

A new Consumer Duty

Feedback to CP21/13 and further consultation

Consultation Paper

CP21/36***

December 2021

How to respond

We are asking for comments on this Consultation Paper (CP) by **15 February 2022**.

You can send them to us using the form on our website at:
www.fca.org.uk/cp21-36-response-form

Or in writing to:

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1 Summary

Why we are consulting

- 1.1** We want to see a higher level of consumer protection in retail financial markets, where firms compete vigorously in the interests of consumers. We also want to drive a healthy and successful financial services system in which firms can thrive and consumers can make informed choices about financial products and services.
- 1.2** We see a range of good practice by firms in retail sectors with firms innovating to meet the needs of consumers. However, we also see that firms are not consistently and sufficiently prioritising good consumer outcomes. This causes consumer harm and erodes consumer trust. 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.
- 1.3** We have addressed poor practices over time with our regulatory and supervisory tools (see Chapter 2). But we want to see all firms getting it right in the first place. This is particularly important in today's world where consumers are making more financial decisions, and where they're doing so in a complex and fast-moving landscape.
- 1.4** Where some firms can benefit by offering low standards that lead to poor consumer outcomes, this can also create an unlevel playing field. We want firms to be incentivised to compete in the interests of consumers. High standards of conduct should be advantageous for individual firms and the industry at large, with a trusted financial services industry that is internationally attractive and competitive.
- 1.5** We first discussed concerns voiced by some stakeholders that our regulatory framework may not be sufficient to minimise the level of consumer harm in retail markets in our Discussion Paper on a 'A duty of care and potential alternative approaches' ([DP18/05](#)). In our subsequent Feedback Statement ([FS19/02](#)), we set out our intention to take forward specific options for change.
- 1.6** The question of whether and how to raise the standard of protection for consumers was also debated in Parliament during the passage of the Financial Services Act 2021 with Parliamentarians calling strongly for change. The Act set out a requirement on whether we should make general rules providing for a duty of care, including whether to make other provisions about the level of care which firms should provide to consumers. In [CP21/13](#), 'A new consumer duty', we outlined our proposals for a package of measures to deliver this.
- 1.7** In this document we set out:
- the responses we received to CP21/13 and our analysis of them, and
 - our revised proposals for a new Consumer Duty

Who this applies to

1.8 This consultation is likely to interest:

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

What we want to change

1.9 In our experience, financial services markets do not always work well to provide adequate levels of consumer protection, and competition does not always work effectively in consumers' interests. Where this happens, consumers may suffer harm.

1.10 For example, they may:

- **find it harder to make an informed or timely decision.** For example, in the past we have seen information presented in a way that exploits consumers' behavioural biases, or unreasonable exit fees or contract terms that discourage consumers from leaving products or services that are not right for them or accessing better deals
- **receive unsatisfactory support from their provider** – data from our Financial Lives survey shows the most common problems raised by consumers across all retail sectors are poor customer service, delays, IT system failures or service disruptions, and
- **buy products and services that are inappropriate for their needs, of inadequate quality, are too risky or otherwise harmful** – for example investments leading to losses for retail investors who did not understand the risks

1.11 Chapter 2 sets out more detailed examples of these harms.

1.12 We want to set a higher expectation for the standard of care that firms give consumers. For many firms, this will require a significant shift in both culture and behaviour, so they consistently focus on consumer outcomes, and put customers in a position where they can make effective decisions.

1.13 We want to bring about a fairer, more consumer-focused and level playing field in which:

- firms are consistently placing their customers' interests at the centre of their businesses
- competition is effective in driving market-wide benefits, with firms competing to attract and retain customers based on high standards and customer satisfaction, and innovate in pursuit of good consumer outcomes

- our regulation keeps up with technological change and market developments so that:
 - consumers are protected from new and emerging harms, and
 - firms can innovate to find new ways of serving their customers with certainty of our regulatory expectations
- firms extend their focus beyond ensuring narrow compliance with specific rules, to also focus on delivering good outcomes for customers
- firms consider the needs of their customers – including those in vulnerable circumstances – and how they behave, at every stage of the product/service lifecycle
- firms continuously learn from their growing focus on and awareness of what their customers experience
- in line with our work on diversity and inclusion, firms act to meet the diverse needs of their customers
- consumers get the products and services they need, which are fit for purpose, provide fair value and do not cause them harm
- consumers understand how to use their products and services and receive the support they need to do so, and
- consumers get prompt and appropriate redress when it is due to them, with reduced misconduct ultimately reducing redress costs

1.14 The Consumer Duty will do this, building on our previous interventions in markets and recognising the changing environment for consumers, by:

- explicitly setting a higher standard of care across all retail markets, informed by our work on behavioural biases and vulnerability
- extending rules focused on product governance and fair value, which already exist in certain sectors, across all sectors
- focusing on matters of market practice (eg sludge practice) that interfere in consumer decision making and, by doing so, cause harm
- ensuring firms consider the needs of their customers – including those with characteristics of vulnerability – and how they behave, at every stage of the product or service lifecycle, and
- requiring all firms to focus on good customer outcomes and whether those outcomes are met

1.15 The Consumer Duty aligns with our own transformation and our focus on being more assertive, innovative, and adaptable in our regulatory approach. Under the Consumer Duty, firms and our supervisors would increasingly focus on the outcomes consumers experience. Firms would need to assess and evidence the extent to which and how they are acting to deliver good outcomes. Combined with our more data-led approach, this should enable us to more quickly identify practices that negatively affect those outcomes and to intervene before practices become entrenched as market norms.

The Consumer Duty and our other business plan priorities

1.16 Our 2021/22 Business Plan set out that improving consumer outcomes through our new Consumer Duty was 1 of 5 consumer priorities. The Consumer Duty also directly informs and supports the other 4.

- **Enabling consumers to make effective investment decisions.** We want to improve firms' conduct to ensure that consumers are informed and empowered to choose the right products and services for them, at the right price. We want consumers to be able to access and identify investments that suit their circumstances and attitude to risk. And we want consumers to get the advice or support they need and know how to seek compensation. Under the Consumer Duty, firms will be required to sell products and services that meet the needs of customers and which are fair value. We are aware of concerns that our advice rules and/or legislation could limit the ability of some firms to act to deliver good outcomes for their customers in this area, and we welcome evidence of this through this consultation.
- **Ensuring consumer credit markets work well.** We want borrowers to be treated fairly and be able to get affordable products that meet their needs. This will be supported by the focus of the Consumer Duty on firms ensuring consumers only get products that meet their needs and ensuring fair value through the design, pricing and sale of products and services, and the communications to and support of customers. Under the Consumer Duty, firms will have to consider the impact that characteristics of vulnerability, such as low financial resilience, can have on consumers' needs and decisions. The Consumer Duty is consistent with our responsible lending and affordability rules.
- **Delivering fair value in a digital age.** Fair value is key to competition and to consumer trust in financial services. Value is the relationship between the overall price paid by the customer and the benefits they receive. It is about more than just the price charged. The Consumer Duty draws on our fair value framework and applies those fair values rules that already exist in certain sectors to other sectors. It aims to tackle factors that can result in unfair or poor value, such as unsuitable features that can lead to foreseeable harm or frustrate the customer's use of the product, or poor communications and consumer support.
- **Making payment safe and accessible.** We want to ensure that we have a payment services sector that gives consumers and smaller businesses a wide variety of safe payment services. We intend the Consumer Duty to support firms in innovating in their customers' interests, and by creating regulation that is flexible and outcome-based we aim to support wider innovation.

Summary of responses to CP21/13 and our analysis

1.17 We received 235 responses to our consultation. Respondents included firms, professional and trade bodies, service providers, academics, consumer organisations and individuals. We also met with some stakeholders during the consultation period.

1.18 All respondents saw the Consumer Duty, and the shift towards outcome-based regulation, as a significant undertaking. Almost all agreed that the Consumer Duty would succeed or fail based on how we supervise and enforce it.

- 1.19** Consumer organisations were generally strongly supportive of the Consumer Duty, and the need for a 'reset'. They generally wanted the Consumer Duty to be framed broadly and supported by a Private Right of Action (PROA) giving individuals a right to take legal action for damages for losses caused by its breach.
- 1.20** Industry respondents were generally supportive of our aims. However, firms also raised significant concerns about the proportionality and design of the Consumer Duty and potential unintended consequences.
- 1.21** We have summarised below some of the key themes in the responses to our consultation, our analysis and response.

The need for the Consumer Duty

- 1.22** Many industry respondents agreed with our approach. Others agreed with our aims but questioned if the Consumer Duty was the best or only way to achieve them. Some suggested we could achieve similar outcomes, with lower cost and less risk of unintended consequences, by making new rules under our existing Principles or through more rigorously supervising and enforcing existing rules.
- 1.23** We do not agree that we can meet our objective without new rules. As set out in paragraph 1.12, we intend to set higher standards in new rules, informed by our experience intervening in markets and firms and what we know about consumers. We will back up these rules with assertive supervisory and enforcement action. As we set out in the Cost Benefit Analysis in Annex 2, we expect the benefits to outweigh the costs.
- 1.24** This represents a clear shift in approach enabled by a reset around a new Principle. We also think a reset is helpful to firms and avoids significantly changing our expectations under the existing Principles.

