stage. This delay was because we prioritised our resources in 2020 to deal with the immediate impact of the Coronavirus pandemic on consumers. We remain committed to the protection of consumers, and we intend this work to provide a stronger basis for consumers to achieve good outcomes, both today and in the future.

The consumer harm we are addressing

2.8 Financial services markets operate effectively, and in the interests of consumers, where:

- firms offer products and services that are fit for purpose in meeting the needs of customers in their target market, and offer fair value
- consumers are enabled to effectively access information and assess which products and services best meet their individual needs
- consumers are able to act effectively, taking responsibility for making decisions to meet their needs

2.9 But we know from experience that markets do not always work well, with competition not working effectively in consumers' interests. And that firms can sometimes exploit consumers' behavioural biases, eg by not being fully transparent in the information they provide.

2.10 Firms may also introduce excessive friction in their processes that prevents consumers from making decisions in their interests. These are known as 'sludge practices' (explained in the box on the next page). We have a particular interest where these occur online and in mobile apps, because of their increasing prevalence and the potential effects they have on consumer decision-making. We are currently considering further work to better understand the potential scale of consumer harm resulting from sludge practices, whether occurring online or otherwise.

2.11 We also know that, even in the absence of deliberate exploitation, consumers' ability to make good decisions can be impaired by various factors, including their weaker bargaining position, asymmetries of information, lack of understanding or behavioural biases. These factors can be intensified where consumers are in vulnerable circumstances. In various sections of this consultation paper we highlight where firms should take additional care to ensure they meet the needs of those in vulnerable circumstances and at greatest risk, taking account of our recently-published guidance.

Behavioural bias and sludge practices

Academic literature defines **behavioural biases** as 'specific ways in which normal human thought systematically departs from being fully rational'.

Biases can cause people to misjudge important facts or to be inconsistent, for example changing their choices for the worse when essentially the same decision is presented in a different way. In other words, our normal human thought processes can lead us to make choices that are predictably mistaken.

More detail on this can be found in our Occasional Paper on behavioural economics.

We define **sludge practices** as 'an excessive friction that hinders consumers from making decisions in their interests, by taking advantage of their behavioural biases'. For example, a firm may not clearly signpost the process for product cancellation on its website, making it harder for its customers to switch. We distinguish sludge as a distinct concept from frictions in general, since some frictions, such as cooling-off periods or fraud checks, can be there to protect consumers.

In the online world, sludge can be found in the design of websites or mobile apps, eg user interfaces that are designed to push consumers into choices that may not be in their interests. This is likely to be a growing issue, particularly with accelerated uptake of digital services during the pandemic.

2.12 To achieve good outcomes and support their financial wellbeing, consumers need to be able to trust that the range of products and services they choose from are designed to meet their needs, and offer fair value. They need help to understand products and services, and they need confidence that firms will act in a way that helps, rather than hinders, their ability to make decisions in line with their needs and financial objectives.

2.13 These are some of the essential conditions for competition to work effectively and for consumers to be able to take responsibility for their financial decisions. However, we have seen a range of firm practices that hinder this, for example:

- Firms providing information which is misleadingly presented or difficult to understand, hindering consumers' ability to properly assess the product/service. For example, in our High-Cost Credit Review we found a mix of different charging structures which made it difficult for consumers to understand and compare overdraft costs, with only 20% of people able to readily understand the pricing differences and choose the cheapest deal. We estimated that the remedies from that review would lead to an aggregate reduction in overdraft charges of around £101m per year for the 30% of personal current account consumers living in the most deprived areas of the UK.
- Products and services that are not fit for purpose in delivering the benefits that consumers reasonably expect, or are not appropriate for the consumers they are being targeted at and sold to. For example, in our work in 2018/9 on contracts for difference, we noted retail investors not only suffer losses, but lose more than they had originally invested. We recognised that these products can benefit some sophisticated retail investors, and so chose not to ban them for sale to retail investors. Instead we asked firms to take steps to ensure that investors would not lose more than was in their trading accounts.
- Products and services that do not represent fair value to the consumer, where the benefits consumers receive are not reasonable relative to the price they pay. For example, where the premium for an insurance product is so high that it does not reflect the likelihood and value of any claim (as in this example from 2017).

- Poor customer service that hinders consumers from taking timely action to manage their financial affairs and making use of products and services, or increases their costs in doing so. For example, complaints being dismissed without proper investigation, leading to consumers missing out on redress payments to which they are entitled (as in this example from 2016).
- Other practices which hinder consumers' ability to act (eg barriers to exiting from a product/service); or which exploit information asymmetries, behavioural biases or vulnerabilities.
- Exploitation of consumer loyalty or inertia. For example, in our General Insurance Pricing Practices Market Study, we identified that the 'loyalty penalty' in home and motor insurance cost 6 million longstanding consumers an extra £1.2bn in 2018.

2.14 Where these practices occur, consumers may suffer harm. They may:

- find it harder to make an informed or timely decision
- buy products and services that are inappropriate for their needs, of inadequate quality, are too risky or otherwise harmful
- incur greater monetary and non-monetary costs
- receive sub-standard treatment during their relationship with a firm and/or
- find it harder to switch or get a better deal

2.15 Many of these outcomes and harms were called out by respondents to DP18/05, and our own understanding of consumer harm has been strengthened by our ongoing work in behavioural economics. Consumer-focused analysis has given us a deeper understanding of the functioning of retail markets. This includes consumer behaviour, the information asymmetries between financial service providers and their customers, and the weaknesses in consumer decision-making that firms can exploit, and which can impede effective competition.

2.16 The case for change is strengthened by evidence of the low levels of trust that consumers have in financial services. In our 2020 Financial Lives Survey, only 10% of consumers 'strongly agreed' that they had confidence in the UK financial services industry, with a further 32% 'slightly agreeing'. Only 35% of respondents agreed that firms are honest and transparent in their dealings with them.

2.17 We believe this is because some firms have not consistently focused on the needs and objectives of the end-consumer – from the start of product or service development, through its distribution and marketing to consumers, in their monitoring of the product or service's performance, and how they service existing customers. So, firms have not consistently delivered the outcomes that we would expect to see in markets that are functioning well.

2.18 Our increasing reliance on technology, and firms' use of customer data, can also exacerbate these harms. Consumers are transacting in an increasingly digital, fast-moving environment which can provide them with greater choice, but can also increase complexity and risks. This has an impact on consumers' ability to make effective decisions, with the potential to be exploited.

2.19 Various combinations of the issues set out above have often resulted in harms becoming entrenched in particular sectors, requiring us to intervene to ensure consumers receive the outcomes we expect firms to deliver for them. These interventions are resource intensive and once practices have become entrenched, consumers have already experienced harm.

2.20 Over the past few years we have assessed and, in some cases quantified a range of different harms that have arisen across retail markets, through our supervisory work or in thematic reviews and various markets studies. In many cases we have introduced remedies, often in the form of new rules, to address the harm. The proposals in this paper may not be needed for harms that have already been addressed, and may not be the right tool to address some already-entrenched practices (for which other market-wide remedies may be needed). But we intend our proposals to have a pre-emptive effect, reducing the likelihood of harms arising in the first place.

Outcomes we are seeking

2.21 We want to bring about an environment where the consumer harms described above do not occur in the first place, because firms are consistently placing their customers' interests at the heart of their businesses. We want firms to extend their focus beyond ensuring narrow compliance with specific rules, to also focus on delivering good outcomes for consumers. While firms must continue to comply with our rules, we are increasingly looking for senior management to think proactively about the intent behind our rules, and the impact of their actions on their customers.

2.22 We know that many firms deliver good consumer outcomes, and at the same time make profits, by adopting an appropriate consumer focus. We want all firms to consistently consider the needs of their customers, and how they behave, at every stage of the product/service lifecycle, and continuously learn from their growing focus and awareness of real customer outcomes.

2.23 We want competition to be effective, delivering to consumers the products and services they need. To achieve this, we want firms to provide products and services that are fit for purpose, that represent fair value, ones that help consumers achieve their financial objectives and do not cause them harm.

2.24 Equally, we want firms to communicate and engage with consumers so that they are able to make effective choices about which products and services best meet their needs, and to provide a level of customer service that enables consumers to realise the benefits of the products and services they buy.

2.25 In short, we want firms to act in good faith, to avoid causing harm, to empower consumers by placing them in a position where they are able to make effective decisions, so that consumers can take responsibility for their actions and decisions. Our proposals would equip consumers to take this responsibility by requiring firms to 'get it right in the first place', and to continually self-assess so that they can justify the appropriateness of their business models and their treatment of their customers.

Proposal for a new Consumer Duty

2.26 To achieve the outcomes detailed above, we are proposing to introduce a new 'Consumer Duty' as part of our range of regulatory tools. It would comprise a new Principle and a suite of other rules and guidance. This Duty would set a new and higher expectation of the standards of conduct that we expect from firms, putting consumers in a better position to take responsibility for meeting their financial needs and objectives.

2.27 In this CP we refer to the body of rules and guidance we propose, including the Consumer Principle, as a Consumer Duty. The Consumer Principle and the supporting rules and guidance would be likely to be positioned in the FCA Handbook's Principles for Businesses sourcebook (PRIN). We will consult further on the positioning and drafting of the supporting rules and guidance, and their interaction with the existing Principles, in a subsequent consultation paper.

2.28 As with the existing Principles, the Consumer Duty would apply also to electronic money institutions, payment institutions and registered account information service providers.

2.29 We had previously considered, in FS19/02, some stakeholders' calls for a statutory duty. But, as we explained in that paper, we concluded that there were insufficient grounds for asking Parliament to make changes to primary legislation.

2.30 We have also considered how we apply our regulatory framework and whether we could achieve the outcomes we are seeking by resetting our expectations within the existing framework of Principles and other Handbook rules. We have noted the ongoing debate through Parliamentary passage of the Financial Services Act 2021 about a duty of care and the level of care firms provide consumers. Having considered all of this, we believe that the Principles remain fit for purpose as a statement of firms' fundamental obligations. However, we consider that in UK retail financial services markets there is a need for something more – a clear statement of expectations that goes beyond our existing Principles and rules, and provides a framework for the ongoing development of retail markets.

2.31 The proposals in this paper for a new 'Consumer Duty' are specifically designed to address this. They also meet the requirement of the Financial Services Act 2021 for us to consult on the level of care firms provide to consumers, including whether we should make general rules providing for a duty of care. What constitutes a 'duty of care' may have different meanings, and our existing rules already create different duties of care for firms. The generally accepted legal meaning of a duty of care is an obligation to exercise reasonable care and skill when providing a product or service and this is, for example, reflected in Principle 2's requirement that a firm must conduct its business with due skill, care and diligence. In addition, section 49 of the Consumer Rights Act 2015 (CRA) implies into every contract for a trader supplying a service to a consumer a term saying that the trader must perform the service with reasonable care and skill. This cannot be excluded by the trader and is enforceable by the consumer either under general law or specifically under the CRA. See Section 2, "Our regulatory and legal framework" in DP18/5, for a more detailed discussion.

2.32 The Consumer Duty is intended to, and in fact does, set a higher standard of care and expectation beyond our current set of Principles and Rules. Consequently, we have not branded the Consumer Duty as a 'duty of care'. Nor do our proposals comprise of a 'one-line duty'; rather, they are a package of measures that has been specifically designed to more effectively tackle the harms we see in financial services markets, and their causes. The Consumer Duty would provide clear expectations to help ensure that firms deliver the right level of care to consumers, and deliver the outcomes we want to see.

2.33 The Consumer Duty would be designed to reinforce and complement our existing Handbook requirements, eg the current Principles and the conduct of business rules. Its expectations would also be compatible with other consumer protection and competition law that we use to ensure markets work well and consumers get the right outcomes, such as the Consumer Rights Act 2015, the Enterprise Act 2002 and the Consumer Protection from Unfair Trading Regulations 2008. We will continue to use our powers under relevant consumer protection legislation as appropriate.

