

3 February 2023

Dear CEO/Director,

### **Implementing the Consumer Duty in Asset Management, Custody & Fund Services and Alternatives portfolios**

The Consumer Duty is a significant shift in our expectations of firms. It introduces a more outcomes-focused approach to consumer protection and sets higher expectations for the standard of care that firms give customers.

We are sending this letter to firms whose primary business model in the Asset Management<sup>1</sup>, Custody & Fund Services<sup>2</sup> and Alternatives<sup>3</sup> portfolios<sup>4</sup>, to help them implement and embed the Duty effectively. This letter sets out:

- A reminder of the implementation timeline, key elements of the Duty and how it applies to firms in Asset Management, Custody & Fund Services and Alternatives portfolios.
- Our expectations for how firms should embed the Duty in Asset Management, Custody & Fund Services and Alternatives portfolios, including relevant examples of good and poor practice.
- Feedback from our recent review of firms' implementation plans.
- Our approach to supervising the Duty in Asset Management, Custody & Fund Services and Alternatives portfolios and planned next steps.

We expect the Duty to be a top priority for you personally. We want good outcomes for customers to be at the heart of firms' strategies and business objectives, and leaders have a key role to play here. Firms' Boards and senior management should embed the interests of customers into the culture and purpose of the firm.

---

<sup>1</sup> **Asset Management** is comprised of firms that predominantly manages mainstream investment vehicles, or advise on investments, excluding wealth managers and financial advisers.

<sup>2</sup> **Custody and Fund Services** is comprised of firms acting as (i) third-party custodians, (ii) depositories for both authorised and non-authorised funds; and (iii) third-party administrators who provide services such as fund accounting and transfer agency. This includes ancillary services to regulated activities.

<sup>3</sup> **Alternatives** is comprised of firms that predominately manage alternative investment vehicles (i.e., hedge funds or private equity funds) or manage and advise alternative assets directly.

<sup>4</sup> [List of FCA portfolios](#)

## Your timeline for introducing the Duty

In July 2022, we published final rules and guidance for firms, and set out the following timeline for firms to implement the Duty:

- By the end of October 2022 firms' boards or management bodies should have agreed their plans for implementing the Duty
- By the end of April 2023 manufacturers should have completed all reviews necessary to meet the outcome rules and shared necessary information with their distributors
- The Duty comes into force on 31 July 2023 for new and existing products or services that are open to sale or renewal
- On 31 July 2024 the Duty come into force for closed products or services.

## How the Duty applies to firms in Asset Management, Custody & Fund Services and Alternatives portfolios

The Duty applies in relation to a firm's retail market business (in broad terms, where a firm is in a distribution chain involving retail customers). This could be where products or services are offered to retail customers or where firms determine or have a material influence over customer outcomes – the Duty does not just apply to those with a direct customer relationship. We've set out a some more information and examples about how the Duty applies to firms in these portfolios in the Annexes to this letter.

## Overview of the requirements of the Duty

The [Finalised Guidance](#) we published in July provides firms with a full explanation of the requirements of the Duty, including many helpful examples of good and poor practice.

The Duty requires firms to act to deliver good outcomes for retail customers. Firms must act in good faith towards customers, avoid causing them foreseeable harm, and enable and support them to pursue their financial objectives. Firms should consider the diverse needs of their customers – including those with characteristics of vulnerability (see chapters 4-5 of the Guidance).

The Duty also introduces new rules and guidance to ensure that:

- **Products and services:** are designed to meet the needs, characteristics and objectives of a specified target market (chapter 6)
- **Price and value:** Products and services provide fair value with a reasonable relationship between the price consumers pay and the benefit they receive (chapter 7)
- **Consumer understanding:** Firms communicate in way that supports consumer understanding and equips consumers to make effective, timely and properly informed decisions (chapter 8)
- **Consumer support:** Firms provide support that meets consumers' needs throughout the life of the product or service (chapter 9)

There are interactions with existing rules that are discussed in more detail in Annex 2.

A key part of the Duty is that firms are able to define, monitor, evidence and stand behind the outcomes their customers are experiencing (chapter 10). This monitoring must enable firms to identify where customers, or groups of customers, are experiencing poor outcomes, and where this is the case firms must take appropriate action to rectify the situation.