Guidance on good and bad practice

- 1.25** Industry respondents raised concerns that outcome-based regulation would be inherently less clear than detailed rules. Respondents often asked for detailed guidance and/or examples of good and bad practice.
- 1.26** In this consultation paper (CP) we have proposed draft rules, and Handbook and non-Handbook guidance to help provide examples of behaviour that could lead to outcomes which would be likely or unlikely to satisfy the Consumer Duty. This goes further than we have with our other Principles.
- 1.27** Our aim is to make it easier for consumers to know what they should expect and for firms to understand what we are looking for and to apply the approach to their own business models.
- 1.28** These examples are not intended to be a complete list of how firms should act in all instances. The Consumer Duty sets expectations that can be applied flexibly in a changing environment to new products, services and business models as they emerge. Detailed rules cannot provide the same flexibility. The Consumer Duty would also apply across all retail sectors we regulate, to firms of different size and with different business models and approaches. In that context, an outcomes-focused approach is more suitable than prescriptive rules and would provide flexibility to firms to enable them to innovate.

- 1.29** We expect the implementation of the Consumer Duty to be iterative. We will learn more from firms' implementation and reviews of products and services. As set out in Chapter 13, we are considering whether and how we can give more regular updates on what we are seeing and our views of it to provide further clarity to firms on our expectations.
- 1.30** Many in the industry have asked to engage with us as our work develops. We are keen to work closely with firms and their trade bodies, consumer organisations and wider stakeholders during the implementation period, through new or existing fora. This could, for example, help identify and work through examples of good and poor practice that have relevance for the wider industry which could be communicated to other stakeholders.

Cooperation with the Financial Ombudsman Service

- 1.31** Firms expressed significant concern that the Financial Ombudsman could take a different and/or wider interpretation of what the Consumer Duty required than us.
- 1.32** Both we and the Financial Ombudsman work on the basis that firms should be held accountable against the standards that prevailed at the time of the problem. We work closely with the Financial Ombudsman to ensure that, where complaints have potentially wider implications, the Financial Ombudsman is aware of our expectations of firms. This cooperation will be important in the case of the Consumer Duty. This is because outcome-based regulation inevitably requires judgment (by firms, by us and by the Financial Ombudsman) and the rules and guidance cannot and should not exhaustively define what firms should do in each instance.
- 1.33** As set out above we intend to work closely with stakeholders throughout implementation to identify examples that can help firms understand and embed the Duty. We will share the results of this work with the Financial Ombudsman. We and the Financial Ombudsman also intend to work together closely on issues identified through the Financial Ombudsman's casework role where the Consumer Duty may be particularly relevant, and which may help inform future understanding and guidance for firms.
- 1.34** Through this approach, we aim to ensure a consistent view on the interpretation of the Consumer Duty while respecting the different roles of the FCA and the Financial Ombudsman.

The opportunities presented by the Consumer Duty

- 1.35** While many respondents naturally focused on the risks associated with the Consumer Duty, a large number highlighted the opportunities it presented for firms. This has also come through in our wider engagement.
- 1.36** We welcome this. Good consumer outcomes and a focus on the consumer proposition should be commercially positive, attracting new business to firms and supporting growth domestically and globally, and we expect firms, as well as consumers, to benefit from our proposals. For example, increased consumer trust and healthier competition would support innovation and encourage new entrants to the market, with firms competing to drive up quality for consumers. This will benefit the UK financial services industry and the high standards will ensure that firms seek to establish themselves in the UK and can export services outside it in the global financial services system.

- 1.37** We believe the Consumer Duty will increase consumer trust in financial services markets. We have seen examples of this where firms place consumers at the centre of their strategy. For example, during the 2020 Covid-19 lockdowns, many firms focused on consumer outcomes and adapted their practices and processes accordingly. The industry stepped up and supported consumers. Trust in some firms went up during this time. We want to build on the good practice we have seen, and for all firms across all markets to take this approach.

The risk of unintended consequences

- 1.38** Some industry and consumer respondents expressed concern that higher standards of the Consumer Duty or increased compliance costs associated with it could lead to firms removing products from the market and that this could impact consumers in vulnerable circumstances.
- 1.39** These concerns were often the result of uncertainty about what the Duty would and would not require. Firms had different interpretations of how far-reaching the headline Principle and cross-cutting rules were, and what they required them to do. Industry respondents also generally said this risk would be more acute if a PROA attached to the Consumer Duty.
- 1.40** We have heard these concerns and take them seriously. We do not want to see firms reducing access to appropriate products and services that offer fair value. This would not support our objectives or our wider business priorities, for example improving access to advice and support for customers with consumer investments and ensuring consumer credit customers get affordable products that meet their needs.
- 1.41** As set out in Chapters 2 and 5, the Consumer Duty does not replace the general principle that consumers should take responsibility for their decisions or impose an open-ended duty. Our draft non-Handbook guidance in Appendix 2 sets out more detail on what the Consumer Duty does and does not require.
- 1.42** We have also considered the impact of previous interventions, such as the introduction of product governance rules in some sectors, and our vulnerability guidance, and not seen evidence of this happening.
- 1.43** We have also set out how we plan to use the implementation period to work with firms to mitigate any residual risk of unintended consequences. We would therefore not expect any firm to pre-emptively withdraw products without participating fully in this engagement.

The proposals we are consulting on

- 1.44** In this paper, we are consulting on new rules and guidance setting out our revised proposals for the Consumer Duty which we consider establish the level of care to consumers that is appropriate having had regard to our analysis of the responses to CP21/13, as follows.
- 1.45** In Chapter 3, we set out the proposed scope of the Consumer Duty.

- 1.46** In Chapter 4, we set out how we expect the Consumer Duty to apply to existing products and services, including contracts entered into before the Consumer Duty comes into force.
- 1.47** In Chapters 5 to 10, we set out our proposals for the Consumer Duty, comprising:
- A new Consumer Principle (Chapter 5) that would replace Principles 6 and 7 for retail business and require firms to act to deliver good outcomes for retail customers.
 - Cross-cutting rules (Chapter 6). These set out how firms should act to deliver good outcomes and therefore provide greater clarity on our expectations under the new Principle. They also help firms interpret the 4 outcomes (see below). The cross-cutting rules require firms to:
 - act in good faith
 - avoid foreseeable harm, and
 - enable and support retail customers to pursue their financial objectives
 - Rules relating to the 4 outcomes we want to see under the Consumer Duty. These represent key elements of the firm-consumer relationship which are instrumental in helping to drive good outcomes for customers. These outcomes relate to:
 - the governance of products and services (Chapter 7)
 - price and value (Chapter 8)
 - consumer understanding (Chapter 9), and
 - consumer support (Chapter 10)
- 1.48** In Chapter 11, we discuss how the Consumer Duty aligns with our work to improve outcomes for consumers in vulnerable circumstances and on diversity and inclusion.
- 1.49** In Chapter 12, we set out our thinking on a PROA. We do not propose to introduce a PROA for the Consumer Duty at this time but will keep this under review.
- 1.50** Chapter 13 sets out our proposals for an implementation period starting after we publish final rules and ending on 30 April 2023, and how we expect the implementation period to be used.
- 1.51** Chapter 14 sets out our expectations for how firms monitor consumer outcomes and our high-level approach to supervision.
- 1.52** Chapter 15 sets out our proposed changes to the Senior Managers and Certification Regime (SM&CR).
- 1.53** In addition to the draft Handbook rules and guidance in Appendix 1, we are consulting in this paper on non-Handbook guidance to give greater clarity on our expectations under the Consumer Duty. This guidance is set out in Appendix 2.

FCA supervision and monitoring of the Consumer Duty

- 1.54** All firms will need adapt and respond to the Consumer Duty, but the changes they need to make will depend on a number of factors including:
- the nature of their business and relationship with customers
 - their own business models, practices and conduct, and

- their sector, the rules that already exist in that sector and the extent to which they are acting in accordance with them

1.55 Our own supervisory focus and actions will also vary accordingly. If we proceed with the Consumer Duty, it will drive our supervisory strategies and prioritisation, informed by our understanding of the difference in firms' conduct between and within each sector against the requirements of the Consumer Duty. This will ensure the Consumer Duty is translated into a reduction in harm as quickly as possible.

1.56 We would communicate our expectations and the action we expect within different sectors through all our supervisory and communication channels, including the published results of supervisory and multi-firm work, portfolio and Dear CEO letters, speeches and industry engagement.

1.57 Under the Consumer Duty we would expect firms to consider the likely outcomes their customers will receive, from product or service design and through their full lifecycle. We would expect firms to monitor, assess, understand and be able to evidence the outcomes their customers are receiving. Where firms identify that consumers are not receiving good outcomes, we would expect them to take appropriate action to rectify the causes.

1.58 In our work with the industry, our focus on the Consumer Duty should enable us to more quickly identify practices that negatively affect those outcomes and intervene before practices become entrenched as market norms.

1.59 We will do this through the regulatory lifecycle, from authorisation to supervision and enforcement. We will make the Consumer Duty an integral part of our regulatory approach and mindset including our gateway processes, firm and portfolio assessment models, and enforcement processes. Our work will help to ensure that:

- we consider a firm's ability to comply with the Consumer Duty at authorisation
- all supervisors can assess that the Consumer Duty is implemented effectively and proportionately in firms, and
- we are ready to intervene and take enforcement action where appropriate

1.60 While we will supervise and enforce the Consumer Duty, we also expect there to be less need for us to intervene after things go wrong. The Consumer Duty aims to reduce the extent to which consumers suffer harm in the first place, with firms doing more to consider consumer needs and to take action to guard against problems.

Governance and accountability

1.61 We expect the focus on acting to deliver good outcomes to be at the centre of firms' strategy and business objectives.

1.62 Under the Consumer Duty, the firm's board or equivalent management body, will be responsible for assessing whether it is delivering good outcomes for its customers which are consistent with the Consumer Duty.

- 1.63** This will be supported by the interaction between the Consumer Duty and the SM&CR. The SM&CR establishes clear senior management responsibility for compliance with the requirements and standards of the regulatory system. The Consumer Duty raises this standard.