2.34 Our recent guidance on the fair treatment of vulnerable consumers emphasised that firms need to deliver outcomes for vulnerable consumers that are as good as those for others. So, we expect firms to ensure that vulnerable consumers benefit from the overall improvements in outcomes delivered as a result of these proposals. These proposals aim to raise the standard of care afforded to all consumers, and also make explicit reference to the need for firms to provide an additional level care to ensure they meet the needs of customers who are vulnerable. This means that our Handbook would make express provision about the treatment of vulnerable consumers.

2.35 The following chapters of this CP set out the detail of our proposals. We intend to implement the Duty using rules and guidance, and in Chapters 3 and 4 we describe how these are intended to work (although we are not, in this first-stage paper, consulting on draft Handbook text). We also set out some options for how the Consumer Duty could interact with the existing Principles and other Handbook provisions, and seek views on this.

What this would mean for firms, consumers and the FCA

2.36 The Consumer Duty would have wide-ranging implications for firms, consumers, and the FCA as a regulator. These include:

For firms and their senior managers:

a. There would be a stronger focus on customers' interests and outcomes that goes beyond a narrow focus on compliance with the rules. A firm would need to consider the Consumer Duty at every stage of its processes and at every level of its organisational structure.

b. Firms would 'get it right in the first place', particularly when designing products and services. Firms would place greater emphasis on putting customers in a position where they can make decisions to meet their needs (eg protecting against a risk or making a payment) or pursue their financial objectives (eg planning for retirement or buying a home).

c. There would be clarity on where responsibilities lie, and an understanding of the outcomes we expect. Firms would, in many cases, need to exercise more judgement in determining how their behaviours, policies and processes act in achieving those outcomes.

d. Firms would monitor, test and (where necessary) adapt their practices and processes on an ongoing basis, to satisfy themselves that they are delivering the expected outcomes. Firms would be in a position to provide information and data to the FCA, to evidence the outcomes of their monitoring and testing activity.

e. The implementation of the Consumer Duty would create a paradigm shift in our expectations of firms in retail markets. While some firms may already be operating in line with these expectations, others would need to adapt significantly to meet them. The Consumer Duty's wide application would reduce any 'first mover disadvantage' that could be a barrier to firms making changes to put their customers first.

For consumers:

f. Consumers would have confidence that firms are acting in good faith, in line with their interests.

g. Consumers would be able to choose from a range of products and services that are fit for purpose, by being explicitly designed to meet the needs of their target market.

h. Consumers would receive clear and understandable information, tailored to the channel they are using to interact with the firm, that enables them to assess which products and services are most likely to meet their needs.

i. Those products and services would deliver the benefits that consumers reasonably expect them to.

j. The standard of customer service would consistently meet consumers' needs, and would not hinder them from acting in their interests.

k. Consumers would obtain fair value from financial products and services.

For the FCA:

l. The supervision and enforcement of our rules was a key theme raised by respondents to DP18/05. The Consumer Duty is part of our revised approach to regulation which is being underpinned by our internal Transformation programme. Our Transformation programme aims to clarify the regulatory outcomes that we are looking to achieve and ensure that we have the internal capabilities, processes, ways of working, technology and data to support delivering these. We will communicate further on this as our Transformation work evolves.

m. Under the Consumer Duty, our supervisors would increasingly focus on the outcomes being experienced by consumers. Supported by the Duty's rules-based clarity of expectations, supervisors would be able to challenge firms and intervene robustly. Their interventions would be informed by the use of data from firms' own monitoring and testing activities as evidence of real consumer outcomes. We expect to be able to say more about this in our second consultation.

n. Because of the additional clarity introduced by the Consumer Duty and its rules-based approach, we would be able to use it readily and effectively to hold firms to account.

o. The Consumer Duty's enhanced expectations for firm monitoring of consumer outcomes would support a more data-led FCA to more quickly identify practices that adversely impact those outcomes. This would enable us to intervene before practices become entrenched as market norms.

p. With firms acting in a way that avoids problems developing, rules-based policy interventions, which can be costly and slow to take effect, would be needed less often and could be more targeted.

q. There will still be occasions where we would use our existing regulatory tools, such as rule-making to implement sectoral interventions or remedies for specific harms, or market studies to investigate structural problems in particular markets.

r. We may, in the future, be able to consult on the removal of some Handbook material, where it is shown to be superseded by elements of the Consumer Duty (see, for example, section in Chapter 3 below on 'how the Consumer Duty would fit with our existing Principles').

s. The broad outcomes and standards embodied in the Consumer Duty would be 'future-proofed' and could adapt to new types of business and conduct. Their focus on outcomes and high-level standards of behaviour would mean they should not become obsolete as new technologies and ways of transacting emerge.

t. If necessary, we would be able to build on these core standards through additional guidance to support firms to better understand how they apply to emerging technologies.

What the Consumer Duty would not do

2.37 The Consumer Duty would not:

a. Remove consumers' responsibility for decision making or, in itself, prevent consumers from making decisions that are not in their interests.
b. Require that all consumers of a product or service obtain the same terms or outcome.
c. Impose an open-ended duty that goes beyond the scope of the firm's role and its ability to determine or influence consumer outcomes, or protect consumers from all potential harms.
d. Remove or supersede the need for specific rules or guidance, which may be necessary to mitigate specific consumer harms.
e. Specify exactly how firms should act. Firms would have flexibility in how they act to avoid harm to consumers and put them in a position to achieve their financial objectives.
f. Apply retrospectively to past business. Nor do we intend to judge practices with the benefit of hindsight.

Links with other work

2.38 The proposals in this Consultation Paper form a core part of the FCA's Transformation programme, and its focus on our role as a regulator, by setting out:

- clearer consumer outcomes that we want to see in retail financial services
- a clearer and heightened set of requirements for firms on how they should act to enable those outcomes

How it links to our objectives

2.39 The Consumer Duty would help us to meet our strategic objective of making markets work well. It aims to advance both our **consumer protection** and **competition** objectives, and to ensure they continue to be mutually-reinforcing in driving good outcomes for consumers and markets.

Consumer protection

2.40 We aim to raise the level of consumer protection by stopping the sale of products that are not fit for purpose and/or do not offer fair value, and to reduce the practices of firms preventing consumers from making effective choices or acting in their own interest. This will address harms such as those noted above, delivering better consumer outcomes. The world is changing rapidly, and transactions are increasingly digital. The Consumer Duty will help to ensure that this level of protection is not only appropriate for the environment in which consumers currently transact, but for ones in which they will transact in the future

Competition

2.41 These policy proposals are as much about our competition objective as they are about consumer protection, as noted in the 'harms' section above. Where consumers are put in a position to make informed decisions and act in their interests, and there is a range of products and services that are designed to meet their needs, this creates the conditions that drive effective competition to the benefit of consumers. So, the Consumer Duty would increase the level of consumer protection and also help to ensure that competition works in consumers' interests.

Equality and diversity considerations

2.42 We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper.

2.43 The proposals aim to improve outcomes for all consumers. Where distinct groups of customers experience different outcomes from a firm's products or services, we would expect firms to investigate the causes of this. This is particularly important where groups sharing protected characteristics (as defined in the Equality Act 2010) may be disadvantaged. Firms would need to satisfy themselves, and be able to evidence to us, that these different outcomes are compatible with the firm fully meeting the standards required by the Consumer Duty for all its customers.

2.44 We would view a firm that unlawfully discriminates between customers in breach of the Equality Act 2010 as very likely to be in breach of the Consumer Duty.

2.45 Overall, we do not consider that the proposals materially impact any of the groups with protected characteristics under the Equality Act 2010. But we will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when making the final rules.

2.46 In the meantime, we welcome your input to the consultation on equality and diversity considerations.

Q1: What are your views on the consumer harms that the Consumer Duty would seek to address, and/or the wider context in which it is proposed?

3 A new Consumer Duty

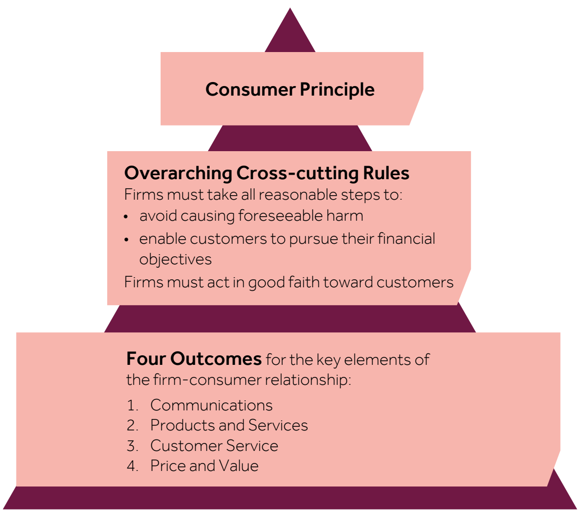
Summary

3.1 To achieve the outcomes we are seeking, we are proposing that the Consumer Duty will be comprised of a Consumer Principle, along with a set of rules and guidance that amplify the Principle and set out the detail of our expectations. This aims to ensure that the Duty is understandable, flexible and adaptable.

3.2 The Consumer Duty would have 3 elements:

- A **Consumer Principle**, which sets a clear tone and uses language that reflects the overall standards of behaviour we want from firms. The conduct this Consumer Principle requires would be developed in the other elements of the Consumer Duty.
- '**Cross-cutting Rules**' which develop our overarching expectations for common themes that apply across all areas of firm conduct, and are discussed in this chapter.
- The '**Four Outcomes**': a suite of rules and guidance setting more detailed expectations for firm conduct for 4 specific outcomes representing the key elements of the firm-consumer relationship. These outcomes and rules are discussed in the following chapter.

Consumer Duty Structure



Q2: What are your views on the proposed structure of the Consumer Duty, with its high-level Principle, Cross-cutting Rules and the Four Outcomes?

Scope

3.3 The financial services we regulate are defined in statute through our perimeter. So these proposals relate to the regulated activities that authorised firms engage in, and the consumers those activities affect. As with the existing Principles, the Consumer Duty would apply to electronic money institutions, payment institutions and registered account information service providers.

3.4 Our proposals relate to products and services sold to 'retail clients'. This is a wide term that includes all clients other than professional clients (such as large corporate entities and government bodies) and eligible counterparties. So in most cases, where we regulate the provision of financial services to SMEs, these proposals would apply.

3.5 We consider this to be the right scope for the new duty, as the harms we have identified, and the concerns voiced by stakeholders in response to DP18/5, relate to retail-facing markets. Customers in wholesale or professional client markets would continue to benefit from the protection of our existing Principles.

3.6 In this Consultation Paper we use the term 'consumer' and 'customer' interchangeably to mean retail clients who are within the scope of these proposals. Both of these terms include potential as well as actual clients of firms. We use 'consumer' when talking about the wider group of those who use financial services. We use 'customer' when talking about an individual firm's customers or potential customers.

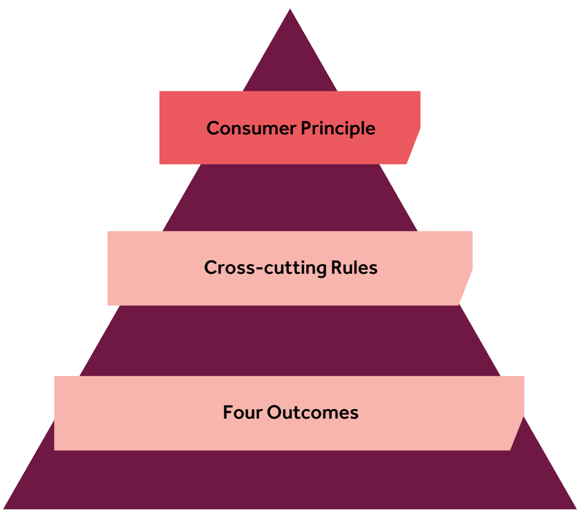
3.7 Some firms may be involved in the manufacturing or supply of products and services to consumers in the retail market, but have no direct customer relationship with the end-user. Other firms may be responsible for performing a limited role in relation to a product or service (eg administering a mortgage). The Consumer Duty would apply where a firm can, through its regulated activities, influence material aspects of the design, target market or performance of a product or service that will be used by consumers. So, some firms that operate exclusively in wholesale markets as part of a distribution chain for retail products or services would be subject to the Consumer Duty. What it will require will be dependent on their ability to influence outcomes for consumers.