The Duty does not have a retrospective effect and does not apply to past actions by firms. However, the Duty applies, on a forward-looking basis, to firms' ongoing work for existing customers (chapter 3).

### **Our expectations for how firms should embed the Duty in Asset Management, Custody & Fund Services and Alternatives portfolios**

In Annex 2, we further highlight areas firms need to consider, including: the interaction with our previous [Asset Management Market Study \("AMMS"\)](#); the interactions with existing rules (COLL or PROD); the relationship with a retail consumer; how the Duty impact on the relationship between distributors and manufactures; and some examples of good and poor practice.

### **Feedback from our review of implementation plans**

On 25 January we [published feedback](#) for firms on the implementation plans we have reviewed. This feedback contains examples of good practice, and areas for improvement, which will be useful for all firms to review as they implement the Duty.

Many of the plans we reviewed showed that firms have understood and embraced the shift to focus on consumer outcomes, established extensive programmes of work to embed the Duty, and are engaging with the substantive requirements.

However, we did also identify plans that suggested some firms may be further behind in their thinking and planning for the Duty. This brings a risk that they may not be ready in time, or they may struggle to embed the Duty effectively throughout their business.

We have identified three key areas where firms should particularly focus their attention during the second half of the implementation period (to 31 July 2023):

- **Effective prioritisation:** We saw some plans where it was not clear what the basis was for prioritising some implementation work ahead of other aspects. Firms should make sure they are prioritising appropriately, focusing on reducing the risk of poor consumer outcomes and assessing where they are likely to be furthest away from the requirements of the Duty.
- **Embedding the substantive requirements:** We saw some plans that suggested firms may have considered the requirements superficially or are over-confident that their existing policies and processes will be adequate. We urge firms to carefully consider the substantive requirements of the Duty, so that when they are reviewing their products and services, communications and customer journeys, they identify and make the changes needed to meet the new standards.
- **Working with other firms:** To implement the Duty on time, many firms need to work and share information with other firms in the distribution chain. However, some firms may need to accelerate their work on this important aspect of implementation.

In the Asset Management, Custody & Fund Services and Alternatives portfolios, we have seen firms acting at pace to document their implementation plans. We now need to see firms develop the substance and progress towards the implementation and embedding. For example, firms must move beyond the thinking in terms of which business lines are within scope. As they oversee the implementation of the Duty, firms' boards and management bodies will want to particularly focus and provide challenge in the three areas above, and on the other issues as highlighted in our feedback.

### **Our supervisory approach and next steps**

The Consumer Duty is a cornerstone of our [three-year strategy](#), a key element of our work to set and test higher standards between now and 2025. It is being prioritised at every level of the FCA, from the Board down, and it will drive our supervision strategies and prioritisation.

As part of this work, we are developing a strategy for Asset Management, Custody & Fund Services and Alternatives portfolios to embed the Duty in our Supervision work and tackle key harms, as well as metrics to measure the impact of the Duty in the sector.

We will also continue to engage with the relevant trade bodies and other stakeholders to provide further support and guidance to firms during this implementation phase. We are considering whether we can provide further clarity on issues around the scope of the Duty, such as the concept of 'material influence' discussed in Annex 1 of this letter and the expectations where firms operate funds in the UK, but with no UK consumers. We will respond on that separately in due course. We will work with trade bodies to consider this further.

We will continue our work to support firms' embedding activities in the run-up to the July 2023 implementation deadline. Our programme of communications on the Duty will continue, with further events and updates to our dedicated [webpages](#). We are working with an external research agency that will soon be sending a short survey to a sample of firms that do not have fixed supervisors. This anonymised survey will help us understand the progress firms are making in implementing the Duty and will inform our ongoing communications to firms.

The Duty is central to our supervision approach in this sector and will form a core component of our proactive supervision on the Duty, described in Annex 2.

For more information:

- Read our **Finalised Guidance** [Finalised Guidance \(FG22/5\)](#)
- Consider our [feedback](#) on our **review of implementation plans**
- Visit our **Consumer Duty homepage** [www.fca.org.uk/firms/consumer-duty](http://www.fca.org.uk/firms/consumer-duty) where you will find additional information about the Consumer Duty, on-demand webinars and [podcasts](#), and the option to sign up for email updates
- If you have any questions, you can **email us** at [firm.queries@fca.org.uk](mailto:firm.queries@fca.org.uk)

Firms with a dedicated supervisory team should contact their named supervisor if they wish to discuss any specific issues relating to their business model.