Success measures

- 1.64** We will evaluate the success of our proposals by using data from a variety of sources including supervision and authorisation activities, firm management information (MI), our Financial Lives Survey and complaints data. We set out below the outcomes we want to measure and examples of how we will measure them.
- 1.65** We want to know whether consumers experience improvements in:
- **Fair value:** Consumers pay a price for products and services that represents fair value and poor value products and services are removed from markets leading to fewer complaints about poor value and unexpected fees or charges.
 - **Products and services:** Consumers are sold and receive products and services that have been designed to meet their needs and characteristics leading to a reduction in the number of complaints about products and services not working as expected.
 - **Treatment:** Customers receive good customer service leading to a reduction in complaints about switching, cancellation and service levels and customers having higher levels of satisfaction with the level of service they receive.
 - **Confidence:** Consumers increase their confidence in financial services markets as a result of the above and are equipped with the right information to make effective, timely and properly informed decisions about their products and services.

Next steps

- 1.66** We are seeking views on our proposals. We ask questions throughout this CP, which are also collated in Annex 1. Please send us your comments by 15 February 2022.
- 1.67** We expect to publish the policy statement summarising responses and to make any new rules by 31 July 2022.

2 The wider context

The harm we are trying to address

- 2.1** Retail financial services markets do not always work well for all consumers. We have found cases where firms have not acted to support their customers or prevent foreseeable harm and where competition is not working effectively in consumers' interests.
- 2.2** In CP21/13, we provided more detail and examples of the harms we have seen and their drivers. These harms can occur in different ways.
- **Firms exploiting consumers' behavioural biases, eg by not being fully transparent in the information they provide or by providing information which is misleadingly presented or difficult to understand, hindering consumers' ability to properly assess products and services.** For example:
 - Online sales journeys where information is presented in a way that exploits consumers' behavioural biases and encourages consumers to take out, or make payment for products, using credit. For example, by giving much greater prominence to a credit option or making other options harder to find or access.
 - 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.
 - In our investment platforms market study, we found that consumers can find it difficult to shop around and choose a suitable platform based on price. Charging structures could be complex with many different fees and charges, with different language used to describe similar fees across platforms and pricing information not always readily available, prominent or clear. This means consumers could not easily take account of all charges, calculate the total cost of investing or easily compare different options.
 - Our review of MiFID II product governance in asset management firms found most of the firms appeared to leave out certain charges, particularly portfolio transaction costs, from their cost disclosures. In addition, some of the cost information shown in marketing documents did not match the information shown in regulatory documents.
 - **Firms selling products and services that are not fit for purpose in delivering, or are not designed for the consumers they are being targeted at and sold to.** For example:
 - In our work in 2018/9 on contracts for difference, we saw poor conduct by firms leading to retail investors, who often do not fully understand the risks, suffering harm. We restricted the ability of firms to sell contracts for difference to retail investors.

- We have previously had to intervene to encourage firms to stop catalogue, credit and store card credit card debt becoming persistent. This was because these credit products were not the best tool for long-term borrowing, with customers making the minimum payment for extended periods. We estimated overall benefits of between £300m to £1.3bn for credit card customers and a further £67m – £179m in savings for existing store card customers in persistent debt.
- We also found evidence of harm occurring because of the poor design and distribution of insurance products. The GI add-ons market study found that firm profits on some add-on products were high. For example, intermediaries reported that profits of more than 70% were being earned on add-on home emergency insurance, and the market study estimated consumer overpayment for 5 products of £108m or more. We concluded that stronger product governance measures could have reduced this overpayment in these and other insurance markets.
- Our MiFID II product governance review of asset management firms found that, while all the firms had product governance committees, some fell short of our expectations. The role of the second line of defence was often poorly defined, meaning the potential for meaningful challenge was limited. The review also found problems with distributor firms, including platform providers, not providing asset managers with data to support their regular review of funds. This hindered asset managers from checking that their distribution strategy remains appropriate and funds are being distributed to the target market rather than to customers for whom they were not designed.
- In 2020 we wrote to operators of Self Invested Personal Pensions (SIPPs) setting out our concern that some consumers now have SIPPs that do not match their needs, because they have become marketed and distributed to a much wider group of consumers. Those with simpler investment needs, are not likely to require the full scope of flexibility permitted by some SIPPs. That flexibility – particularly for those with smaller pots – can result in higher relative charges, which may not represent good value.
- **Firms selling products and services that do not represent fair value**, 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).
 - In our review of general insurance distribution chains, we found some customers paid potentially excessive prices due to parties in the chain receiving remuneration which appeared to significantly exceed the costs incurred in distributing the products. This was most prevalent where insurance was linked to another non-financial purchase, such as a car or a holiday.
 - Our Retirement Outcomes Review found that charges on pension drawdown products can be complex, opaque and hard to compare. Products had as many as 44 charges linked to them making it difficult for consumers to compare and shop around for the best deal, contributing to the limited competitive pressure on providers to offer good deals. This lack of competitive pressure raised concerns that consumers might pay too much in charges. Our analysis found that charges for non-advised consumers vary considerably from 0.4% to 1.6% between providers.
 - We have taken action to address concerns about poor value as a result of our Asset Management Market Study, and in relation to funeral plans.

- **Firms providing poor customer support 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).
 - 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. Data from our financial lives survey shows the most common problems raised by consumers across all retail sectors are poor customer service, delays, IT system failures or service disruptions. The most common impacts include increased stress and time spent resolving the issue. Taking retail banking as an example, for all those that experienced a customer service problem, over a third (34%) spent significant time resolving the problem.
 - We have seen examples of customer service processes which are designed or delivered in a way that create barriers to consumers taking action which would benefit them. For example, our [General Insurance Pricing Practices Market Study](#) found some insurance providers using 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.
 - Our [thematic review into the non-advised sales of annuities](#) found some firms failed to provide customers with sufficient information about enhanced annuities, which could result in consumer harm. Failures were typically caused by a firm's poor handling of telephone conversations with their customer. Often, these conversations only reacted to customers' questions and the firm took no steps to reiterate key messages about customers' potential eligibility for enhanced annuities.
 - During our work to assess the implementation of the [Coronavirus Tailored Support Guidance](#) we identified that some firms used digital tools when providing financial help. However, we found evidence of some 'sludge' practices which can add friction to the customer journey and, in some cases, may lead customers to make decisions that are not in their best interest. These included:
 - customers using third party digital tools having to register and log on to more than one system/platform to complete the automated forbearance journey, and
 - customers having to click on multiple boxes to reveal additional text to help inform their decision-making and customers using third party digital tools having to wait a day or more before receiving confirmation of their payment plan or if they need to provide further clarity
 - Respondents to CP21/13 flagged other examples, such as requiring consumers to send a letter via post to make a claim under section 75 of the Consumer Credit Act 1974 (CCA) and requiring consumers to visit a branch to close saving accounts opened online.
- **Firms exploiting 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. We estimated savings of £4.2 to 11.2bn through lower prices as a result of increased competition from our pricing remedy and the reduction of prices for consumers in the back book in motor and home insurance.

- **Other practices which hinder consumers' ability to act, or which exploit information asymmetries, consumer inertia, behavioural biases or characteristics of vulnerability.** For example:
 - We have seen evidence of debt packagers using persuasive language to promote products without explaining the risks involved and manipulating consumers' details so that they meet the criteria for IVAs/Protected Trust Deeds, meaning that the firms get much higher fees than they would otherwise. We are currently consulting on new rules to ban debt packagers from accepting referral fees.
 - Our guidance for firms on the fair treatment of vulnerable customers includes examples where firms' processes have not been designed to account for customers in vulnerable circumstances. These include not adapting communications where consumers have accessibility needs, not having the option to communicate across different channels or not providing an option for consumers to exit automated processes.
 - When implementing Strong Customer Authentication and mobile-based authentication we found that some firms were not providing appropriate means of authentication to meet the needs of different groups of customers, particularly those who were in vulnerable circumstances, less digitally engaged or located in areas with limited access. We highlighted that firms may need to provide options for the methods of authentication. This include considering that not all consumers will possess a mobile phone and providing a viable means of authenticating these customers.
 - Our investment platforms market study raised ongoing concerns that consumers and advisers who want to switch platforms find it difficult to do so because of the time, complexity and cost of switching. This is driven in part by difficulties switching between unit classes and by exit fees. Barriers to switching may result in consumers staying on platforms which no longer meet their needs or offer them poor value for money.
 - Basic Bank Accounts (BBAs) are key to increasing access to financial services. Giving customers the right information at the right time is critical but our review of the information that retail banks provide about Basic Bank Accounts found that staff often did not identify potential eligibility or give any information about BBAs. When our mystery shoppers recounted stories that indicated they may be vulnerable customers, we saw numerous examples where frontline staff did not tailor their approach to reflect the information they were given.

2.3 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 have characteristics of vulnerability.

Responses to CP21/13

2.4 In CP21/13, we invited responses from readers on whether they thought the Consumer Duty would help address the harms set out above.

CP21/13 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?*

- 2.5** Most consumer organisations responding to this question said the Consumer Duty would help to address consumer harms, including by providing many examples of good and bad practice that they have seen in their work.
- 2.6** Respondents suggested several harms that the Consumer Duty could address, including:
- customers in vulnerable circumstances getting outcomes that are worse than other customers
 - increasingly complex products that many consumers cannot understand
 - problems caused by fraud or identity theft, and
 - technological exploitation of consumer information, as set out in our work on [Big Data](#)
- 2.7** Several consumer organisations and the Financial Services Consumer Panel said that the Consumer Duty could help send a clear signal to firms that they need to consider consumer needs in everything they do.
- 2.8** Many industry respondents agreed with our approach and many others agreed that harm exists but questioned if the proposals are the best way to deal with it. Their main concern was that the current framework already ensures fair outcomes and could be more effective if better enforced or backed with additional guidance. For example, some said the Consumer Duty was not necessary because the harms could all be addressed through the Senior Managers and Certification Regime (SM&CR). Others said some sectors are already subject to existing rules on product governance and fair value.
- 2.9** Industry respondents also asked us to provide more clarity, such as by providing a gap analysis showing how the Consumer Duty differs from the existing rules, or setting out the harms of concern, for each sector. Several said a 'one-size-fits-all' approach could add costs to firms already doing the right thing and, if there are specific harms, we should address them with tailored rules.