Q3: **Do you agree or have any comments about our intention to apply the Consumer Duty to firms' dealings with retail clients as defined in the FCA Handbook? In the context of regulated activities, are there any other consumers to whom the Duty should relate?**

Q4: **Do you agree or have any comments about our intention to apply the Consumer Duty to all firms engaging in regulated activities across the retail distribution chain, including where they do not have a direct customer relationship with the 'end-user' of their product or service?**

Wording of the Consumer Principle

3.8 The Consumer Principle itself would underpin and drive the culture and conduct changes we wish to see in firms. Our expectations of conduct under the Consumer Principle would be further explained through the other elements of the Consumer Duty.



3.9 The constantly changing environment, along with product and service innovation, mean new drivers of consumer harm may evolve. So we want to set expectations that can apply flexibly and dynamically to new products, services and business models as they continue to emerge and develop in an increasingly digital age. If situations arise that seem novel, possibly outside the scope of the Four Outcomes or Cross-cutting Rules, the Consumer Principle itself should give firms a clear sense of how to act. The Consumer Principle should prompt firms to ask themselves questions such as 'Am I treating my customers as I would expect to be treated?' or 'Are my customers getting the outcomes from my products and services that I would expect?'.

3.10 We want the Consumer Principle to set a higher standard than the existing requirement of Principle 6 for a firm to 'pay due regard to the interests of its customers and treat them fairly'. We want it to indicate to firms that they need to play a greater and more positive role in delivering good outcomes for consumers – including those who are not direct customers of the firm.

3.11 The Principle must reflect the positive and proactive expectation we have of firm conduct, and our desire for firms to think more about consumer outcomes and place consumers' interests at the heart of their activities. Compliance cannot just be a tick-box exercise. Firms should consistently challenge themselves to ensure their actions are compatible with consumers' interests and objectives.

3.12 With the right underlying rules and guidance as set out in the rest of this Consultation Paper, different forms of words could deliver this policy intent. We are seeking views on two options for the Consumer Principle, which we currently view as best expressing the change we want it to drive:

Option 1: 'A firm must act to deliver good outcomes for retail clients'

Option 2: 'A firm must act in the best interests of retail clients'

3.13 As with any high-level principle, these cannot be defined exhaustively. Although their meaning will be clarified and amplified through the cross-cutting rules and outcomes, firms would need to take responsibility for judging whether their conduct serves consumers' interests and delivers good outcomes.

3.14 With either formulation, we would not expect firms to go beyond what is reasonably expected given the nature of their role and the product or service they offer. Firms' ability to control the outcomes consumers receive will vary. They may have a limited role and will not be responsible for outcomes that cannot be achieved through performing that role. External factors such as the performance of investments, or changes to the customer's circumstances may also impact on the outcomes that customers achieve. We expand on this in paragraph 3.28.

3.15 Consumers would remain responsible for decisions they make. But we do want firms to consider the impact of their actions on consumers. Depending on the circumstances they may need to think about consumers in general, or the particular needs of a group or individual – we explain this further in paragraph 3.26.

3.16 At times, different individuals or groups of customers might have competing interests. We do not think this makes it impossible for firms to act in the best interests of retail customers, or deliver good outcomes to all of them. Firms would need to use their judgment in a fair and reasonable way to ensure that outcomes for all customers are in line with the Duty's standards. The obligation to act in customers' best interests would not replace our existing expectations on firms to manage conflicts of interest between customers. FCA Principle 8 requires firms to manage such conflicts of interest fairly.

Option 1: A firm must act to deliver good outcomes for retail clients

3.17 This wording places emphasis on consumer outcomes, and firms' obligation to be proactive in delivering those outcomes.

3.18 Although we have previously offered guidance on the outcomes that should result from 'Treating Customers Fairly' under Principle 6, framing the Consumer Principle as 'outcomes based' would take this a step further. It would underline that firms should not focus simply on processes, but on the impact of their actions on consumers.

3.19 Firms should not only "pay due regard" to customer interests, but act to deliver good outcomes to them. The concept of a 'good outcome' does not have an established legal meaning. The rules and guidance in the wider Consumer Duty would give firms greater clarity on what 'good' looks like. But, although the Four Outcomes we propose are key ones, this form of the Consumer Principle would not be limited to delivering those outcomes alone.

Option 2: A firm must act in the best interests of retail clients

3.20 The reference to "best interests" conveys how we want firms to challenge themselves to do the right thing for consumers.

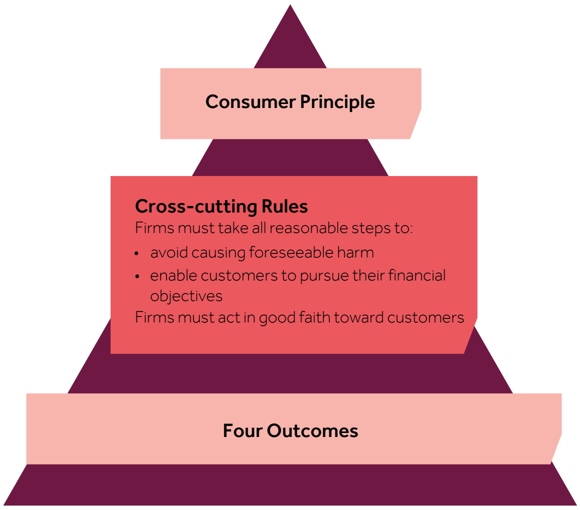
3.21 A duty based on the best interests of customers already exists in a number of our Handbook rules (eg COBS 2.1.1R, ICOBS 2.5.-1R). So firms in sectors ranging from insurance and investments to mortgages are already under a similar obligation. By using this language in the Consumer Principle we would extend this expectation, giving it greater prominence in the Handbook, and bringing greater consistency to our expectations for the conduct of firms in retail markets.

3.22 Outside our Handbook, 'best interests' is sometimes used in the context of fiduciary relationships, such as the duties owed by trustees to their beneficiaries. In line with how 'best interests' is used elsewhere in our Handbook, it is not our intent that the Consumer Principle would give rise to such a relationship.

3.23 Although this standard may be seen as more demanding than acting to deliver 'good' outcomes, in practice it does not mean that firms have to deliver the absolute best outcome for each and every customer. But firms should satisfy themselves that their conduct could **reasonably** and **objectively** be said to be in consumers' best interests, and equip them to be able to make decisions in their best interests.

Q5: **What are your views on the options proposed for the drafting of the Consumer Principle? Do you consider there are alternative formulations that would better reflect the strong proactive focus on consumer interests and consumer outcomes we want to achieve?**

Cross-cutting Rules



3.24 We are proposing to implement a set of cross-cutting Handbook rules and guidance which would develop and amplify the standards of conduct that we expect under the Consumer Principle.

3.25 We propose that the Consumer Duty's Cross-cutting Rules would require 3 key behaviours from firms, requiring them to:

- **Take all reasonable steps to avoid causing foreseeable harm to customers**. This means firms not causing harm to customers through their conduct, products or services and taking proactive steps to avoid it (where it is within the firm's control to do so). Firms should not seek to exploit customers' vulnerabilities, behavioural biases or lack of knowledge. They should be fair in describing the benefits and risks of their products and services, not disguise these through misleading framing, omission, or burying key terms in documents they know customers won't read.

  This does not mean that consumers will be protected from all bad outcomes:
  - Sometimes harm will occur because of circumstances that were unforeseeable. Sometimes the harm may be foreseeable too late to enable the firm to act. Or the nature of the harm may be such that there are no reasonable steps open to a firm to act to avoid it.
  - Many financial products involve risk. These may arise because of the nature of the product or service, or external factors. A consumer may experience an adverse outcome if such a risk materialises. For example, investments may carry a risk of capital loss, and secured lending may put a consumer's home at risk if they do not keep up repayments. We do not expect firms to protect their customers from risks that they reasonably believed the customer understood and accepted.

- **Take all reasonable steps to enable customers to pursue their financial objectives.** Consumers best understand their own circumstances and financial needs and objectives. They should be empowered to make choices for themselves and remain ultimately responsible for their decisions and actions. But we expect firms to take responsibility for establishing an environment in which consumers can act in their own interests. Some actual or potential harms arise when firms do not sufficiently recognise and take account of consumers' behavioural biases and the impact that characteristics of vulnerability can have on consumers' needs. Firms should take reasonable steps to understand these factors and use their knowledge of how consumers behave to enable and support them to make good decisions.

- **Act in good faith.** This is a standard of conduct characterised by honesty, fair and open dealing and consistency with the reasonable expectations of consumers. When consumers deal with financial services firms, there is generally an imbalance in bargaining position, knowledge and expertise. While firms and consumers both have a role to play if consumers are to achieve good outcomes, consumers can only reasonably be expected to take responsibility for their choices and decisions if firms act openly and with honesty.

3.26 The Consumer Duty would apply across all of a firm's activities – from high-level strategic planning to individual customer interactions. Sometimes firms will need to think about their customers in general terms eg when considering the appropriate target market. Here, firms should consider the range of characteristics those customers may have, including the needs of vulnerable customers, and take those into account. When behaviour will affect narrower groups of customers, eg when designing a communication aimed at a specific sub-set of its customers or advising an individual, a firm may need to think about their particular needs and characteristics.

3.27 For competition to work effectively in the interests of consumers, it is important that firms are free to offer choice, meeting the differing needs and preferences of consumers across markets; to innovate and seek to meet consumer needs in new ways; to compete and seek profit through a range of different business models and strategies. We expect that in many situations there will be a wide range of reasonable courses of action that are all compatible with the Consumer Duty.

3.28 We propose to embed a concept of **reasonableness** in the Consumer Duty, applying to the interpretation of all of its elements, including the Consumer Principle. This will clarify the objective standard of conduct that firms would need to meet. We intend to set out factors that influence what is reasonable. These are all factors that have a significant impact on what the Consumer Duty means in practice for firms' conduct, including:

- **The nature of the product or service being offered or provided. This includes, for example:**
  - **The nature of the firm's role and relationship with customers**. The Consumer Duty would not change the nature of a firm's relationship with its customers. For example, it would not introduce a fiduciary duty or require an advisory service where they do not already exist.
  - **The potential of the product or service to harm consumers**. Where a product or service is higher risk, firms can reasonably be expected to take additional care to ensure it meets consumers' needs and is targeted appropriately. There will be types of product, or points in the firm-customer relationship when consumers are particularly exposed to a risk of harm, such as when they have difficulty keeping up with repayments, or when they are considering long-term investment decisions. The steps it will be reasonable to expect firms to take in these situations may be more onerous than where a consumer is making decisions which carry a lesser risk of adverse outcomes.
  - **The complexity of the product or service**. Consumers may find it more difficult to assess the features, suitability or value offered by more complex products. For example, those with less foreseeable outcomes such as investments, or with non-standard charging structures, or other features that may not be easy for consumers to understand. It is reasonable to expect firms offering more complex products and services to take extra care to promote, and monitor, consumer understanding.

- **The role of the firm in the distribution chain**. Firms throughout the distribution chain of products and services would have obligations under the Consumer Duty (this is explained further under 'scope' above). What is reasonable will depend on each firm's role in the distribution chain, and its ability to influence the end customer's outcomes.

- **The reasonable expectations of consumers**. What the firm needs to do to comply with the Consumer Duty will vary depending on what a reasonable consumer would expect. This would depend on the nature and the purported quality of the product or service, and the firm's previous conduct or interaction with customers. For example, a service marketed as 'no-frills' would create different expectations from a 'top-end' service.

