

FCA CONSUMER DUTY POLICIES AND PROCEDURES

NOTES:

- These FCA Consumer Duty Policies and Procedures can be inserted into a firm's existing FCA Compliance Manual to implement the new FCA Consumer Duty.
- They were last updated on 1 July 2023.

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CHAPTER [1] – FCA CONSUMER DUTY

1.1 INTRODUCTION

1.1.1 Application

The provisions contained in this Chapter apply to the Firm with effect from [31 July 2023 OR, IF EARLIER, SPECIFY DATE OF AUTHORISATION]. *[Please note that technically the rules apply from 31 July 2023 only in relation to new and existing products or services that are open for sale or renewal and from 31 July 2024 in relation to closed products or services. For simplicity, however, a single commencement date is applied in this Manual]*

In this Chapter, a “product” includes both products and services and a “retail customer” includes a prospective customer.

1.1.2 FCA Consumer Duty Principle

A new Principle 12 (Consumer Duty) has been inserted at PRIN 2.1 of the FCA Handbook. It states that the Firm must “act to deliver good outcomes for retail customers”.

Such Principle reflects a general expectation by the FCA that the Firm should conduct its business to a standard which ensures an appropriate level of protection for retail customers.

The cross-cutting obligations at PRIN 2A.2 (see below) set out the overarching conduct which the Firm must demonstrate when it acts to deliver good outcomes for retail customers.

The main elements of the Firm’s conduct obligations under Principle 12 and PRIN 2A are set out in PRIN 2A.3 to PRIN 2A.11.

The retail customer outcome rules and guidance at PRIN 2A.3 to PRIN 2A.6 set out the Firm’s key obligations in relation to product governance, price and value, consumer understanding and supporting consumers.

Principle 12 does not change the nature of the Firm’s relationship with any given retail customer. In particular, it does not create a fiduciary relationship where one would not otherwise exist nor require the Firm to provide advice or carry out any other regulated activity where it would not otherwise have done so.

The FCA has issued guidance on the Consumer Duty in FG22/5, which the Firm should read alongside Principle 12 and PRIN 2A as a guide to the FCA’s view as to how Principle 12 and PRIN 2A might be complied with.

1.1.3 Guidance on responsibilities of the Firm in a product’s distribution chain

Principle 12 imposes obligations on the Firm towards retail customers of products irrespective of whether the customer is a client of the Firm.

This extended application aims to ensure the effectiveness of obligations under Principle 12 which may properly relate to activities which determine or materially influence retail customer outcomes carried out by the Firm with whom the retail customer is not in a client relationship.

The Firm’s role in the distribution chain may mean it is unable to determine or materially influence retail customer outcomes in connection with the product. If so, the Firm may not be subject to any obligation under Principle 12.

1.2 CROSS-CUTTING OBLIGATIONS

1.2.1 Duty to act in good faith

The Firm must act in good faith towards retail customers.

Acting in good faith is a standard of conduct characterised by honesty, fair and open dealing and acting consistently with the reasonable expectations of retail customers.

Examples of where the Firm would not be acting in good faith include:

- (1) failing to take account of retail customers' interests, for example in the way it designs a product or presents information;
- (2) seeking inappropriately to manipulate or exploit retail customers, for example by manipulating or exploiting their emotions or behavioural biases to mislead or create a demand for a product;
- (3) taking advantage of a retail customer or their circumstances, for example any characteristics of vulnerability, in a manner which is likely to cause detriment;
- (4) carrying out the same activity to a higher standard or more quickly when it benefits the Firm than when it benefits the retail customer, without objective justification.

Acting in good faith does not mean the Firm is prevented from pursuing legitimate commercial interests or seeking a profit, provided it does so in a manner which is compliant with Principle 12 and PRIN 2A. Acting in good faith does not require the Firm to act in a fiduciary capacity where it was not already obliged to do so.

If the Firm identifies through complaints, its internal monitoring or from any other source, that retail customers have suffered foreseeable harm as a result of acts or omissions by the Firm, it must act in good faith and take appropriate action to rectify the situation, including providing redress where appropriate.

This does not apply where the harm identified was caused by risks inherent in a product, provided the Firm reasonably believed that retail customers or the relevant retail customer (as the context requires) understood and accepted those risks.

1.2.2 Duty to avoid causing foreseeable harm

The Firm must avoid causing foreseeable harm to retail customers.

Foreseeable harm may be caused by both act and omission, in the Firm's direct relationship with a retail customer or through its role in the distribution chain even where another Firm in that chain also contributes to the harm.

Avoiding causing foreseeable harm to retail customers includes:

- (1) ensuring all aspects of the design, terms, marketing, sale of and support for its products avoid causing foreseeable harm;
- (2) ensuring that no aspect of its business involves unfairly exploiting behavioural biases displayed or characteristics of vulnerability held by retail customers;
- (3) identifying the potential for harm that might arise if it withdraws a product, its products change or its understanding about the impact on retail customers changes; and
- (4) responding to emerging trends that identify new sources of harm, including FCA supervisory action and/or communications.
- (5) taking appropriate action to mitigate the risk of actual or foreseeable harm, including for example by:
 - (a) updating or otherwise amending the design of the product or distribution strategy;
 - (b) updating information about a product or updating investment advice;
 - (c) ensuring that retail customers do not face unreasonable barriers (including unreasonable additional costs), for example when they want to switch products or providers or to complain;