Our response and proposals

- 2.10** We intend to raise standards and to hold firms to account against these higher expectations. As set out in Chapter 1, we think a reset around a new Principle is needed to deliver this. We agree with the Financial Services Consumer Panel that the Consumer Duty can help send a clear signal to firms that they need to consider consumer needs in everything they do. We set out below how the Consumer Duty supports both our consumer protection and competition objectives.
- 2.11** We thank respondents for the examples of harms that the Consumer Duty might be able to address and the examples of good and bad practice they have seen. We have used these examples where appropriate to inform our proposed non-Handbook guidance. As part of this CP, and our engagement with stakeholders during the consultation and implementation period, we are keen to see any other examples, potentially with the aim of providing further guidance in the future.
- 2.12** The Consumer Duty represents an approach based on outcomes rather than prescribing specific steps. The detailed rules and guidance we are consulting on aim to help firms understand our expectations. Firms will need to decide what changes they need to make to meet the outcomes we want to see. We are inviting feedback on the impact of our proposals, on the draft rules and non-Handbook guidance.

- 2.13** Where firms already meet existing rules in relation to, for example product governance, these will usually meet the new requirements we are consulting on under these outcomes. However, the Consumer Duty overall is broader than these requirements so firms would still need to consider if they meet all aspects of the Consumer Duty. For example, a firm may meet existing product governance requirements and, in doing so, will satisfy the products and services outcome, but they should also consider other aspects of the Duty, such as whether their consumer support standards meet the new requirements.

How it links to our objectives

- 2.14** We were required under the Financial Services Act 2021 to consult on the extent to which a duty of care, or other provision, would advance our consumer protection objective. We expect the Consumer Duty to advance our consumer protection and competition objectives. In CP21/13 we asked respondents if they agreed.

CP21/13 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?*

- 2.15** Most consumer organisations and a substantial minority of industry respondents felt that the Consumer Duty would advance these objectives. The Financial Services Consumer Panel said that it was difficult to overstate the benefits that the new Duty would deliver in terms of our consumer protection objective, provided that it was not diluted by its supporting components and that it was effectively implemented, supervised and enforced.
- 2.16** However, many industry respondents and a few consumer organisations were sceptical that the Consumer Duty would advance our objectives. Many said the existing framework of rules already has the same aims and it is not clear what the new rules would add.
- 2.17** Some respondents were concerned that additional rules could have an adverse impact on competition and, by trying to address every possible cause of harm, we might lead some firms to exit the market.
- 2.18** Many respondents also raised potential unintended consequences of our proposals, such as:
- it might lead firms to become more risk averse, which could stifle innovation or lead firms to remove products from the market, reducing consumer choice and, potentially, having consequences for increased financial exclusion
 - firms passing increased compliance costs to consumers or reducing product quality, and
 - increasing complaints or litigation, which could lead to increased costs for firms and have an impact on the availability, or cost, of professional indemnity insurance
- 2.19** We were also asked to provide clarity on the extent to which we expect consumers to be responsible for their decisions.

Our response and proposals

2.20 We consider the Consumer Duty will advance our consumer protection and competition objectives.

- **Consumer protection:** The Consumer Duty sets a higher, clearer standard by requiring firms to ensure their products and services are fit for purpose and offer fair value, and helping consumers make effective choices or act in their interests. By focusing on outcomes, the Consumer Duty will help to ensure that the level of consumer protection is both appropriate for the environment in which consumers currently transact and for those in which they will transact in the future. Paragraph 2.2 sets out examples of the scale and nature of harm that can occur and the benefits of firms getting it right in the first place.
The Consumer Duty also supports more agile and assertive supervision which should mean that where harm does appear to occur, it is addressed more quickly and so ultimately reduced. We agree with the Financial Services Consumer Panel that the proactive, anticipatory nature of the Duty is the strongest and most efficient way for us to meet our consumer protection objective.
- **Effective competition in the interests of consumers:** We know that some respondents felt that the new rules could have a negative impact on competition, with higher costs reducing the number of firms competing in the market. We do not agree. We think the Consumer Duty will create a fairer and more consumer-focused playing field on which firms can compete and innovate in pursuit of good consumer outcomes. Competition can more effectively act in the interests of consumers where firms design products and services to meet consumer needs, and consumers are put in a position to make informed decisions and act in their interests. We do not think there is good reason to think this will reduce the intensity of competition. The international standing of the UK financial sector is based on high standards and we think the reinforcement of these standards will only make the UK more attractive to international investment.

A Duty of Care

2.21 We were required under the Financial Services Act 2021 to consult on:

- whether we should make general rules providing for a duty of care
- whether we should make other provisions in general rules about the level of care that authorised persons must give to consumers either instead of or in addition to a duty of care
- whether a duty of care should be owed, or other provision should apply, to all consumers or to particular classes of consumer, and
- the extent to which a duty of care, or other provision, would advance our consumer protection objective

- 2.22** In CP21/13 we asked for feedback on whether, overall, our proposals amounted to a duty of care and if not, what further measures would be needed.

CP21/13 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?*

- 2.23** There was a mixed response on whether our proposals amount to a duty of care. Many respondents said it did, with several saying it went beyond a duty of care.
- 2.24** Most respondents, however, either did not comment on this or were uncertain. These respondents were typically more focused on the substance of the proposals themselves and the outcomes they were designed to achieve. A significant number of industry respondents argued against 'labelling' our proposals a duty of care or even a Consumer Duty, which they felt imply a legally enforceable obligation which would not necessarily help firms or consumers in understanding the Consumer Duty.
- 2.25** A few respondents felt that our proposals would only amount to a duty of care if combined with a private right of action (PROA).
- 2.26** Two respondents argued that our proposals failed to meet the Financial Services Act 2021 requirement for us to consult on a duty of care. Some consumer organisations called for a statutory duty which would underline the fundamental importance of firms' responsibilities to their customers.

Our response and proposals

- 2.27** The responses we received indicate a lack of consensus on what constitutes a duty of care under the Financial Services Act 2021.
- 2.28** We carefully considered the requirements of the Financial Services Act 2021 in preparing our consultation and we are confident that CP21/13 met those requirements. We do not have the power to introduce a duty of care in statute. Only Parliament could do this.
- 2.29** What constitutes a duty of care may have different meanings and so cannot be exhaustively defined. The term is used in a variety of contexts: in relation to a statutory or regulatory duty enforceable by penalties (eg section 34(1) of the Environmental Protection Act 1990); in relation to a professional duty (eg the professional duty of a nurse or midwife); in relation to express or implied duties in contract; and in relation to tort law, in particular the law of negligence.
- 2.30** Our view, as set out in DP18/5, is that a duty of care (or any 'duty') is a positive obligation on a person to ensure that their conduct towards others meets a set standard. We therefore do not agree that the 'label' Consumer Duty implies a legally enforceable obligation, nor do we agree that our proposals would only amount to a duty of care under the Financial Services Act 2021 if combined with a PROA. We set out our analysis of whether it would be appropriate to have a PROA for the Consumer Duty in Chapter 12.

- 2.31** The Consumer Duty sets a higher standard of care and expectation beyond our current set of Principles and rules. For the reasons above, 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 tackle the harms we see in financial services markets, and their causes, more effectively. 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.

Consumer responsibility

- 2.32** Some industry respondents said the Consumer Duty risks placing all responsibility on firms and takes away from consumers their role in making decisions. Consumer organisations generally felt that consumers can only reasonably exercise their responsibility when firms have created the right environment for them to do so.
- 2.33** Section 3B of the Financial Services and Markets Act (FSMA) 2000 sets 8 regulatory principles to which we are required to have regard when discharging our general functions, including when making rules, guidance and general policies. One of these is the general principle that consumers should take responsibility for their decisions.
- 2.34** In setting out our proposals for the Consumer Duty, we have had regard to this general principle. We do not, for example, expect firms to protect their customers from risks they understood and accepted. However, consumers can only take responsibility for their actions if they have the information and support they need to be able to make informed decisions. Our draft non-Handbook guidance in Appendix 2 sets out more detail on this.

Access to products and services

- 2.35** The Consumer Duty does not require firms to provide any particular product or service on particular terms or to particular consumers. That remains their commercial decision.
- 2.36** The Consumer Duty also does not in and of itself prevent a firm from withdrawing a product. However, a firm can cause foreseeable harm or frustrate the objectives of its customers in the way it does so. For example, if a firm withdrew a product or service abruptly or without considering the effect on the consumers who are impacted.
- 2.37** Where a firm is planning to alter or withdraw a product or service, they should consider whether it could lead to foreseeable harm for their customers or specific groups of customers (such as customers with characteristics of vulnerability) and take steps to mitigate the impact of the potential harm. This could mean not withdrawing the product or service too abruptly and ensuring that they communicate any changes in a timely, clear and sensitive manner. This should include setting out what it means for the consumer, communicating alternative solutions, and the consequences to any consumers of not acting.

3 The scope of the Consumer Duty

- 3.1** In CP21/13, we proposed that the Consumer Duty would apply to all 'retail clients'. In this chapter, we set out the responses we received and our analysis of them and outline the proposed scope of the Consumer Duty.

Retail scope

- 3.2** In CP21/13, we proposed that retail business would be defined to include all clients other than professional clients (such as large corporate entities and government bodies) and eligible counterparties. So, in most cases, in addition to protecting 'natural persons', we proposed that the Consumer Duty would apply to firms where we regulate the provision of financial services to small and medium enterprises (SMEs).