- **The specific characteristics of customers, including characteristics of vulnerability**. Different customers will have diverse needs, and their needs may change. The Consumer Duty would require firms to recognise and respond to the diverse needs of their customers and potential customers, especially where these are associated with vulnerability, or with protected characteristics.

3.29 There can be many reasons why a firm's conduct or business model results in different outcomes for distinct groups of customers. We expect firms to be able to identify when particular groups of customers receive systematically poorer outcomes This may indicate that the firm is not meeting the Consumer Duty for those groups. Firms should consider the root causes of differential outcomes and whether there is more they could reasonably do to improve outcomes for those customers least well served. This is particularly important where those receiving poorer outcomes share protected characteristics under the Equality Act 2010.

3.30 Vulnerability features explicitly as a factor relevant to what the Consumer Duty requires from firms. Our view of vulnerability is as a spectrum of risk which is increased when consumers have characteristics of vulnerability. These could be poor health, such as cognitive impairment, life events such as new caring responsibilities, low resilience to cope with financial or emotional shocks and low capability, such as poor literacy or numeracy skills. Not all consumers who have these characteristics will experience harm. But they may be more likely to have additional or different needs which, if firms do not meet them, could limit their ability to make decisions or represent their own interests. So, firms may need to provide an additional level of care to vulnerable consumers to enable them to carry out their responsibilities, avoid harm and achieve outcomes that are as good as for other consumers. Our recent guidance on treatment of vulnerable consumers provides more detail on our expectations of the level of care that is needed.

Q6: **Do you agree that these are the right areas of focus for Cross-cutting Rules which develop and amplify the Consumer Principle's high-level expectations?**

Q7: **Do you agree with these early-stage indications of what the Cross-cutting Rules should require?**

Q8: **To what extent would these proposals, in conjunction with our Vulnerability Guidance, enhance firms' focus on appropriate levels of care for vulnerable consumers?**

The Four Outcomes

3.31 The Four Outcomes represent the key elements of the firm-consumer relationship: how firms design, sell and service products and services, and the key contact points along the customer journey. The behaviour and actions of firms for each of these outcomes are instrumental in enabling consumers to meet their financial needs. If done right, they can be drivers of improved financial wellbeing. These outcomes are set out in more detail in the following chapter, and relate to:

1. Communications
2. Products and Services
3. Customer Service
4. Price and Value

3.32 We propose to set expectations for each of these outcomes in a suite of rules and guidance. These expectations would build on the Consumer Principle and the Cross-cutting Rules set out in this chapter, setting out how they apply to these key elements of the firm-consumer relationship.

How the Consumer Duty would fit with our existing Principles

3.33 We consider that the Consumer Principle would set a fundamental obligation for firms similar to our existing 11 Principles, and we are likely to place it alongside them in the Principles for Business (PRIN) sourcebook of our Handbook.

3.34 The broader package of rules and guidance that would make up the Consumer Duty, while similarly wide-ranging in application, would provide a level of detail that does not exist in the existing Principles. As noted above, however, it is likely that we would position these rules and guidance in PRIN – we will consult further on this in our next consultation.

3.35 As explained at the start of this chapter in the Scope section, the Consumer Duty would not apply to all firms we regulate. So, all of the existing Principles would continue to apply to conduct outside retail markets.

3.36 Where it would apply, the Consumer Duty would overlap with existing Principles, particularly Principles 6 and 7, as well as the TCF Outcomes. We believe that conduct that met the requirements of the Consumer Duty would generally meet our expectations under Principles 6 and 7 as well.

3.37 It is likely in future that we would make use of the Consumer Duty, and its more developed rules, in preference to the existing Principles 6 and 7. And firms and consumers may find it simpler if the overlap with these existing Principles were removed by disapplying them where the Consumer Duty would apply.

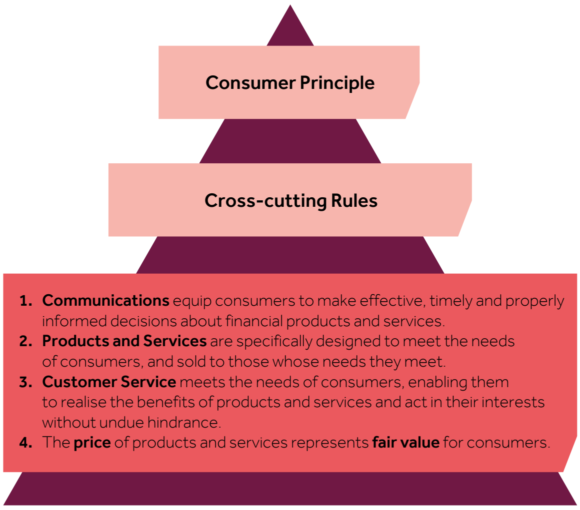
3.38 However, we consider there may be value in retaining them even where the Consumer Duty applies. There is a lot of Handbook and non-Handbook material that reflects the language of these existing Principles, as well as guidance to firms on how to comply with them. A lot of it is relevant to conduct within the scope of the proposed Consumer Duty. We do not propose to revisit all this material immediately if we proceed with the proposals set out in this Consultation Paper. Instead, we would expect firms to continue to take into account material based on Principles 6 and 7, which predates the Consumer Duty.

3.39 Retaining Principles 6 and 7 even where the Consumer Duty applies would be a simple way to maintain the legal status of this material.

3.40 We have not reached a firm view about whether or not to disapply Principles 6 and 7 where the Consumer Duty applies. But we do not expect to disapply any of the other Principles. They represent essential standards of conduct that are not fully reproduced within the Consumer Duty.

> **Q9:** **What are your views on whether Principles 6 or 7, and/or the TCF Outcomes should be disapplied where the Consumer Duty applies? Do you foresee any practical difficulties with either retaining these, or with disapplying them?**
>
> **Q10:** **Do you have views on how we should treat existing Handbook material that relates to Principles 6 or 7, in the event that we introduce a Consumer Duty?**
>
> **Q11:** **What are your views on the extent to which these proposals, as a whole, would advance the FCA's consumer protection and competition objectives?**
>
> **Q12:** **Do you agree that what we have proposed amounts to a duty of care? If not, what further measures would be needed? Do you think it should be labelled as a duty of care, and might there be upsides or downsides in doing so?**

4 The Four Outcomes



4.1 In this chapter, we describe the outcomes that we are seeking to achieve from the Consumer Duty, and the requirements that we propose to implement to achieve them. In this first-stage consultation, we are setting out these proposed requirements in narrative form rather than draft Handbook rules and guidance. We want to encourage feedback on the overarching intentions and potential impact of the Duty, and in particular any areas where the impact of the outcome could be affected by the nature of the market for a product or service. The responses to this consultation will inform our drafting of Handbook provisions, on which we will consult in a subsequent consultation paper.

4.2 We expect the Consumer Duty to improve outcomes for consumers in all areas of business between firms and customers. The key elements of the firm-consumer relationship are 'communications', 'products and services', 'customer service', and 'price and value'. The first 3 elements relate to what is provided by firms to consumers. The last element relates to payments provided by consumers to firms. So, the Four Outcomes describe the conditions that are needed for consumers to be able to obtain fair value in the products and service they buy. The outcomes we are proposing for these are set out in the diagram on this page.

Outcome 1: Communications

Summary

4.3 We want firms' communications to consistently support consumers by enabling them to make informed decisions about financial products and services. We want consumers to be given the information they need, at the right time, and presented in a way they can understand.

Our concerns and the harm we are aiming to address

4.4 To make effective decisions, consumers need to be able to understand and assess:

- the features of products and services
- the costs they are likely to incur, risks they might take and the benefits they are likely to derive from products or services
- whether products and services will meet their needs.

4.5 Firm communications, such as financial promotions and product descriptions presenting charges and other terms, play a key role in equipping consumers with the information they need to make effective decisions. The information firms present on their websites, and through digital consumer journeys or application interfaces, can have a lot of influence on consumer understanding and decision making. It is therefore crucial to good consumer outcomes that firms' communications are specifically designed to give consumers the understanding they need, in terms of **what** information is provided, **how** it is provided and **when** it is communicated.

4.6 We have found that some firm communications do not sufficiently support good consumer outcomes, and that firms do not always take enough care to convey useful information in a way that helps consumers to make effective decisions. In retail markets we have seen:

- Communications that are framed, whether deliberately or inadvertently, to exploit information asymmetries and consumers' behavioural biases. For example, in the past we have seen communications from banks that encouraged consumers to focus on the daily cost of an overdraft (which appeared small) rather than the significant cumulative cost of borrowing. In other cases, we have seen communications that encourage consumers to make decisions without full possession of relevant information, eg on costs and exclusions.
- Key information being hidden within a large volume of material, or hard to find on a website, rather than being clear, visible and accessible. We have seen examples of lengthy and technical communications that are likely to confuse or overwhelm their readers, when the salient information could have been presented in a simple and understandable format.
- Insufficient information being provided to consumers, or provided at a time when consumers don't have enough opportunity to reflect and consider their options. For example, information about the end of an introductory rate being sent out very close to its expiry date.
- Firms failing to draw customers' attention to key changes to an agreement. For example, sending out a full set of revised Terms & Conditions but not drawing customers' attention to terms which have changed.
- Communications not being tailored to the channel that is used. This is particularly the case for online communications, with evidence that consumers are less likely to read through lengthy disclosure documents when applying for a product on their mobile device.

4.7 These are examples of 'sludge practices' as described above – they can hinder effective consumer decision-making and contribute to poor outcomes such as purchasing inappropriate products, not switching to a more appropriate product, or overpaying for products and services.

Outcome we are seeking

4.8 We are seeking the following outcome for firm communications:

Communications equip consumers to make effective, timely and properly informed decisions about financial products and services.

Our proposal

4.9 To achieve this outcome, we propose to implement high level rules and guidance requiring firms to:

- communicate in a way that is reasonably likely to be understood and that facilitates decision-making:
  - taking into account the likely recipients of the communication, with particular care given to communicating with vulnerable consumers
  - at every stage of the product/service lifecycle, from marketing, to sale, and post-sale service
  - taking into account the complexity of the product or service they offer, and the channel(s) they are using to communicate
  - in a timely way
- take proportionate steps to review and, where appropriate, test and adapt communications to show that the firm has taken reasonable steps to ensure its communications are reasonably likely to be understood and facilitate customers' decision-making.

4.10 These requirements would apply to all firms involved in the production of consumer communications, regardless of whether the firm itself has direct consumer relationships. For example, we would expect firms that approve financial promotions on behalf of others to meet the expectations of this outcome. We recently published a discussion paper on Strengthening our Financial Promotion Rules, which includes a section on the role of firms approving financial promotions.

What this would mean for firms

Customer understanding

4.11 Firms would be expected to 'put themselves in their customers' shoes' when considering whether their communications equip consumers with the right information, at the right time, to assess products or services and their value and make effective decisions in their interests. Communications should be understandable, enabling consumers to evaluate the options available to them, the costs, risks and benefits attached to those options, and how those options relate to their needs and financial objectives. But, unless this is part of their advisory role, this would not extend to informing customers about alternatives available in the wider market.

4.12 Firms would need to consider the characteristics of the consumers that their communications are aimed at, and tailor their communications accordingly so that they are likely to be understood. This is especially important where it is reasonably foreseeable that the recipients include vulnerable consumers.

4.13 Firms would need to consider the appropriate level of detail for each communication, and take into account the kind of decision to be taken by its recipients, what the consumer needs to know, and where confusion could arise. For example, information on a simple, low-risk product intended for mass market consumers (eg a personal current account without an overdraft) is likely to involve a different style of communication than would be appropriate for a complex investment or pension product.

4.14 Similarly, we would expect firms to tailor the information they provide to the channels through which they are providing information. For example, respondents to our Smarter

Communications Discussion Paper suggested that consumers are less likely to read lengthy disclosure documents when applying for a product on a mobile phone. So, if a firm is marketing to consumers via mobile devices, it should consider the volume of material that consumers are likely to meaningfully engage with through this channel. A firm might also consider requiring consumers to interact with the firm via another channel before making a decision to (for example) buy a product or service, where the other channel is likely to facilitate a fuller consideration of important information.