Yours sincerely,

**Camille Blackburn**  
**Director – Wholesale Buy-Side**  
**Supervision, Policy & Competition – Markets**

## **Annex 1 – How the Duty applies to firms in the Asset Management, Custody & Fund Services, and Alternatives portfolios**

We supervise most firms as members of a portfolio of firms that share a common business model. We analyse each portfolio and agree a strategy for each portfolio.

The Duty applies to firms that can determine or materially influence retail customer outcomes, even if they do not have a direct relationship with the customer. This is an important consideration for firms in the asset management sector, which may be in a retail distribution chain and, so, potentially in scope of the Duty.

For example, the Duty applies to firms that can influence material aspects of, or determine: the design or operation of retail products or services, including their price and value; the distribution of retail products or services; preparing and approving communications that are to be issued to retail customers; or engaging in customer support for retail customers

A firm will be able to determine or have material influence where it makes or influences decisions over any of the above. We would generally expect firms with a decision-making role for one or more of the four customer outcomes to have greatest responsibility under the Duty.

Although this letter addresses elements of the Duty which apply to all firms, there are some considerations which depend upon a firm's business model and its portfolio that are noted below. The areas detailed below are not an exhaustive list and we expect firms to consider all requirements of the Duty as they apply to their activities.

### Asset Management:

- There are already rules on value in the Handbook. These rules are specific to the sector but have similar objectives to the Price and Value outcome (PRIN 2A.4). Authorised fund managers that are subject to the Assessment of Value and related rules in COLL<sup>5</sup> are not subject to the price and value rules in PRIN 2A.4 in respect of their authorised funds. So, where a firm is subject to these rules in COLL, it should continue to comply with the Assessment of Value and related rules. Refer to Chapter 7 of [FG22/5](#).
- The rules in PROD 3 are broadly equivalent to those under the Products and Services outcome (PRIN 2A.3). Refer to Chapter 6 of [FG22/5](#), which is summarised below:
  - If a firm is subject to the rules in PROD 3 in respect of any financial instruments, structured deposits or services which it manufactures or distributes, it must continue to comply with those rules. Where those PROD 3 rules apply, the rules in PRIN 2A.3 do not apply to the firm for that product or service;
  - In some cases, a product or service would have been within scope of PROD but for certain application provisions. For example, some products were introduced before the relevant rules in PROD came into force. In addition, certain types of firms follow PROD 3 as guidance rather than rules. In these cases, firms may choose whether to comply with the rules in PROD or those under the Products and Services outcome; and
  - The Duty as a whole is broader than the existing rules in PROD, so satisfying the PROD rules is unlikely to meet all aspects of the Duty. For example, firms would

---

<sup>5</sup> COLL 6.6.19R to COLL 6.6.27R, COLL 8.5.16R to COLL 8.5.22R or COLL 15.7.16R to COLL 15.7.24R

still need to consider elements of the Duty such as the customer support outcome for their product or service, and to pay appropriate regard to the nature and scale of characteristics of vulnerability that exist in the target market.

- Firms will need to consider if they have material influence to determine if they are subject to the Duty. Whether a material influence exists depends on the extent to which a firm is exercising discretion over customer outcomes. A material influence would not include, for example, a firm whose role is limited to:
  - operating within a mandate determined by another firm in the chain, such as a portfolio manager whose role is limited to managing assets under a mandate determined by a professional client, where that client is entirely independent of the manager; and
  - providing factual information to support the work of another firm in the chain.
- A firm that has more of a key role – for instance by determining a product’s charges or terms and conditions – would have more significant obligations. For example, if a firm works with a fund manager to design a fund and has a decision-making role on elements such as the target market or investment strategy, it would be regarded as a co-manufacturer under the Products and Services outcome and the Price and Value outcome.
- Consumer Support – where firms have direct, or even indirect engagement with customers, for example servicing legacy customers or dealing with complaints, firms will need to ensure they meet the Customer Support outcome.
- Consumer Understanding – where funds are distributed to customers directly or through third-parties, firms should be aware of their obligations of the Consumer Understanding outcome where they provide documents that will reach customers, such as any financial promotions, fund literature or sales aids.