CP21/13 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?*

- 3.3** Many respondents supported our proposal to apply the Consumer Duty to dealings with retail clients. Many consumer organisations emphasised the importance of protecting all SMEs.
- 3.4** Some respondents suggested we should use alternative definitions, such as:
- 'natural persons' only, in line with our guidance for firms on the fair treatment of vulnerable customers
 - consumers acting outside their business, trade or profession
 - small businesses within the jurisdiction of the Financial Ombudsman, and
 - natural persons, charities and enterprises in line with the approach in the Banking Conduct of Business Sourcebook (BCOBS)
- 3.5** Some industry respondents highlighted that there is no uniform retail client definition and different definitions apply in different sectors. A few industry respondents opposed the use of the 'retail client' distinction because it would not align with these existing definitions and said that applying the Consumer Duty to customers not currently covered by relevant sector rules would have a significant impact.
- 3.6** Some respondents also highlighted the potential breadth of size and sophistication of SMEs potentially caught by our proposals, and their differing needs. They also said the additional requirements imposed by the Consumer Duty might have an impact on the availability of products for SMEs. The impact could be more acute for larger and more sophisticated SMEs, which are better placed to protect their own interests and where a more proportionate regulatory approach would be preferable.

3.7 A few respondents called for high net worth (HNW) clients to be excluded from the scope of the Consumer Duty in order to retain flexibility and ability to offer these category of customers more complex products suited to their requirements.

3.8 A few respondents said we should ensure that firms consider the Consumer Duty when dealing with potential customers, who are not yet a customer of a firm.

Our response and proposals

3.9 We recognise that applying a single standard retail client definition to the Consumer Duty could create challenges in different sectors. Currently, certain larger SMEs are in scope of Principle 6, but out of scope of any detailed Handbook rules. Applying the Consumer Duty, which is a package of both a Principle and rules, would therefore have a significant impact and we agree this would be disproportionate. It could also lead to a confusing picture of protections for SMEs in scope of the Consumer Duty but not our Handbook rules.

3.10 We are therefore proposing to align the scope of the Consumer Duty with the existing scope of our sectoral sourcebooks. For example, for insurance, the scope of the Consumer Duty will follow the position in the Insurance Conduct of Business Sourcebook (ICOBS). For mortgages, the Consumer Duty would follow the position in the Mortgage Conduct Business Sourcebook (MCOB). Our draft rules set this out in more detail.

3.11 The duty would apply to firms dealing with HNW individuals unless that status takes conduct outside of our regulatory perimeter. For example, under the Financial Promotion Order 2005, the financial promotion restriction in FSMA does not apply to certain promotions communicated to certified HNW individuals.

3.12 Principles 6 and 7 would continue to apply to firms dealing with wholesale or retail customers outside the scope of the Consumer Duty.

3.13 We agree that the Consumer Duty should apply to prospective customers. The practical impact of this will depend on the context. For example, financial promotions are often targeted at potential customers, and firms should consider the needs, characteristics and objectives of a target market of customers when designing products or services.

Q1: **Do you have any comments on the proposed scope of the Consumer Duty?**

Application of the Consumer Duty through the distribution chain

3.14 In CP21/13, we proposed that the Consumer Duty would apply to all firms in the distribution chain that can influence material aspects of the design, target market or performance of a retail financial services product or service.

CP21/13 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?*

- 3.15** Most respondents, including all consumers and consumer organisations, supported the proposal. Several consumer organisations wanted us to be explicit that firms could not contract their way out of, or transfer, their responsibilities under the Consumer Duty. Many respondents asked questions about how this would work in practice.

Proportionality

- 3.16** Many industry respondents raised concerns about the need for the Consumer Duty to be applied proportionately to firms through the distribution chain. Respondents said it can be difficult to judge a firm's ability to influence outcomes where there is an indirect relationship to the end user, and the responsibilities need to be proportionate to the action involved. Several respondents said that the Consumer Duty should only apply to firms that have a direct relationship with the end user.

- 3.17** Many respondents were concerned that the proposal meant they would become responsible for the actions of other firms in the distribution chain. For example, a respondent asked whether a fund manager would need to consider charges added by firms later in the chain, such as platform fees and adviser charges, when assessing fair value.

Our response and proposals

- 3.18** Our proposed rules would apply proportionately, taking account of the firm's role in relation to the product or service, the nature of the product or service and the characteristics of consumers.
- 3.19** All authorised firms would need to comply with the Consumer Duty for retail business for their own activities. In general, firms would be responsible only for their own activities and would not need to oversee the actions of other firms in the distribution chain.
- 3.20** We would generally expect firms with a direct relationship with the end user to have greatest responsibility under the Consumer Duty. However, all firms that have an impact on consumer outcomes will need to consider their obligations. Our draft non-Handbook guidance in Appendix 2 sets out more detail on this.

Liability

- 3.21** Respondents asked several questions about the liability of different firms in the distribution chain. These included whether:
- all firms in the distribution chain should share responsibility jointly and severally
 - shared liability would complicate firms working together, affecting contractual relationships and innovation
 - firms could transfer their responsibilities to other firms

Our response and proposals

- 3.22** We are not proposing to make all firms in the distribution chain responsible for consumer outcomes on a joint and several basis. We only expect firms to be liable for their own activities, so potential complications in contractual relationships should not arise. Firms would not be able to transfer their responsibilities to other firms.
- 3.23** Where firms work together to manufacture a product or service, we propose that they must have a written agreement appropriately setting out their mutual responsibilities.

This should clarify the extent to which firms in the distribution chain are responsible for meeting different requirements and, therefore, the extent to which they are liable.

Firms in the wholesale sector

3.24 In CP21/13, we said that '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'.

3.25 Industry respondents called for wholesale transactions to be out-of-scope of the Consumer Duty, even if the product or service is ultimately used by a retail customer. They also said that, where there is no direct retail participation or firms are providing services primarily to other firms, it is inappropriate to make firms subject to the Consumer Duty. Examples cited include wholesale investment markets, agency banking and wholesale managing general agents in the insurance sector.

Our response and proposals

3.26 We propose that the Duty would apply to firms that have a material influence over:

- 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 clients, or
- direct contact with retail clients on behalf of another firm, such as firms involved in debt collection or mortgage administration

3.27 For example, an investment bank that designs a structured product for sale to retail customers would be subject to the Consumer Duty but investment banks providing wholesale instruments as component parts of a product created by a third-party firm would not.

3.28 We do not intend to capture primary market activities in relation to real economy securities within this. We are therefore proposing to exclude from the scope of the Consumer Duty activities that involve the issuance of non-complex financial instruments and non-retail financial instruments.

Unregulated activities

3.29 Some respondents asked about the application of the Consumer Duty to firms, products or activities outside the regulatory perimeter. There were mixed opinions as to whether the Duty should apply beyond the perimeter.

3.30 We were also asked to confirm that occupational pensions would not be subject to the Duty, as they are regulated by the Pensions Regulator (TPR) rather than the FCA. And we were asked to confirm that services companies, such as those providing IT services to regulated firms, would not be subject to the Duty.

Our response and proposals

3.31 As with other FCA rules, the Consumer Duty would only apply to activities within our remit. It would not apply to activities outside our perimeter, which is set by Parliament, or to pension schemes regulated by TPR.

- 3.32** However, we are proposing that the Consumer Duty would apply to unregulated activities which are ancillary to regulated activity. These are activities carried on in connection with a regulated activity or held out as being for the purposes of a regulated activity. They can include, for example, activities relating to product design. In a similar way, it will also apply to activities in connection with the provision of payment services or issuing e-money. This takes forward a broadly similar position as at present under the current Principles.
- 3.33** Authorised firms approving financial promotions on behalf of unauthorised third parties would be subject to the Consumer Duty. They would need to consider, in particular, the Consumer Principle, cross-cutting rules and consumer understanding outcome.
- 3.34** Where services companies are authorised and conduct retail business activities, they would need to apply the Consumer Duty in a proportionate manner. They are likely to need to focus particularly on the new Consumer Principle and the cross-cutting rules.
- 3.35** Where authorised firms outsource activities to unauthorised third parties, the firm would need to consider the risks involved and ensure they are appropriately addressed and managed. The authorised firm remains fully responsible for compliance with our rules in this scenario.

Application outside the UK

- 3.36** Some respondents asked us how the Consumer Duty would apply either where part of the distribution chain is outside the UK or where firms are dealing with non-UK customers.

Our response and proposals

- 3.37** Only firms conducting regulated activities in the UK are within our regulatory remit and, so, would be subject to the Consumer Duty. We recognise that this carries risks for consumers and a risk of regulatory arbitrage if firms try to avoid the rules. To manage these risks, where part of the chain is outside the UK, we propose to require UK distributors of non-UK products and services to take all reasonable steps to comply with the products and services outcome.
- 3.38** There are specific issues to consider for firms in Gibraltar selling into the UK and firms in the temporary permissions regime and financial services contract scheme following the UK's withdrawal from the EU.
- In the future, a new permanent legislative framework – the Gibraltar Authorisation Regime (GAR) – will be established. This will enable UK market access for specified Gibraltar-based financial services firms if they intend to carry on approved activities in the UK. It is expected that Gibraltar's regulation of firms under the GAR would be aligned with the UK approach. Until the GAR is in place and rules are aligned, we are proposing to apply the Consumer Duty to firms based in Gibraltar doing regulated business in the UK, whether from an establishment here or on a services basis. This will ensure an appropriate degree of consumer protection for UK consumers and a level playing field for firms. Once the rules are aligned, we would propose to rely on the Gibraltar Financial Services Commission (GFSC) regulation of firms in Gibraltar under those rules.