4.15 We recognise that firms need to use language that achieves legal certainty in some of their communications, eg when setting out contractual obligations. The Consumer Duty would not override this need. But it would require firms to exercise judgment to ensure they bring the most important information to the attention of consumers in an accessible way.

4.16 This may mean, for example, that communications are 'layered,' ie they highlight the key information in a summary, with cross-referencing to detailed terms and conditions. This approach can be particularly effective in online communications.

Example
A credit card provider recently amended its minimum payment terms. It communicated this by sending a complete set of the revised Terms & Conditions to each customer, without drawing attention to what had changed. This made it difficult for customers to identify the relevant information.

In this example we would expect the provider to highlight the key changes so as to bring them to the attention of customers in a clear and understandable way.

4.17 We would expect firms to communicate with their customers in a timely manner, giving them an appropriate amount of time to take in the information and, where relevant, assess their options.

4.18 Firms would need to communicate at appropriate touch points throughout the product/service lifecycle (eg before the end of an introductory offer period, as is already the case in the mortgage market), and do so in a way that supports their customers' decision-making. In some cases this may mean that firms need to communicate more often than they currently do. Conversely, firms would need also need to fully consider the effect of communicating too frequently (and possibly diminishing the impact of important communications on which action is required).

Testing

4.19 As part of the standards, we would expect firms to take proportionate steps to review and, where appropriate, test and adapt their communications to ensure they are likely to be understood by the target consumers.

4.20 In determining whether additional testing of understanding is required and if so, the nature and extent of testing, we would expect firms to consider factors such as:

- the purpose of the communication, and in particular the relative importance of the decision it is intended to prompt or inform
- the context of the communication (eg individual communications vs mass marketing), its timing and its frequency

- the reasonably foreseeable information needs or vulnerabilities of target consumers (for example, whether the recipients are likely to include significant numbers of individuals with low capability)
- the scope for harm if the information being conveyed were misunderstood or overlooked by the consumer

4.21 So, for example, it is likely that firms would need to undertake more careful testing of consumers' understanding for the types of materials on which consumers are likely to base a decision to buy a product or service; and less for the types of communications that are not intended to prompt or inform any specific decision (for example a bank statement). We expect that for many communications, for example where there is no meaningful risk of harm to the consumer, no testing of consumer understanding would be required beyond the usual checks for clarity, accuracy, and fairness.

4.22 Firms would be expected to exercise judgement on how they satisfy themselves that their communications are understandable and equip consumers to make effective decisions. Methods might include, for example, customer surveys or monitoring of relevant management information.

Example
A firm seeks feedback from its customers on the first anniversary of a product purchase. The survey responses highlight that a high number of consumers say that they have paid unexpected fees in the first year.

In this situation, we would expect the firm to reconsider how understandable their initial product communications are and make appropriate changes.

4.23 Where a firm communicates with the customer in person, for example in the context of advised sales or provision of a tailored service, testing of understanding is more likely to take place during routine customer interactions.

What this would mean for consumers

4.24 Under this element of the Consumer Duty, we are seeking an environment where:

- consumers feel more confident in their ability to make considered decisions to achieve their financial objectives
- consumers are able to compare products and services more easily, shop around for better deals, and interact with financial services and products with confidence
- overall consumer outcomes are improved by a reduction of the scope for harm arising from poorly informed or mistimed decisions, or the exploitation of consumer behavioural biases

4.25 Where clear and understandable information is available on products and services across retail markets, this increased transparency will also improve the competitiveness of those markets, with consequent benefits for consumers.

What this would not mean

4.26 There are existing rules in many sectors about how and what information firms should provide to consumers. Firms should continue to follow product-specific rules and guidance where applicable, as they remain necessary to achieve particular outcomes, such as demonstrating suitability or enabling consumers to compare products across a market. But this should not stop firms thinking more widely about the purpose of their communications in promoting consumer understanding, and the outcomes they bring about.

4.27 This element of the Consumer Duty would build on, but may not replace, the existing Principle 7, which states that:

'A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.'

The standard of conduct required by Principle 7 is compatible with these policy proposals. However, the proposals go beyond Principle 7, setting higher expectations by requiring firms to actively consider how communications can equip consumers to make effective decisions.

4.28 The Consumer Duty would be compatible with, but would not replace, the communications-related provisions in other existing consumer protection legislation such as the Consumer Rights Act 2015 (including the FCA's powers relating to unfair contract terms as set out in this regulatory guide), the Enterprise Act 2002 and the Consumer Protection from Unfair Trading Regulations 2008.

4.29 Finally, these proposals would not require firms to verify that all individual customers have in fact understood the information provided. Rather, firms would be required to take appropriate steps to satisfy themselves that their communications are reasonably likely to be understood by their recipients. Firms should consider the needs of vulnerable consumers in their target market, and ensure that, overall, customers are equipped with the information they need to make an informed decision about the relevant product or service. However, in certain contexts the obligation we would impose may require a reasonable degree of checking of individual understanding. For example, where the customer is receiving a personalised service with interactive one-to-one communications with a firm and asked to make important or complex decisions.

Q13: What are your views on our proposals for the Communications outcome?

Q14: What impact do you think the proposals would have on consumer outcomes in this area?

Outcome 2: Products and Services

Summary

4.30 We want all products and services that are sold to consumers to be fit for purpose. We want them to be designed to meet consumers' needs, and targeted at the consumers whose needs they are designed to meet. This is an essential requirement for products and services to be able to represent fair value for consumers.

Our concerns and the harm we are aiming to address

4.31 Too often in our work we encounter products and services that are apparently designed without regard for the outcomes they achieve for consumers. This can happen when firms start out by considering what they can profitably sell to whom, rather than by identifying a consumer need which they can profitably serve.

4.32 Some products and services are **designed**, either intentionally or through insufficient consideration of consumer outcomes, with aspects that exploit behavioural biases, or with features that make it difficult for consumers to assess whether they are right for their needs. For example, we have seen:

- consumer credit products designed to generate a high proportion of profits from late payment fees or relending (as highlighted in our 2020 Relending by high-cost lenders report)
- complex savings and investment products where the complexity disguises high risks, high costs, or poor prospects of the product delivering a return commensurate with the risks and costs

4.33 We also see products and services that are designed with features that can deter consumers from acting in their interests. For example:

- unreasonable exit fees which discourage consumers from leaving products or services that are not right for them, or accessing better deals
- sludge practices that discourage exit, for example requiring customers to go into a branch to close a product

4.34 In addition, firms' **distribution** strategies do not always effectively target products and services towards the types of consumers for whom they are likely to be suitable. For example:

- firms having insufficient controls to prevent products, such as packaged bank accounts, being marketed to consumers for whom the benefits are unlikely to be justified by the price.

4.35 Consumer harm in relation to the distribution of products and services can be exacerbated where there are complex distribution chains involving multiple firms from design through to sale to the end consumer, and provision of different elements of the overall product. This poses particular risks where the respective responsibilities of firms in the chain are unclear or do not pay sufficient attention to the interests of the consumer who is the end user of the product or service. For example, our thematic review of General Insurance distribution chains found that some consumers were paying excessive charges due to parties in the chain receiving remuneration which appeared to significantly exceed the costs incurred in distributing the products.

Outcome we are seeking

4.36 We are seeking the following outcome for products and services:

Products and services are specifically designed to meet the needs of consumers, and sold to those whose needs they meet.

Proposal

4.37 Under the Consumer Duty, we propose to introduce rules and guidance for products and services (described in the remainder of this chapter simply as 'products'), to create the following obligations:

- **Product providers**: a firm involved in the manufacture or provision of a product would be responsible for ensuring that it is designed to meet an identified need or objective of consumers in an identified target market, with costs, benefits and performance in keeping with consumers' reasonable expectations. The product provider would also be required to convey sufficient information about the product to other firms in the distribution chain to enable them to discharge their own responsibilities, including in particular:
  - information about the product
  - its potential risks to consumers
  - its target market

  The product provider would be required to carry out regular reviews of how the product actually performs through its lifecycle. The provider would need to respond appropriately where there are any unanticipated risks of harm to consumers, or where the product no longer meets the consumer need for which it was designed.

- **Product distributors**: A firm involved in the distribution of the product would be responsible for ensuring the product is marketed and distributed in a manner that appropriately focuses on and reflects its target market. The firm would need to take reasonable steps to mitigate scope for the product being offered to consumers outside the target market. What steps would be reasonable would depend on the characteristics of the product and of consumers in the target market, and on the risk of harm to consumers if it were mis-sold.

- **Apportioning of obligations across the distribution chain**: Where multiple firms are involved in the distribution chain, the rules we would propose would require each of the firms to take due responsibility for the consumer outcome, in a manner that reflects the extent to which they are able to control or influence choices about product design, operation and distribution.

4.38 Our Product Intervention and Product Governance Sourcebook (PROD) already sets substantially similar requirements on the design, approval, marketing and management of certain products and services throughout their lifecycle. But PROD does not have general application across all retail markets that we regulate. There is also a regulatory guide in the FCA Handbook on The Responsibilities of Providers and Distributors for the Fair Treatment of Customers (RPPD), which covers much of the same ground and applies more widely. However, this does not have the status of rules.

4.39 We consider that cross-sectoral requirements reflecting the key obligations in PROD, positioned under the Consumer Duty, would make an important contribution to addressing harms to consumers and delivering the overall improvement in firms' conduct in the retail market. So we propose to introduce rules creating overarching requirements that apply to all products and services that consumers use. This should mean that consumers purchase products and services that have been designed to benefit them and perform as expected, addressing the harm we see in relation to product design and distribution.

What this would mean for firms

Manufacture/design

4.40 As part of the requirements proposed above, firms would be expected to:

a. Identify the consumer need the firm is aiming to meet with its product, and specify a 'target market'. This is a group of consumers sharing the need or objective that the product will be designed to meet, and for whom the product is likely to be a good option. It is up to firms to decide on the level of granularity of their product's target market and, as part of this, they should also identify the types of consumers the product is not suitable for. For simple products intended for the mass market, this may be a straightforward exercise. For more complex or niche products and services, target markets would need to be defined in more detail, taking account of any increased risk of consumer harm associated with these products and their potential mis-distribution.
b. Design the product in such a way as to ensure that it will meet the identified need of consumers in the target market.

Example

In a Thematic Review, we identified weaknesses in the design and governance of some **structured products**. We found that some products were not designed with proper consideration of consumer needs, and were of limited value to the consumers they were sold to. Causes of this included:

- Inadequate testing of how products are likely to perform in all market conditions.
- Inadequate consideration of the value of products, in comparison to alternative uses of consumers' money.
- Marketing based on factors deemed to be attractive to consumers, rather than seeking to meet identified needs.

The review concluded that firms should do more to match product design with consumer needs, and ensure that products have a reasonable prospect of delivering value to consumers in the target market. Firms should be able to determine and evidence this via robust stress-testing as part of the product approval process, and should not manufacture or distribute products that fail this process.

These conclusions are consistent with the expectations of PROD and the Consumer Duty.

c. Ensure the costs, risks, benefits and overall operation of the product are compatible with the reasonable expectations of consumers.
d. Ensure that their products and services do not include features that impose undue costs or risks on the consumer, or features that otherwise unduly hinder the consumer from acting in their interests. For example, generally speaking, products should not contain terms or features intended to make it difficult for the consumer to switch to a better alternative (eg an unjustifiable lock-in period), or ones which undermine the consumer's ability to use the product or for the product to meet the need it is designed to meet.
e. Consider whether the target market for their product or service could include vulnerable consumers and, if so, take this into account in how the product is designed and targeted. It is not our intention that this requirement would lead firms to exclude particular groups such as those who might be vulnerable and whose needs a product might meet. Rather, we want the design of products and services to take account of the needs of all groups within the target market. Where firms compete in the interests of consumers, we would expect them to offer fit-for-purpose products and services that meet the needs of a wide range of consumers.