#### Custody and Fund Services:

- Firms will need to assess their client base and the full range of services provided.
- We would generally expect firms with a decision-making role for one or more of the four customer outcomes to have greatest responsibility under the Duty.
- While there may not be any direct relationship with retail customers, firms could influence outcomes for consumers when providing supporting or outsourced services such as:
  - Where depositary services provide direct communications or information to retail customers, this could be in scope of the Duty.
  - Transfer Agency Services or administrative services could be in scope of the Duty in relation to the Consumer Understanding and Consumer Support outcomes including when providing complaints handling and subscription services.
- The [portfolio letter](#) of March 2022 explained how the custody and fund services sector plays a crucial role in the UK financial system in the safeguarding, servicing, and oversight of assets. Effective delivery of these services through outsourcing arrangements provided to asset management could result in needing to consider the Consumer Duty.

#### Alternatives:

- The [portfolio letter](#) of August 2022 referred to the need for firms to consider their obligations under the Duty.

- Many firms have customers who are categorised High Net Worth (HNW) or Sophisticated customers. These are still retail customers and so the four consumer outcomes, the Principle and cross-cutting rules may apply.
- Firms working with investors who elect to be treated as professional clients under COBS 3.5 are not subject to the Duty. However, the Duty does apply to the process used by firms to determine their status. A firm that encourages a customer to seek a 'professional client' classification so that it can avoid providing the customer with those consumer protections that would apply if they were a retail client would breach the Duty. If a customer has been incorrectly classified, or the firm becomes aware that a customer has been incorrectly classified earlier in the distribution chain, the firm should reclassify the customer and restore the correct level of consumer protection.



## **Annex 2 – Key things for firms to consider**

It is now more than five years since the FCA's [Asset Management Market Study](#) ("AMMS"), which resulted in the introduction of enhanced governance and product value assessment remedies to advance our consumer protection objectives. Following the introduction of the rules implementing the AMMS findings, we conducted several reviews. These showed that firms have implemented some of the remedies, including adding Independent Non-Executive Directors to boards and made reductions in some fees. The reviews also identified areas where further effort was required.

The Duty and the AMMS interventions address the key risk that products and communications do not meet consumers' needs.

In supervising the Duty, we will build on the work of firms in this sector to implement the AMMS remedies to assess whether firms are acting to deliver good consumer outcomes.

Our overarching portfolio letter, published alongside this letter, sets out our priorities over the next 2 years for the asset management portfolio. In line with priorities in that portfolio letter, we will conduct a review in 2024 to assess the embeddedness of the Duty. This will cover a variety of business models, including Authorised Fund Managers and investment managers, with a focus on the Price and Value outcome and, where relevant, the assessment of value rules. We will focus our supervisory activities on the effectiveness of firms' governance in identifying, considering and mitigating consumer harm and on those firms with known issues or where we identify outliers in relation to the Consumer Duty priorities for the sector we have outlined.

### Interaction with rules

While asset managers must comply with the COLL Assessment of Value (AoV) rules for authorised funds and PROD currently applies to them as guidance, the Duty could still have an impact on firms. As such, the Duty's Price and Value outcome will apply fair value requirements more broadly, to other funds and services. For example, where the Duty applies, firms will need to consider whether Products and Services provided to/used by Defined Contribution Pension trustees and unit-linked funds are consistent with the various expectations arising from the Duty (including around delivering fair value).

The Products and Services outcome will mean asset managers are subject to rules on the governance of products and services. We encourage you to consider your responsibilities under the Duty and to ensure you are appropriately prepared. For firms who do not have the direct relationship with retail consumers but who can "materially influence retail customer outcomes", where this requirement is new, you must implement adequate processes, and governance to ensure the requirements are met.

In line with liquidity rules, fund managers must maintain an appropriate liquidity strategy for a fund. Our expectation under the Duty is that firms consider consumer outcomes for both exiting and remaining investors when identifying the mix of assets which may be employed to meet redemption requests.

### Direct relationship with a retail consumer

Where firms in the above portfolios do not have a direct relationship with a retail consumer, they may still play a role in the distribution chain, and therefore must understand how they impact consumer outcomes. In terms of the PRIN 3.2.7R application rule, the Duty applies to a firm operating in a distribution chain 'only to the extent that the person is responsible in the course of that retail market business for determining or materially influencing retail customer outcomes'. So, it is not just that the firm is in the chain, but that the firm has a role that can impact retail customers.