- The UK left the EU on 31 January 2020 and has a temporary permissions regime to allow EEA firms to continue operating in the UK within the scope of their permissions for a limited period, while seeking full UK authorisation, if necessary. We propose to apply the Consumer Duty to firms in the temporary permissions regime, whether these firms are doing regulated business from an establishment in the UK or on a services basis, as well as to firms authorised in the UK. This will ensure that UK customers have the same protections if they deal with a firm in the temporary permissions regime. The application of the Consumer Duty to firms in the temporary permissions regime will include firms in supervised run-off under the financial services existing contracts regime.

3.39 For firms covered by the Consumer Duty which are dealing with non-UK customers, we propose that the Consumer Duty would apply in the same way as existing sectoral sourcebooks.

Q2: Do you have any comments on the proposed application of the Consumer Duty through the distribution chain, and on the related draft rules and non-Handbook guidance?

4 Application to existing products and services

Proposed application of the Consumer Duty to existing products and services

- 4.1** In CP21/13, we confirmed that the Consumer Duty would not apply retrospectively to past business. Our proposed rules for the Consumer Duty would therefore not apply to firms' past actions.
- 4.2** The Consumer Duty would however apply, on a forward-looking basis, to existing products or services and which are either:
- still being sold to customers, or
 - closed products or services that are not being sold or renewed

Existing products or services still being sold or renewed

- 4.3** Firms will need to comply with the Consumer Duty in full for any products or services sold or renewed after the Consumer Duty comes into effect.
- 4.4** Firms would need to review their products and services during the implementation period. This might mean a firm needs to update the contractual terms and conditions of a product or service before it can continue to be sold (or renewed) to new or existing customers following implementation of the Consumer Duty.

Contracts held by existing customers

- 4.5** Following the implementation period, firms would need to comply with the Consumer Duty on a forward-looking basis for customers with existing contracts.
- 4.6** We recognise that the products and services outcome cannot be so easily applied on a forward-looking basis to certain existing contracts, particularly in products or services which are closed and no longer being sold or renewed. These rules are linked to the original design and contractual terms of products and services, so assessment of existing contracts may give rise to implications where this indicates firms should consider changes to a contract. Making such changes may also have the effect of altering a firm's expectations under the contract to, for example, remuneration. A relevant factor in considering what a firm's expectations are under a contract will be whether the contract is for a fixed term or whether the contract is an ongoing contract that is terminable by either party.
- 4.7** We would therefore not expect firms to apply rules that are not relevant for closed products or services. For example, there would be no need for manufacturers to identify a target market or develop a distribution strategy.
- 4.8** For closed products and services, we would expect firms to identify whether there are aspects of the design of the product or service which mean they are not meeting the cross-cutting rules. For example, they should consider if any aspect of the product or

service could lead to harm or frustrate customers pursuing their financial objectives. Where they identify that aspects of the design could cause the product or service to breach the cross-cutting rules, we would expect them to take appropriate action to mitigate harm.

4.9 Where a firm is taking action to comply with the Consumer Duty in respect of any product or service with existing contracts, we would not expect firms to give up any contractual rights they had a firm expectation of being able to enjoy, although they would be free to do so. Firms would instead need to consider alternate ways to prevent harm for existing customers. Appropriate actions would depend on the context. Firms might be able to make changes to the contract that do not alter their vested rights to remuneration. Depending on the case, these could include, for example, greater flexibility on how customers can engage with the product or assisting a customer to switch to a new product or service that does not have the same issues. Firms could also consider enhanced customer support to help customers avoid the risk materialising.

Q3: Do you have any comments on the proposed application of the Consumer Duty to existing products and services, and on the related draft rules and non-Handbook guidance?

Q4: Are there any obstacles that would prevent firms from following our proposed approach to applying the Consumer Duty to existing products and services?

5 The Consumer Duty and Consumer Principle

- 5.1** In this chapter, we summarise the responses we received on the proposed structure of the Consumer Duty and the wording of the Consumer Principle and set out analysis of those responses and our proposals on both.

The proposed structure of the Consumer Duty

- 5.2** In CP21/13, we proposed that there would be 3 elements to the Consumer Duty.
- A **Consumer Principle** which reflects the overall standards of behaviour we want from firms and which is developed by the other elements of the Consumer Duty.
 - **Cross-cutting rules** which develop our overarching expectations that apply across all areas of firm conduct.
 - **Four outcomes** which give more detailed expectations for the key elements of the firm-consumer relationship.

- 5.3** We invited views from respondents on the proposed structure.

CP21/13 Q2: *What are your views on the proposed structure of the Consumer Duty, with its high-level Principle, cross-cutting rules and the 4 outcomes?*

- 5.4** Many respondents, representing both consumer organisations and the industry, were supportive of the proposed structure. Some described it as simple, sensible and logically set out.

- 5.5** However, some industry respondents felt that the proposed structure risked unnecessary and unhelpful complexity both for firms' understanding of our expectations, and for consumers' understanding of firms' obligations to them. Some industry respondents felt that creating a new structure under the Consumer Duty would only replicate much of what is already in the Handbook.

- 5.6** A few respondents suggested alternative structures, for example, removing the cross-cutting rules and only having a Consumer Principle and the outcome rules.

- 5.7** Some respondents asked for clarity, for example in relation to:
- Whether the cross-cutting rules were constituent parts of the Principle, or independent and so additional obligations for firms.
 - How the different tiers of the Consumer Duty will inter-relate. For example, if a firm has complied with all rules and guidance for the 4 outcomes, and has complied with the 3 cross-cutting rules, does that constitute compliance with the Consumer Principle?

- 5.8** Several respondents felt that there should be a 'reasonableness' element, for example by requiring firms to take 'reasonable steps' to deliver good outcomes for consumers. Several consumer organisations were concerned that it must be clear that what was reasonable under the Consumer Duty was an objective test, and not something that could be defined broadly by firms.

Our response and proposals

- 5.9** We are not proposing to change the overall structure of the Consumer Duty.
- 5.10** The Consumer Principle sets out at a high level, the behaviour we want from firms. The cross-cutting rules set out how firms should act to deliver good outcomes for consumers.
- 5.11** Chapter 6 and our draft non-Handbook guidance in Appendix 2 sets out more detail on the relationship between the Consumer Principle, the cross-cutting rules and the 4 outcomes.
- 5.12** We agree that it must be clear that what is reasonable under the Consumer Duty is an objective test and not something that firms can define for themselves. We have introduced an objective standard which firms need to comply with based on the tortious concept of how a reasonable prudent firm would act. We know that firms are already familiar with this concept due to existing duties at common law.
- 5.13** Our draft rules and non-Handbook guidance set out that the Consumer Duty is underpinned by this concept of reasonableness. This means our draft rules and non-Handbook guidance should all be interpreted in line with the standard that could reasonably be expected of a prudent firm:
- carrying on the same activity in relation to the same product or service, and
 - with the necessary understanding of the needs and characteristics of its customers

The Consumer Principle

- 5.14** The Consumer Principle is intended to underpin and drive the culture and conduct changes we wish to see in firms. In CP21/13, we consulted on 2 options for the wording of the new Principle.
- 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

CP21/13 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?*

5.15 The majority of respondents were supportive of Option 1. Some of the reasons given included that:

- it matches the intended tone of the Consumer Duty and our key message that firms must focus on consumer outcomes
- it clearly covers more than the existing requirement in Principle 6 to treat customers fairly
- the new terminology represents a clean break from existing requirements, and
- it would encourage firms to monitor and manage customer journeys against the intended 'good outcomes'

5.16 A smaller number of respondents preferred Option 2, often because it was seen as in line with existing best interest standards already in some parts of our Handbook and was therefore familiar to firms. Consumer organisations that preferred this to Option 1 did so because it:

- sets a clearer and stronger message for firms
- better communicates the anticipatory, preventative nature of the duty, and
- sends a stronger signal to senior managers and boards about what is expected of them

5.17 Consumer organisations were evenly split between Options 1 and 2.

5.18 Several firms and their trade bodies were opposed to Option 2 on the basis that it may be misinterpreted as a fiduciary duty.

5.19 Several respondents suggested alternative formulations, for example:

- a firm must act to deliver fair outcomes for retail clients, or
- a firm must act in the best interest of customers to deliver good outcomes

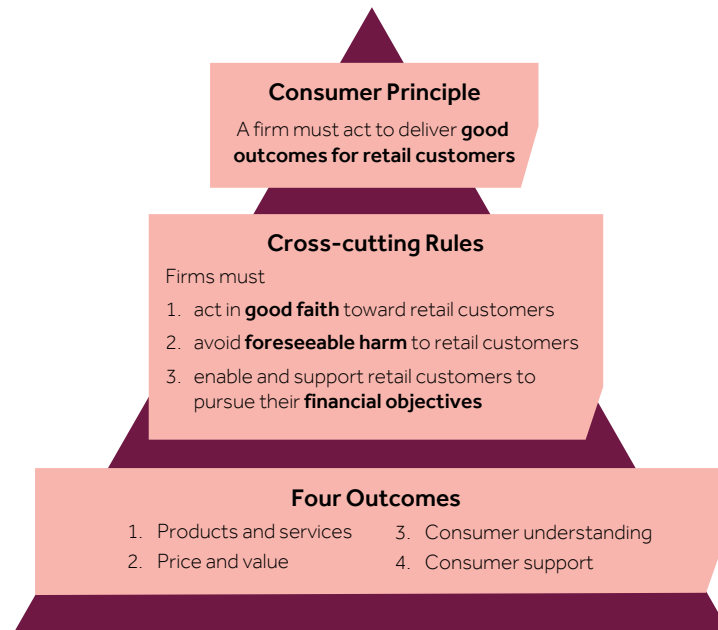
Our response and proposals

5.20 Having considered the responses from respondents we propose Option 1:

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

5.21 The proposed wording reflects the shift we want to see and the expectation for firms to consistently focus on consumer outcomes and putting consumers in a position where they can act and make decisions in their own interests.