Example

A consumer credit firm designs a lending product with late payment fees. The target market includes consumers who are likely to be less financially resilient. The firm identifies that a sizeable proportion of its customers are not making payments on time and are paying substantial sums in late payment fees. The firm concludes that the product is not meeting the needs of its target market as they are paying far higher fees than the firm had anticipated, resulting in unaffordable borrowing rates for these customers. The firm suspends sales of the product while it reviews these consumer outcomes, whether the product is meeting customer needs, and whether it should reposition the target market or product design.

4.41 Firms should take care to ensure that their target market is not defined in a way that results in unlawful discrimination under the Equality Act 2010. Where distinct groups of customers within the target market sharing protected characteristics (as defined in the Act) experience different outcomes from a firm's products, we would expect firms to investigate the causes of this. Firms would need to satisfy themselves, and be able to evidence to us, that these differential outcomes are compatible with the firm fully meeting the standards required by the Consumer Duty for all its customers.

Distribution

4.42 Firms would be required to take reasonable steps to ensure that products and services are distributed to consumers in their target market rather than other consumers. What amounts to 'reasonable steps' would depend on the circumstances. For example, the complexity of the product/service or the potential for it to harm consumers outside its target market. The controls that firms put in place would need to be proportionate to the risk of consumer harm if the product or service was sold to consumers outside the target market.

4.43 This requirement would apply to all firms involved in the design and distribution of products/services used by consumers – although (as noted in Chapter 3 above), the nature of firms' responsibilities in a multi-firm distribution chain would depend on their role, and the degree of influence they have in determining the achievement of the consumer outcome. We would expect firms to work together to deliver this outcome.

4.44 Product manufacturers would need to develop distribution strategies appropriate for their product's target market, communicate all relevant information about the product to enable the distributor to play their part in delivering a good customer outcome, and have controls in place to monitor that the distribution strategy is operating as expected.

4.45 Distributors would need to ensure they get all the information they need from the product manufacturer so that they understand the product and its target market well enough to fully explain the product to consumers whose needs and objectives it is designed to meet.

Example

A product manufacturer designs a complex and high-risk investment product. Its target market is sophisticated investors who can absorb potential losses. The manufacturer identifies that the product could cause significant harm if purchased by consumers outside of the target market who may not be able to afford the potential losses. So, the manufacturer develops a distribution strategy whereby the product can only be sold with advice. The manufacturer identifies a distributor with the appropriate skill and experience to advise on and sell the product. It provides all relevant information about the product and its target market to the distributor. This enables the distributor to assess whether the product is suitable for particular consumers and ensure it is only sold to consumers in the target market.

Example

A firm manufactures and distributes a product that could cause harm (eg an unaffordable level of loss) to consumers outside the target market. It sells the product online without providing advice, but this process includes an online eligibility test where consumers are required to click a button to self-certify that they are part of the target market, which is clearly explained. The risk of harm the product presents to consumers outside the target market is clearly signposted and the firm carries out regular testing to verify that the product is being purchased by the right consumers.

Monitoring

4.46 Firms would be expected to monitor their products and services to ensure that they remain consistent with the identified need for the target market, and deliver the expected outcomes. Where this is not the case, firms would need to take appropriate action. This might include discontinuing a product/service, adapting product design, operation or distribution channels, or, where customers have suffered harm, redress.

What this would mean for consumers

4.47 This element of the Consumer Duty would enable consumers to shop around and buy financial products and services with greater confidence that they will:

- be useful to them, and fit for purpose in meeting their needs
- work in a way they would reasonably expect in the circumstances, without unpleasant surprises

4.48 Along with the other outcomes set out in this chapter, this would also ensure that products and services represent fair value for consumers.

What this would not mean

4.49 The Consumer Duty would be compatible with, but would not replace, existing Handbook material (such as PROD) that sets specific requirements for the manufacture and/or distribution of products and services. PROD sets more granular product governance requirements that remain appropriate for the types of business that they apply to. It is the more general concepts of PROD that we are applying to other sectors in a proportionate way.

4.50 Firms would not be expected to apply the requirements under this outcome to past sales of products or services before the implementation of the Consumer Duty. We would apply the requirements to all product and service lines available for distribution to consumers after the Duty comes into effect, so that future sales meet the requirements. We would consult on an appropriate implementation period for the Consumer Duty, so that firms have sufficient time to implement their requirements.

4.51 Firms would not be required to ensure that products and services are suitable for individual consumers within the target market, except where the firm is providing advice or discretionary services to the customer.

4.52 These rules would not make firms responsible where harm to the consumer arises from the crystallisation of a risk relating to the product that the firm reasonably believes the consumer accepted (eg investment performance). This is in keeping with our proposal, outlined in Chapter 3, of a general obligation on firms to take all reasonable steps to avoid harm to consumers. Firms involved in the distribution chain would be expected to work together to ensure the product performance and features are in keeping with the reasonable expectations of consumers.

Q15: What are your views on our proposals for the Products and Services outcome?

Q16: What impact do you think the proposals would have on consumer outcomes in this area?

Outcome 3: Customer Service

Summary

4.53 We want firms to provide a level of customer service that meets consumers' needs throughout their relationship with the firm. Customer service should enable consumers to realise the benefits of the products and services they buy, and ensure that they are not hindered from acting in their own interests.

Our concern and the harm we are trying to address

4.54 Firms' customer service does not always enable consumers to get the full benefit from products and services, and can make it difficult for them to take action in their own interests.

4.55 We sometimes see 'sludge practices' in customer service processes where they are deliberately designed to hinder consumers from taking action that would benefit them. For example, some insurance firms use customer service processes that make it difficult for customers to stop their policy from automatically renewing, to deter them from switching to a different provider. A firm could also make it difficult for customers to access the benefits a product promised. For example, an unclear or excessively complex claims process may discourage customers from making a valid insurance claim.

4.56 But even where firms do not actively design their processes in this way, poor customer service can have the same effect and cause harm to consumers. Our Financial Lives

Survey in October 2020 found that 11% of all adults were not able to get through to a financial services provider or were unable to access their products.

4.57 Poor customer service can create additional costs for consumers that they didn't take into account when choosing the product or service, for example:

- excessive delays or complex processes can be a drain on consumers' time
- delays may mean a consumer is out of pocket for a long time, or even incurs costs of borrowing while they wait for a firm to act
- the inconvenience of dealing with a firm's customer service processes may lead a consumer to abandon a transaction or use alternative means that are more expensive

4.58 There is an obvious commercial incentive for firms to provide high quality pre-sale service. But most customer servicing occurs after this point. Firms may lack commercial incentives, or may be disincentivised, to make sure their customers are adequately supported throughout the lifecycle of a product after the point of sale – in particular, if they want to switch provider, make a claim or complain.

4.59 Consumers are only likely to discover poor customer service after they have entered into an agreement. Many may never experience this element of a firm's offering at all, eg many insurance customers will not make a claim. This further reduces the competitive pressures on firms to get this right. It can even result in firms that have very poor after-sales service having a competitive advantage over others because customers do not know about it until it is too late to choose a different provider.

4.60 So, we intend this element of the Consumer Duty to protect consumers, and reduce 'sludge practices' that hinder consumers from realising product benefits or from acting in their own interests.

Outcome we are seeking

4.61 We want firms' customer service to work in the interests of consumers. It should enable consumers to engage with their financial services providers confidently, both pre- and post-sale. Good customer service standards should empower consumers to achieve the full benefit of their product or service, and to act in their interests where they want to do so. We want firms to use their understanding of real consumer behaviour and their control of the decision-making environment, to support, not hinder, good decision making.

4.62 So, we propose the following as the outcome our proposals should deliver across retail markets:

Customer service meets the needs of consumers, enabling them to realise the benefits of products and services and act in their interests without undue hindrance.

Our proposals

4.63 Our rules and guidance to implement this outcome would require that firms' customer services do not unduly hinder consumers from realising the benefits of products/services, or acting in their own interests.

4.64 We would also require that firms' customer services do not lead consumers to incur unreasonable additional costs (eg time, money, inconvenience, data).

4.65 Firms would be required to:

- **a.** Design processes in a way that actively takes the consumers' needs into account, and not deliberately design processes that cause undue hindrance to consumers realising the benefits of the product, or acting in their interests, or impose unreasonable additional monetary and non-monetary costs on consumers.
- **b.** Consider the customer service needs of their customer base, and the target market for their products and services and make sure their customer service meets the range of those customers' needs. For example, if a current account product is targeted at the mass retail market, this will include customers with different communication needs (potentially including vulnerable consumers), and firms should make sure they have customer service that can support those needs.
- **c.** Monitor the performance of processes, looking for information that may indicate areas where they fall short of the outcome, and act promptly to address these.
- **d.** Regularly review processes to ensure they remain fit for purpose, and do not disadvantage particular groups of customers, including those who may be vulnerable, particularly as innovation and technology develop.
- **e.** Take responsibility for meeting our customer service standards where they outsource customer service activities to other parties.

What this would mean for firms

Enabling consumers to realise the benefits of products/services without undue hindrance

4.66 Firms should provide a standard of customer service that enables consumers to get what they bargained for, eg make a claim under an insurance policy, or withdraw funds from a savings account, without undue hindrance. What amounts to an 'undue hindrance' will depend on the circumstances, as shown in the example below:

Example:
An insurance firm has a complex claims process which deters many customers from pursuing claims. This process includes a requirement for customers to provide hard copies of all evidence. The firm refuses to consider any requests from customers to waive this requirement.

A firm may have legitimate claims handling requirements, such as a need to give notice when the loss event occurs, or to provide adequate evidence of the loss. But the means of making a claim should be easy to find and the firm should not impose unnecessarily restrictive, rigid or arbitrary administrative requirements on customers that hinder them making a valid claim.

This firm would not be enabling its customers to realise the expected benefit of the insurance product they have bought by making a claim without undue hindrance.

4.67 Firms should use the evidence they have about their customers' use of products, interactions with the firm and other behaviour to identify areas where their processes may be causing undue hindrance to consumers, and act to reduce this. This could include data about abandoned calls or claims, unusually low volumes of claims or successful claims, or root cause analysis of complaints data.

Enabling consumers to act in their interests without undue hindrance

4.68 There can be commercial incentives for firms to create friction points that deter their customers from taking action the firm would prefer they did not take, such as making a complaint or switching product or provider. While prompts or incentives to retain a customer are acceptable, they should not adversely impact the ease with which a customer could switch or exit from a product should they chose to do so. So, a firm should carefully consider the effect of these practices on the customer's ability to switch.

Example

A firm requires its customers to contact them by phone if they want to switch to a different provider. Once on the phone, customers are subjected to a lengthy process during which they are encouraged not to switch.

This type of practice would be likely to constitute an 'undue hindrance' under the Consumer Duty.

4.69 When designing their processes, firms should consider the barriers they might create to consumers acting in their interests, and reduce these where possible. They should use information on customer behaviour to identify unintended hindrances to customers acting in their interests, for example by considering root causes of complaints or unusually low switching rates. Firms should consider the steps they take to support customers wanting to buy their product, and should make it at least as easy to switch, leave their service or make a change as it is to buy in the first place.

Not causing consumers to incur unreasonable additional costs

4.70 Customer service should not lead to the product costing more than the consumer expected up-front. It should not impose unreasonable inconvenience, time, or monetary costs on consumers.

4.71 Some delay, inconvenience or cost may be reasonable. We do not intend to set rigid standards of how long a call should last or how long a customer should wait to talk to an agent. A firm's call centres may experience unforeseeable demands leading to long wait times, or a firm may need to prioritise dealing with certain claims over others at times of high demand. Different levels of inconvenience or delay may be reasonable in different circumstances. For example, a delay that is reasonable for a customer looking to amend a standing order may not be reasonable for a customer trying to disable a credit card that has been stolen.

4.72 Under our proposals we would expect firms to ensure that consumers are not exposed to unreasonable additional costs as a result of how their products are serviced. We would expect them to use proportionate resources to meet expected demand. They would need to monitor and regularly review, based on information on customer behaviour and feedback, whether customers, or particular groups of customers, are paying unreasonable additional costs.