It is particularly important that firms assess the portfolio-specific considerations detailed in this letter and:

- consider whether they are subject to the Duty, even if they do not have a direct relationship with retail customers
- consider how firms meet current rules and the new Consumer Duty obligations
- consider how new obligations on other firms in the value chain such as distributors impact a firm's own obligations such as information flows, and
- have renewed focus on Consumer Understanding and Consumer Support objectives

We would expect firms to be able to articulate how the new obligations apply to their businesses considering their full range of services, as well as evidence how they undertook that analysis.

### **Distributors**

The Duty imposes obligations on distributors as well as manufacturers. Where firms act as distributors they will need to consider if distribution arrangements, including remuneration, could result in a product ceasing to provide fair value.

This applies to the distribution of all products and services. Where UK retail distributors sell offshore products that were not manufactured by a firm subject to the Duty, the distributors will still need to seek information to enable them to meet their own obligations.

Where Authorised Fund Managers are subject to existing AoV rules for authorised funds, they should consider the needs of third-party distributors and whether they need to provide additional support to help distributors understand the value of the funds. We have called for manufacturers to share necessary information by the end of April 2023 for distributors to meet their own obligations under the Duty.

We know that the industry has mechanisms for sharing information in standard formats to enable manufacturers and distributors to meet their obligations in an efficient way. We are not imposing any specific standards in this area, but we anticipate that relevant information will be shared to enable UK firms to meet their obligations.

We note that asset managers acting as manufacturers have previously told us that it is sometimes difficult to obtain relevant information to support product reviews from distributors. The Duty now requires distributors to provide relevant information to manufacturers to support product reviews. Manufacturers need to consider what information would be helpful and to take reasonable steps to gather it.

## **Good and poor practice**

### Good practice

A firm designs an investment product where its target market is sophisticated investors, who are willing and able to take significant investment risk. The manufacturer identifies that the product could cause significant harm if bought by customers outside of the target market who may not understand the risks or be able to afford the potential losses. The manufacturer identifies a clear negative target market of retail consumers for whom the product would not be appropriate – this is clearly articulated in the relevant fund documentation. The manufacturer develops a distribution strategy and identifies an appropriate distributor to ensure that the product can only be sold with advice. It provides all relevant product information, including details on its target and negative target markets. This enables the distributor to assess whether the product is suitable and ensures it is only sold to customers in the target market. The manufacturer also monitors, on an ongoing basis, whether the product is being distributed to customers in the target market. For legacy investors firms must also ensure that the product continues to be suitable. This is also likely to be consistent with the cross-cutting rules, showing the firm is taking steps to act in good faith and avoid foreseeable harm.

### Poor practice

A firm has a legacy book of business with direct retail customers who are required to contact it by phone or post, if they want to switch out or redeem these funds. The telephone service is thinly resourced, and customers are often unable to get through. The postal transactions also require multiple contact points and forms. The customers are subjected to a lengthy process during which they are encouraged not to exit. This type of practice would represent an unreasonable barrier under the Consumer Support outcome if it prevents customers from pursuing their financial objectives.

The Duty encourages firms to think about the information it has access to, to determine whether the firm is delivering good consumer outcomes. For example, firms may be able to obtain information on how and whether key materials are being accessed, run consumer or distributor focus groups to understand what barriers exist to Consumer Understanding. Firms that do not gather appropriate information about how products including product literature are used or understood, could fail to identify poor consumer outcomes.

## **Appointed Representatives**

Some firms may use Appointed Representatives (ARs) which can bring benefits such as supporting innovation, providing more choice, and driving competition in the market. However, we have seen increasing harm from the AR model as per page 4 of our [policy statement](#). We introduced new rules in July 2022, which clarify and strengthen the responsibilities and expectations of principals, including providing more information on their ARs. The changes we are making to the AR regime go hand-in-hand with the [Consumer Duty](#) published in July. If you are a Principal firm, you should ensure that you have appropriate controls in place to effectively oversee your ARs' activities and ensure that your ARs comply with the Duty. Principals should read our [updated rules](#) and expectations and take necessary steps to comply with the changes.