Consumer Duty Structure



5.22 We also recognise concerns that a Principle based on best interests could be confused with a fiduciary duty, or a policy that required the best outcome to be achieved for each consumer. We also saw scope for confusion about how a Principle based on best interests related to existing best interest language used in some parts of our Handbook.

5.23 We recognise respondents' concerns about the need to clarify what amounts to a good outcome, and the need to be clear that it is not possible for all consumers to receive (or feel that they have received) a good outcome. For example, a borrower whose house is repossessed or a consumer who loses money on an investment may well feel they have not had a good outcome, even though the firm has acted in line with the Consumer Principle.

5.24 Our focus is on firms acting reasonably to deliver good outcomes. The cross-cutting rules set out how firms should act to deliver good outcomes for consumers. Our draft rules and non-Handbook guidance set out in more detail that neither the Principle nor the cross-cutting rules (covered in the next chapter):

- mean that consumers can or will be protected from all harm
- impose an open-ended duty that goes beyond the scope of the firm's ability to determine or influence consumer outcomes or protect consumers from all potential harms, or
- remove the principle of consumer responsibility

5.25 This is set out in more detail in our draft rules and non-Handbook guidance.

Q5: Do you have any comments on the proposed Consumer Principle and the related draft rules and non-Handbook guidance?

How the Consumer Principle would fit with our existing Principles

5.26 At present, we have requirements in Principles 6 and 7 for:

- Principle 6: A firm must pay due regard to the interests of its customers and treat them fairly.
- Principle 7: 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.

5.27 In CP21/13, we highlighted that the Consumer Duty would overlap with existing Principles, particularly Principles 6 and 7, as well as the Treating Customers Fairly (TCF) outcomes. We sought views on:

- whether Principles 6 or 7, and the TCF outcomes should be disapplied where the Consumer Duty applies, and
- what approach we should take to Handbook and non-Handbook material related to Principles 6 and 7

CP21/13 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?*

CP21/13 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?*

5.28 There were mixed views on whether we should retain or replace Principles 6 and 7. Some respondents suggested retaining Principles 6 and 7 or amending them to reflect the Consumer Duty. Others suggested the Consumer Duty should replace existing requirements to avoid duplication, confusion and compliance costs from parallel regimes operating together.

5.29 Consumer organisations focused on the risk of diluting the impact of the Consumer Duty if existing requirements continued to apply.

5.30 Many industry respondents asked for greater clarity on the relationship between the Consumer Duty and existing rules in the wider Handbook, with several suggesting a wholesale review of the Handbook.

Our response and proposals

5.31 Given the overlap between the new, higher standard set by the Consumer Duty and Principles 6 and 7, we propose to disapply both Principles where the Consumer Duty applies. Principle 6 and 7 will therefore continue to apply to conduct outside the scope of the Consumer Duty, for example certain SMEs and wholesale business.

5.32 Although we propose to disapply Principles 6 and 7 to this extent, we think there is merit in retaining the Handbook and non-Handbook material linked to them at this time. So, we have proposed draft guidance in the Handbook explaining that:

- The Consumer Principle imposes a higher standard of conduct than Principles 6 and 7
- While existing guidance on Principles 6 and 7 will remain relevant to firms in considering their obligations under the Consumer Duty, firms should take account of the inherent limits of such guidance as they do not cover our expectations under the Consumer Duty in full
- Failure to act in accordance with existing guidance on Principles 6 and 7 which would have amounted to a breach of those Principles, is likely to breach the Consumer Duty
- Where a firm is acting in accordance with guidance on Principles 6 and 7, this should not be relied upon alone in considering how to comply with the Consumer Duty. Firms will also need to consider all their obligations not only under the Principles but under any other applicable other FCA rules

5.33 We do not consider that a full review of the Handbook is sufficiently urgent to merit a delay to implementing the Consumer Duty. However, we will use the implementation period to identify whether there any areas of the Handbook that may require amendment, in due course, in light of the Consumer Duty.

5.34 We will also bear these responses in mind when considering whether, or how, we conduct a Handbook review in the future. Such a review could combine post-Brexit rationalisation, a full update to embed the Consumer Duty, and simplification (both in general and considering the Consumer Duty).

Q6: Do you agree with our proposal to disapply Principles 6 and 7 where the Consumer Duty applies?

Q7: Do you agree with our proposal that Handbook and non-Handbook material related to Principles 6 and 7 should remain relevant to firms considering their obligations under the Consumer Duty?

6 The cross-cutting rules

- 6.1** This chapter discusses the cross-cutting rules. It summarises the responses we received to our proposals in CP21/13 and sets out our analysis of them and the revised proposals we are consulting on.

Responses to CP21/13

- 6.2** As part of the Consumer Duty, we proposed a set of cross-cutting Handbook rules to develop and strengthen the standards of conduct that we expect under the Consumer Principle.

- 6.3** The cross-cutting rules proposed in CP21/13 required firms to:

- act in good faith towards retail customers; and
- take all reasonable steps to:
 - avoid causing foreseeable harm to retail customers, and
 - enable retail customers to pursue their financial objectives

CP21/13 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?*

CP21/13 Q7: *Do you agree with these early-stage indications of what the cross-cutting Rules should require?*

- 6.4** Many respondents were broadly supportive of the aims of the cross-cutting rules. However, some industry respondents felt that the cross-cutting rules were unnecessary or duplicated existing FCA requirements.
- 6.5** Several respondents asked for detailed guidance to support the rules and avoid ambiguity both for firms and consumers.
- 6.6** A few respondents expressed concern that the cross-cutting rules could be misinterpreted as giving rise to a fiduciary duty.
- 6.7** Several consumer organisations suggested an additional cross-cutting rule focused on consumers in vulnerable circumstances.

The 'all reasonable steps' standard

- 6.8** Some industry respondents said the requirement for firms to take 'all' reasonable steps imposed a very high, unachievable or potentially very procedural, standard. Some industry respondents were unclear what this standard meant or how it could ever be evidenced.
- 6.9** By contrast some consumer respondents felt it set a high, though appropriate and achievable, standard for firms.

- 6.10** Some respondents said the requirement was unlikely to clarify the objective standard of conduct that firms would need to meet, as it is open to subjective interpretation which could ultimately reduce consumer protection.

Foreseeable harm

- 6.11** A few industry respondents were concerned that reference to 'foreseeable harm' in the second cross-cutting rule is ambiguous and could create uncertainty for firms. They suggested supplementing the rule with clear examples of good and bad practice to reduce the scope for different interpretations.
- 6.12** Some consumer organisations said that the requirement to avoid causing foreseeable harm was open to abuse by firms seeking to justify causing or not preventing harm by arguing that it was not foreseeable at the time.

Financial objectives

- 6.13** Some respondents said the proposed cross-cutting rule requiring firms to enable retail customers to pursue their financial objectives would be difficult to implement. They asked for further guidance on what we meant by financial objective.

Our response and proposals

- 6.14** We consider that the cross-cutting rules are an important component of the Consumer Duty.
- 6.15** 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, avoid causing customers foreseeable harm and take proactive steps to empower consumers to make good choices by establishing an environment in which consumers can make decisions in their own interest and realise their financial objectives.
- 6.16** These key elements of the Consumer Duty are explicitly reflected in the cross-cutting rules. They:
- develop our overarching expectations for behaviour through 3 common themes that apply across all areas of firm conduct
 - set out how firms should act to deliver good outcomes, and
 - inform and help firms interpret the 4 outcomes
- 6.17** We are, therefore, consulting on introducing the cross-cutting rules with a few amendments to clarify our expectations. Our draft non-Handbook guidance in Appendix 2 sets out more detail on this.
- 6.18** The cross-cutting rules we are proposing require firms to:
- act in good faith towards retail customers
 - avoid causing foreseeable harm to retail customers, and
 - enable and support retail customers to pursue their financial objectives

- 6.19** Our rules are not capable of directly creating a fiduciary relationship where one does not otherwise exist. We have provided guidance in the draft instrument which clarifies that the Consumer Duty does not create a fiduciary relationship where one does not otherwise exist, nor require advice to be provided where it would not have otherwise been required.
- 6.20** We have not proposed an additional cross-cutting rule focused on consumers in vulnerable circumstances. Our draft rules have instead embedded consideration of these consumers at every part of the customer journey.

All reasonable steps

- 6.21** Having considered the responses, we agree that referring to 'take all reasonable steps' is not the best way to achieve the aims of the Consumer Duty. We want firms to focus on acting reasonably, rather than focusing on processes and the steps they take, which could have the result of firms seeking to focus on compliance with the rules rather than ensuring good outcomes for their customers. We have therefore removed the reference to 'all reasonable steps'.
- 6.22** As set out in paragraph 5.13, the entire Consumer Duty is underpinned by a concept of reasonableness. The standard reflects the tortious concept of how a reasonable prudent firm would act and is one firms are already familiar with due to existing duties under common law. We therefore do not think the standard is unobtainable.

Foreseeable harm

- 6.23** The focus of this cross-cutting rule is on firms not causing harm to customers through their conduct, products or services and acting to avoid it.
- 6.24** This cross-cutting rule is not intended to impose an open-ended duty that goes beyond the scope of the firm's ability to determine or influence consumer outcomes or protect consumers from all potential harms. As with the headline Principle, it also does not require firms to protect customers from:
- unforeseeable harm
 - all poor outcomes, or
 - risks that the customer reasonably understood and accepted
- 6.25** Our intention is that firms are only responsible for addressing harm when it is reasonably foreseeable. We do not think it is reasonable to require firms to avoid or mitigate harm that is not foreseeable. Trying to do so might also exacerbate unintended consequences that harm consumers.
- 6.26** As some of the outcome rules require firms to conduct regular reviews, this assessment would need to be undertaken regularly. Therefore, if a harm were not foreseeable at the outset, but later became foreseeable, we would expect firms to take the appropriate action.