Example:
A retail banking customer telephones their bank to transfer money from a savings account into a current account, to avoid going overdrawn. The customer waits on hold for a long time but is unable to get through to an agent to make the transfer. This results in the customer going overdrawn and incurring charges.

It is very likely in this example that the firm would have failed to meet the customer service standards we are seeking.

What this would mean for consumers

4.73 For consumers this would mean:

- they can be confident that when they want to access the benefits of the product or service they have bought, firms will not put undue hindrance in their way
- consumers who want to make changes to how they use a product, switch product, switch provider, claim, or complain will be able to do so easily
- consumers will not incur unreasonable post-sale costs, in terms of time, money or inconvenience as a result of bad customer service

What this would not mean

4.74 These proposals would not require customer service to be provided through a particular channel, as long as firms adhere to the general principle that it should be at least as easy to exit a product/services as it is to enter it. We recognise, for example, the potential for benefits to consumers of predominantly digital propositions. But our recent guidance on the fair treatment of vulnerable customers emphasised that firms with a predominantly single channel strategy should also think about the possible communication needs that consumers with characteristics of vulnerability in their target market or customer base may have and consider providing another channel or channels.

4.75 The Consumer Duty would be compatible with, but would not replace, existing FCA Handbook rules that set specific requirements for the servicing of customers (eg providing information, complaints handling).

Q17: What are your views on our proposals for the Customer Service outcome?

Q18: What impact do you think the proposals would have on consumer outcomes in this area?

Outcome 4: Price and Value

Summary

4.76 We want to ensure that products and services are fit for purpose and represent fair value, not just because they meet consumers' needs and objectives as set out in our Products and Services outcome, but also because their price represents fair value.

4.77 Consequently, we want to set out a clear and consistent approach to price and value. We want firms to assess the price of products and services at the design stage, and through ongoing monitoring. They should ensure that the benefits of the products and services offered to consumers are reasonable relative to their price.

4.78 The proposal is not to set levels at which firms should price their products or services. Nor do we intend to use the proposed rule itself to introduce market interventions such as price caps or other price interventions, for example, as we have done in the rent-to-own and overdrafts markets. In future we may need to use our regulatory tools to make such interventions where markets are failing to deliver fair value. But our aim here is to require firms to give greater consideration to the price and the role it plays in the fair value of products and services. This should reduce the need for us to have to make any such future market-wide inventions.

Our concerns and the harm we aim to address

4.79 In addition to the Products and Services, Communications and Customer Service outcomes, the price of a product or service, and whether it is reasonable given the consumer benefits, should be a key factor in the firm's assessment of whether the product or service is compatible with the needs of customers in its target market and is delivering fair value to them.

4.80 We have included 'price and value' as a separate outcome because we want to stress the importance of price in determining whether a product or service is fit for purpose and offers fair value. We want to be clear about the specific outcomes we expect of firms when they are considering the price of a product or service.

4.81 When markets function well, with competition working effectively in consumers' interests, consumers will be able to choose the product or service that represents the best value for them. Firms will be limited by the value their competitors offer and will only win business if their product or service is good value for consumers. However, for several reasons, markets do not always function well and that can result in consumers getting poor value.

4.82 There are different reasons why consumers might end up buying poor value products. Consumers can find it difficult to assess value in both the product's *price* and its *benefits*. This can be for several reasons, including poor firm conduct in product design or firm communications (as explained earlier in this chapter). Consumers may also have limited financial or numerical competence. Financial Lives data shows that 34% of adults have poor or low levels of numeracy involving financial concepts. Firms' conduct can make it harder for consumers to assess *price*. This is more likely if there are complex or opaque pricing practices or layering of charges along a distribution chain. For instance, in the motor and home general insurance markets we found complex pricing practices that do not make the true lifetime cost of such insurance policies clear. This leads some consumers to believe their renewal price is more competitive than it is. In the case of overdrafts, we found consumers found the fees and charges complicated and difficult to understand, resulting in some consumers paying more for short-term credit than they might have needed to.

4.83 Consumers can sometimes also find it difficult to assess the *benefits* they are getting. This can be compounded by behavioural factors, such as optimism bias which can lead them to overvalue the benefit of products and so have little idea of what is an appropriate price. For example, they may have unrealistic expectations about a reasonable level of investment performance. This situation is worsened where they may not find it easy to assess the benefits of a product or service at the point of purchase, eg advice, insurance, or investments. For example, we found that consumers have considerably less information and understanding about claims and the process of making them than claims management companies, and so overestimate the benefits they are getting from claims management companies' services.

4.84 There could be also be anti-competitive conduct such as cartel behaviour which inflates prices, reduce consumers' choice and firms' incentives to innovate and provide good service in the market. This may result in poor value products and can also damage the trust consumers have in financial services.

Outcome we are seeking

4.85 We want firms to deliver the following outcome across retail markets:

The price of products and services represents fair value for consumers

Our proposal

4.86 We propose to introduce a requirement that **firms set prices so that they represent fair value for their target customers**. Value means the relationship between the overall price to the customer and the benefits received by the customer. This assessment of value would include consideration of at least the following:

- the nature of the product, including the benefits that will be provided or may reasonably be expected, their quality and any limitations
- the type and quality of services provided to customers
- the expected total price the customer will pay

4.87 We think that the firm's costs for manufacturing and/or distribution of the product or service should also be included in the consideration when it assesses value.

4.88 We would state that **firms would not be providing fair value if the price consumers pay for a product/service is not reasonable relative to its expected benefits**.

4.89 Our intention is that firms should assess the intended pricing of products and services at the design stage, before offering products and services to consumers. This will allow consumers to select fit-for-purpose products that represents fair value. We would also expect firms to actively assess the value of their products and services throughout their life by ongoing monitoring.

4.90 These proposals originate from our long-running work on fair value, which we have built on in recent policy proposals in the General Insurance and Funeral Plans sectors. We intend to introduce similar but high-level rules across all retail markets to provide a clear indication to firms of our expectations about value. Our earlier market interventions on pricing have addressed incidents of poor value that have already become entrenched in a market. These proposals are aimed at setting clear expectations on firms on what they need to consider to ensure their products and services offer fair value. This should reduce the likelihood of markets developing in a way that does not offer fair value, and consequently requiring us to use other regulatory tools to make market-wide interventions, such as introducing price caps or other price/value-related interventions.

What this would mean for firms

4.91 Firms would need to ensure they are providing fair value to consumers in their products and services. They should proactively assess the benefits consumers can reasonably expect to get from the products or services against the price paid.

4.92 *Consumer benefits* – The benefits consumers can reasonably expect to get from products and services can often be financial, but there may also be other benefits that a firm can consider. For example, ones which relate to particular product features or aspects of customer services. For instance, an enhanced level of customer service may justify a higher price for a range of services, such as enhanced support for a 'premium' bank account or more assistance given to customers who need to make a travel insurance claim, or other factors that increase convenience, saving consumers time.

4.93 *Price to consumers* – When considering the price charged, firms should consider all the costs and charges a consumer may pay for the product or service over time.

4.94 Firms should consider the overall value chain and how that affects the price consumers pay. For instance, the separate fees charged for investment products offered by a discretionary manager (eg platform fees, fund management fees and advice fees) might together result in a higher overall fee that does not represent fair value.

4.95 Firms also need to consider whether the consumer will incur other costs which may not be financial. For example, the growing use of data and its value to firms. It can be a cost to consumers due to their relinquishing of privacy. As the use of data continues to evolve, we expect firms to be aware of the role consumer data plays in the value chain, how they use that data and its impact on competition and the fair value of products and services for consumers.

4.96 *Outcomes for different groups* – Where firms charge different prices to separate groups of consumers, they would need to consider that the product or service is fit for purpose for an average consumer in each group. For example, it may not necessarily be a problem if some groups of consumers are being charged significantly more than other groups. But the firm should consider whether for each group of consumer the price charged in relation to the benefits received represents fair value. Vulnerable consumers may be more susceptible to receiving poor value, and firms would need to take extra care where consumers in target markets are likely to be vulnerable.

4.97 Firms offering the same charging structure to all consumers may also not provide fair value. Whilst it may often be fair to do this, it may not always be fair where, for example, servicing fees are charged as a percentage of the value of a product (this might be in relation to the size of a loan, investments or savings). Some consumers may pay substantially larger fees in this way even though the costs of providing the service and the benefits consumers receive may be very similar. In such circumstances, firms should consider whether the relationship of the price such consumers would pay is reasonable relative to the benefits they receive.

4.98 Likewise, firms will need to be particularly careful where groups that share protected characteristics (as defined in the Equality Act 2010) may be disadvantaged. Firms should satisfy themselves, and be able to evidence to us, that any differential outcomes represent fair value, and are compatible with their obligations under the Equality Act.

4.99 *Firm costs* – In some cases, the price may be high because it reflects the underlying costs incurred by the firm. This may be the case where, for example, there is a higher risk and the cost to underwrite that risk is reflected in the price of lending and insurance products. In such cases we would still expect the firm to be able to demonstrate that the consumer benefits were reasonable relative to the price.

4.100 *Value assessment and resulting action* – We would expect firms to be able to show us that they have made an assessment and can demonstrate why they consider that the relationship between the price and benefits is reasonable. This is so that we can consider the firm's assessment. As with all of the elements we propose in this consultation, our intention is that firms' senior management would be accountable for the outcomes of their value assessments.

4.101 In cases where it is clear the price charged is not reasonable relative to the benefits to the consumer, we would expect firms to withdraw the product or amend their offering so that it does represent fair value.

4.102 In cases where it is less clear, but where we may be concerned as to whether the price is reasonable relative to the benefits, we will look at the full context. This will help us to better understand any factors that may have an impact on value or on consumers' ability to assess price and value. This would include looking at the firm's conduct against other drivers of value to consider whether it might need to address this. For example, whether the firm's communications allow consumers to fully assess the value of the product, or whether there were obstacles to consumers being able to switch to other products that offered better value. Depending upon the circumstances, such obstacles may amount to breaches of rules implementing the above outcomes for communications, products and services or customer service. The presence of such factors could impede markets functioning well and competition working effectively in consumers' interests.

4.103 We understand that assessing whether a particular pricing practice is fair or unfair can be complex. There may be issues that are relevant across a market rather than being specific to a particular firm. So, we may need to conduct a broader investigation to consider any such market-wide potential issues that could be resulting in poor value for consumers.

4.104 In some cases, we may choose to introduce other specific or prescriptive rules or guidance to address particular issues that lead to competition not working effectively. For instance, to help investors get better value, we introduced a requirement for firms to undertake value assessments for fund fees in the asset management sector.

What this would mean for consumers

4.105 Under this outcome, we are seeking an environment where consumers feel more confident that the products and services offered to them are at a price that represents fair value.

4.106 Consumers would still be responsible for their decisions and need to consider which product or service represents the best value for them among the range of products and services offered, eg if a basic or premium product best meets their needs.

4.107 Fair value does not mean that all consumers will achieve the same outcomes. While firms will be expected to ensure that their products and services represent fair value, it will still be likely that some consumers, such as those that shop around or undertake research, will achieve better outcomes than others.

What this would not mean

4.108 The proposals would not:

- Require firms to offer products at or below a set price. We do not intend to remove flexibility in the way firms price products and services. Our proposals are not attempting to set an 'ex ante' charge / price control (as is done by many other regulators such as in the water, electricity or telecommunications sectors). Nor are we seeking to determine what the price for any particular product should necessarily be, subject to any existing or proposed price caps. That is and will remain for firms to decide.
- Cap firms' operating margins. We want to encourage competition and innovation, and we recognise that firms may temporarily be able to earn higher margins, for example, when they have developed innovative, more efficient processes. We want to encourage further innovation and improvements by competitors in the market, benefiting consumers. In cases where we find high margins, we will look for evidence on whether competition is working well and if firms are passing on the benefits of innovation or efficiencies to consumers.
- Prevent firms from charging different prices to different groups of consumers which could be for a range of reasons, including different risk profiles of different groups. However, the firm should justify the price offered to each group in terms of fair value, with particular consideration given to vulnerable consumers and consumers with protected characteristics.
- Require firms to point consumers to a potentially better or cheaper product offered by another firm. There are exceptions in areas where there are existing or proposed rules, such as debt management companies having to signpost the availability of free advice and claims management companies having to tell consumers that they can seek redress directly from the firm they are complaining about.

Q19: What are your views on our proposals for the Price and Value outcome?

Q20: What impact do you think the proposals would have on consumer outcomes in this area?

5 A private right of action

Summary

5.1 In our Feedback Statement FS19/02, we said we would consider the potential merits and unintended consequences of introducing a private right of action (PROA) for breaches of our Principles, including any new Principle. Different stakeholders have given us opposing and equally strong views on this.

5.2 We view the PROA as part of a wider range of mechanisms which make firms accountable for their breaches of our rules, and by which consumers can get redress. This includes firms' own complaints and redress procedures, our supervisory and enforcement activities, access to redress through the Financial Ombudsman Service ('the ombudsman service'), redress schemes and the Financial Services Compensation Scheme (FSCS).

5.3 We will continue to take account of stakeholder input as we further consider this issue. We want this consultation to focus on our proposals for the Consumer Duty, and ensure that they would deliver the right outcomes for consumers. So, we are not making any specific proposals on a PROA at this stage, but we set out below the arguments that have been made for and against it. We would welcome stakeholders' further views on how a PROA could support or hinder the success of the proposals and their intended impact on firms, consumers and markets.

Context

5.4 Section 138D FSMA allows us to determine, for each of our rules, whether individuals have a right of action for damages for loss caused by a breach of that rule (subject to some limited exceptions). This right applies to most of our rules, but does not currently apply for breaches of our Principles.

5.5 We could allow the right for private persons to bring private action for breaches of our Principles, including the Consumer Principle, and the wider Consumer Duty, through an amendment to the Handbook. In our conversations with stakeholders, and in response to Discussion Paper 18/5, many respondents and other parties have shared their views on the potential advantages and disadvantages of doing so. We have reflected their points in this chapter. We are now seeking views on a PROA in relation to the proposals for a Consumer Duty.

Suggested benefits of a private right of action for breaches of the Principles

5.6 As set out in this consultation, we intend that the proposed Consumer Duty will shift firms' focus to deliver better outcomes for their customers. It will sit alongside the Principles in our Handbook. Some stakeholders have suggested that a private right of action attached to any new Principle could deliver further benefits. These stakeholders have also argued that these benefits also apply across our other Principles.

5.7 For example, some suggested that the risk of firms being taken to court, risk of being liable to pay damages and the reputational impact, would be likely to have an impact on firm behaviour. This could act as a powerful deterrent to breaching the Principles and encourage firms to deliver good consumer outcomes first time.

5.8 Where consumers have suffered harm due to poor firm conduct, some stakeholders have argued that allowing a private right of action for breaches of the Principles would provide an alternative redress route for consumers, as well as or instead of the ombudsman service. Stakeholders identified consumers who suffer losses from such a breach that exceed the ombudsman services' compensation limits as one group that might benefit from this.

5.9 Currently, as consumers cannot take private action against breaches of the Principles, we cannot use our powers under section 404 of FSMA to impose an industry-wide redress scheme. These redress schemes can require firms to proactively review files of historic cases. Some stakeholders have suggested that our ability to establish such a scheme for breaches of our Principles, particularly the Consumer Duty, would allow us to seek redress for consumers if there was a significant market failure. This would ensure firms gave the Consumer Duty an appropriate standing.

5.10 Unlike the ombudsman service, the FSCS can only pay compensation where the firm owes the consumer a civil liability. Where a PROA applies to our rules, a breach can create this liability. But a consumer of a firm which breached a Principle, but not another FCA rule, is unlikely to be able to claim compensation from the FSCS if that firm is declared in default. Some stakeholders have said that providing a PROA for breaches of the Principles would enable the FSCS to pay more consumer claims.

Suggested potential unintended consequences of a private right of action for breaches of the Principles

5.11 In contrast to these suggested benefits of providing for private actions for breaches of the Principles, other stakeholders have expressed concern that this could lead to unintended consequences.

5.12 One potential unintended consequence raised is that firms might become risk-averse to avoid private litigation. This could harm consumer outcomes. In particular, there is concern consumers could receive outcomes which are legally safer (for firms) but less good. It might also discourage firms from developing innovative products or services, which could restrict consumer choice and competition.

5.13 Where consumers can bring private action, some stakeholders said this will increase costs for firms. Even where cases aren't brought, they are concerned that the risk of action being brought could increase the cost of Professional Indemnity Insurance (PII). These costs would ultimately be passed down to consumers, who might also see a reduction in the availability of products or services as a result of any reduction in the availability of PII.

5.14 Where private action is brought, UK plaintiffs run an adverse costs risk, meaning that, if they lose, they are likely to have to pay costs for the other party. For large claims (over £200,000), it costs £10,000 to submit the claim form to the court, before legal fees are included. Given these costs, and the availability of the ombudsman service, a private action for a breach of the Principles might be rare. So some stakeholders have suggested the negative impact of increased costs passed on to consumers would undermine any potential benefits.

5.15 Some stakeholders have expressed concern that Claims Management Companies (CMCs) could see a private right of action as a new business opportunity, particularly given that the PPI deadline is past, which could lead to spurious claims. Where a CMC carries out a claims management activity regulated by the FCA, it would have to meet the proposed Consumer Duty, wider Principles and specific rules in our Handbook. In particular, it would have to comply with CMCOB 2.1.7R which prohibits a CMC from pursuing a baseless, fraudulent, frivolous or vexatious claim. Nonetheless, some stakeholders are concerned that CMCs could seek to issue a high volume of cases to generate income, increasing costs across the industry.

5.16 Another suggested unintended consequence is that the courts could play a significant role in determining the interpretation of the Consumer Duty. Any change or addition to the Principles will take time to embed within firms and the FCA, as it did when the Principles were first introduced in 2001, with understanding built over time through our interventions and communications. Some stakeholders feel that giving the industry time to deliver this consultation's proposed outcomes, without the prospect of private action being brought, might be important to fully realise the consumer benefits of the cultural and mindset changes the Consumer Duty aims to achieve.

Q21: **Do you have views on the PROA that are specific to the proposals for a Consumer Duty?**

Q22: **To what extent would a future decision to provide, or not provide, a PROA for breaches of the Consumer Duty have an influence on your answers to the other questions in this consultation?**

6 Cost Benefit Analysis

6.1 In the feedback to this first-stage consultation, we are seeking views on the extent to which the Consumer Duty will lead firms to make changes, and the costs that they may incur from this. We also want to know if you think the Consumer Duty would have any sector-specific or market-wide consequences.

6.2 We have a statutory duty to perform a cost benefit analysis on any proposed rules. This will be published in the next stage of our consultation. During this consultation period, we will consider the potential costs and benefits of the Consumer Duty. The following questions (primarily aimed at authorised firms) form part of this process:

Q23: **To what extent would your firm's existing culture, policies and processes enable it to meet the proposed requirements? What changes do you envisage needing to make, and do you have an early indication of the scale of costs involved?**

Q24: **[If you have indicated a likely need to make changes] Which elements of the Consumer Duty are most likely to necessitate changes in culture, policies or processes?**

Q25: **To what extent would the Consumer Duty bring benefits for consumers, individual firms, markets, or for the retail financial services industry as a whole?**

Q26: **What unintended consequences might arise from the introduction of a Consumer Duty?**

Q27: **What are your views on the amount of time that would be needed to implement a Consumer Duty following finalisation of the rules? Are there any aspects that would require a longer lead-time?**

Annex 1
Questions in this paper

Q1: **What are your views on the consumer harms that the Consumer Duty would seek to address, and/or the wider context in which it is proposed?**

Q2: **What are your views on the proposed structure of the Consumer Duty, with its high-level Principle, Cross-cutting Rules and the Four Outcomes?**

Q3: **Do you agree or have any comments about our intention to apply the Consumer Duty to firms' dealings with retail clients as defined in the FCA Handbook? In the context of regulated activities, are there any other consumers to whom the Duty should relate?**

Q4: **Do you agree or have any comments about our intention to apply the Consumer Duty to all firms engaging in regulated activities across the retail distribution chain, including where they do not have a direct customer relationship with the 'end-user' of their product or service?**

Q5: **What are your views on the options proposed for the drafting of the Consumer Principle? Do you consider there are alternative formulations that would better reflect the strong proactive focus on consumer interests and consumer outcomes we want to achieve?**

Q6: **Do you agree that these are the right areas of focus for Cross-cutting Rules which develop and amplify the Consumer Principle's high-level expectations?**

Q7: **Do you agree with these early-stage indications of what the Cross-cutting Rules should require?**

Q8: **To what extent would these proposals, in conjunction with our Vulnerability Guidance, enhance firms' focus on appropriate levels of care for vulnerable consumers?**

Q9: **What are your views on whether Principles 6 or 7, and/or the TCF Outcomes should be disapplied where the Consumer Duty applies? Do you foresee any practical difficulties with either retaining these, or with disapplying them?**

Q10: **Do you have views on how we should treat existing Handbook material that relates to Principles 6 or 7, in the event that we introduce a Consumer Duty?**

Q11: What are your views on the extent to which these proposals, as a whole, would advance the FCA's consumer protection and competition objectives?

Q12: Do you agree that what we have proposed amounts to a duty of care? If not, what further measures would be needed? Do you think it should be labelled as a duty of care, and might there be upsides or downsides in doing so?

Q13: What are your views on our proposals for the Communications outcome?

Q14: What impact do you think the proposals would have on consumer outcomes in this area?

Q15: What are your views on our proposals for the Products and Services outcome?

Q16: What impact do you think the proposals would have on consumer outcomes in this area?

Q17: What are your views on our proposals for the Customer Service outcome?

Q18: What impact do you think the proposals would have on consumer outcomes in this area?

Q19: What are your views on our proposals for the Price and Value outcome?

Q20: What impact do you think the proposals would have on consumer outcomes in this area?

Q21: Do you have views on the PROA that are specific to the proposals for a Consumer Duty?

Q22: To what extent would a future decision to provide, or not provide, a PROA for breaches of the Consumer Duty have an influence on your answers to the other questions in this consultation?

Q23: To what extent would your firm's existing culture, policies and processes enable it to meet the proposed requirements? What changes do you envisage needing to make, and do you have an early indication of the scale of costs involved?

Q24: [If you have indicated a likely need to make changes] Which elements of the Consumer Duty are most likely to necessitate changes in culture, policies or processes?

Q25: **To what extent would the Consumer Duty bring benefits for consumers, individual firms, markets, or for the retail financial services industry as a whole?**

Q26: **What unintended consequences might arise from the introduction of a Consumer Duty?**

Q27: **What are your views on the amount of time that would be needed to implement a Consumer Duty following finalisation of the rules? Are there any aspects that would require a longer lead-time?**

Annex 2
Abbreviations used in this paper

Abbreviation	Description
CMC	Claims Management Company
CMCOB	the Claims Management: Conduct of Business sourcebook
COBS	the Conduct of Business Sourcebook
CP	Consultation Paper
FCA	Financial Conduct Authority
FSCS	the Financial Services Compensation Scheme
FSMA	the Financial Services and Markets Act 2000
MCOB	the Mortgages and Home Finance: Conduct of Business sourcebook
PII	Professional Indemnity Insurance
PPI	Payment Protection Insurance
PRIN	the Principles for Businesses Sourcebook
PROA	Private Right of Action
PROD	the Product Intervention & Product Governance sourcebook
RPPD	Responsibilities of Product Providers and Distributors
SM&CR	Senior Managers & Certification Regime
SME	Small and medium-sized enterprise
TCF	Treating Customers Fairly

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