Financial objectives

- 6.27** The focus of this cross-cutting rule is on enabling and supporting consumers to make effective choices for themselves and enjoy the use of the product and service they have purchased. We have amended the wording of the proposed cross-cutting rule to reflect this.
- 6.28** The actions a firm might need to take to enable and support customers to pursue their financial objectives would be determined by what is within a firm's control, based on their role and knowledge of consumers.
- 6.29** Guidance on this cross-cutting rule sets out that a firm providing an execution only or non-advised service can assume their customers' objective to be the enjoyment and use of the product and service they have purchased.
- 6.30** By contrast, a firm providing advisory or discretionary services would understand more about an individual consumer's specific objectives and would need to act on that knowledge. For instance, an advice firm might know a consumer has the objective to retire by a particular age, or to make sure a dependent is provided for.

Q8: Do you have any comments on our proposed cross-cutting rules and the related draft rules and non-Handbook guidance?

7 The products and services outcome

- 7.1** We want all products and services for retail customers to be fit for purpose. We want them to be designed to meet consumers' needs and targeted at those consumers. These are essential steps if firms are to act to deliver good outcomes to consumers.
- 7.2** This chapter discusses this outcome. It summarises the responses we received to our proposals in CP21/13 and sets out our analysis of them and the revised proposals we are consulting on.

Feedback to CP21/13

- 7.3** In CP21/13, we set out proposals for all firms in the distribution chain to consider issues related to product or service design, distribution strategies and ongoing monitoring and asked respondents for their views.

CP21/13 Q15: *What are your views on our proposals for the products and services outcome?*

CP21/13 Q16: *What impact do you think the proposals would have on consumer outcomes in this area?*

- 7.4** While many respondents were in favour of the proposals, many others also asked questions or suggested changes.

Financial exclusion

- 7.5** Some industry and consumer respondents said the proposals could restrict access to products, particularly for those in vulnerable circumstances or who have low incomes. By requiring them to focus product or service design on a target market, some respondents said that firms might focus only on those people with the most mainstream needs. This could lead to increased exclusion.
- 7.6** By contrast some respondents saw our proposals as having the potential to help firms better meet the needs of people in vulnerable circumstances.
- 7.7** Several consumer organisations and 1 industry respondent said we could embed an inclusive design principle to ensure products are designed to be accessible to, and usable by, as many people as possible. One consumer organisation, for example, said that every target market will undoubtedly include people in vulnerable circumstances who may have additional needs. As anyone can become vulnerable at any time, firms will need to design products and services to be flexible and able to adapt.

Our response and proposals

7.8 We do not expect the rules on which we are consulting to restrict access to products or services. By setting high but attainable standards, we expect to enable better and healthier competition and innovation. We agree with respondents who said the proposals could help firms respond to the needs of customers in vulnerable circumstances through product or service design.

7.9 On the suggestion that we include rules on inclusion, the proposed rules would require firms to identify any group of customers with characteristics of vulnerability in their target market and take account of any additional needs when designing products and services. We will monitor the outcomes experienced by different consumer groups, including those in vulnerable circumstances, to check they are not being disadvantaged.

Other unintended consequences

7.10 Respondents raised several other potential unintended consequences. They said the assessment of whether the products and services outcome is met could be highly subjective and this could:

- restrict innovation
- restrict access for SMEs, counter to government concerns about lack of provision for these customers
- lead to product simplification or a focus only on products for the widest possible target market
- worsen access to advice or guidance services by complicating the requirements, or
- lead to product regulation, with the FCA setting minimum requirements or approving individual products

Our response and proposals

7.11 We are aware of the risks of unintended consequences flagged by respondents. However, we believe that the proposed rules on which we are consulting in this paper minimise these risks from arising in practice. By requiring firms to consider the needs, characteristics and objectives of customers in their target market, we believe benefits are more likely to accrue, for example with innovations focused on delivering good customer outcomes.

7.12 We have not seen the consequences highlighted by respondents arise following the introduction of similar requirements elsewhere in regulation.

7.13 Our proposals do not amount to product regulation. We are not setting minimum requirements for products to meet in different sectors and will not approve products before they are launched (other than those where we already have this role).

7.14 We are consulting in Appendix 2 on non-Handbook guidance to help firms understand our expectations, which we intend to help reduce the risks of unintended consequences.

Proportionality

7.15 Some industry respondents were concerned that the proposals are disproportionate, at least for some sectors. For example, the required target market analysis could have significant overheads, even where there is a low risk of harm.

- 7.16** A few respondents also said the decision on whether a product is fit for purpose might only be judged at the point a complaint is made. They said we need to avoid assessing firm's actions with hindsight if problems are not foreseeable. Similarly, another respondent asked how firms should deal with changes in consumer expectations/ market conditions over time.

Our response and proposals

- 7.17** We consider that the rules under this outcome are relevant for all sectors and all products and services in the retail market. While some may be simpler or carry less risk of harm, all products and services should be designed to take account of consumer needs, have an appropriate distribution strategy and be reviewed regularly to check how they function in practice.
- 7.18** The rules on which we are consulting are designed to be proportionate. While firms will need to apply the rules for all products or services, the requirements are less onerous for simpler products with less risk of consumer harm.

Proposed requirements for the products and services outcome

- 7.19** In line with existing product governance requirements in our Handbook, we propose to set different requirements for firms depending on their role in the distribution chain.
- Manufacturers: firms that create, develop, design, issue, operate or underwrite a product or service would be regarded as a product manufacturer. More than 1 firm may be involved in the manufacture of a single product. It is also possible that intermediaries may be co-manufacturers, for example if they set the parameters of a product and commission other firms to build it.
 - Distributors: firms that offer, sell, recommend, advise on, propose or provide a product or service would be regarded as distributors.
- 7.20** Firms could be both a manufacturer and a distributor, depending on their activities.

Proposed requirements for manufacturers

- 7.21** We are proposing to introduce requirements for manufacturers, including the need to:
- develop an approval process for products or services
 - identify a target market of consumers for whose needs, characteristics and objectives the product or service is compatible
 - consider if there are any consumers with characteristics of vulnerability in the target market and take account of any additional or different needs of those consumers
 - test the product or service and ensure it is designed to meet the needs, characteristics and objectives of the target market
 - select distribution channels that are appropriate for the target market and provide adequate information to distributors to enable them to understand the product or service and the target market, and
 - regularly review the product or service and its distribution, and take appropriate action to mitigate the situation if they identify circumstances that may adversely affect their customers

7.22 Where there is more than 1 firm involved in the manufacture of a product or service, firms would need to identify their own responsibilities and to agree with other firms their respective responsibilities.

7.23 The proposed rules would apply in relation to any new product or service, or when making significant adaptations to a product or service, before it is marketed or distributed to retail customers. The rules would also apply to existing products and services before they are sold to new customers. See Chapter 4 for discussion on our proposals in relation to the treatment of existing customers.

Proposed requirements for distributors

7.24 We propose to introduce requirements for distributors, including the need to:

- develop distribution arrangements for each product or service distributed
- get information from the manufacturer to understand the product or service, its target market and its intended distribution strategy, and
- regularly review the distribution arrangements to ensure they are appropriate and, if they identify issues, take appropriate action to mitigate the situation and prevent any further harm

7.25 When selling a product or service that was manufactured by a person not subject to the Consumer Duty, we propose that the distributor must take all reasonable steps to comply with these obligations.

7.26 We also propose that all firms in the distribution chain must cooperate by sharing relevant sales information with manufacturers. This would include, where appropriate, information on the regular reviews of product distribution arrangements.

Q9: Do you have any comments on our proposed requirements under the products and services outcome and the related draft rules and non-Handbook guidance?

8 The price and value outcome

- 8.1** We want all consumers to receive fair value. This chapter discusses this outcome. It summarises the responses we received to our proposals in CP21/13 and sets out our analysis of them and the revised proposals we are consulting on.

Responses to CP21/13

- 8.2** In CP21/13, we outlined the high-level approach we intended to introduce and asked respondents for their views.

CP21/13 Q19: *What are your views on our proposals for the price and value outcome?*

CP21/13 Q20: *What impact do you think the proposals would have on consumer outcomes in this area?*

- 8.3** Many respondents, from both the industry and consumer organisations, supported our high-level proposals, although they also shared some concerns.

Concerns raised with the price and value outcome

- 8.4** Some consumer respondents were concerned that the proposals do not go far enough to have meaningful impact. Many industry respondents also questioned whether the proposals would result in a significant improvement in consumer outcomes. They said this depends largely on our supervision and enforcement activities.

- 8.5** Consumer organisations also raised concerns about the need to consider fair value for different groups of customers. For example, some said:

- customers in vulnerable circumstances might cross-subsidise other customers
- we should require firms to monitor pricing outcomes for groups with protected characteristics, or
- the proposals under this outcome will not help consumers who the market does not serve, such as people in financially vulnerable circumstances who are unable to access mainstream credit

- 8.6** Industry respondents also raised some concerns.

- Some said the focus on price might be unhelpful, for example leading firms to offer fewer features in products or worse customer service. Low-cost products may not offer all the benefits that consumers value.
- Respondents in the e-money and payments sector said the outcome would have little effect on customer outcomes. Customers already have full transparency of the fees or would not regard those fees as fair value as they do not benefit directly from payment services.
- Several respondents asked how the proposed price and value outcome rules would link to our existing competition powers, and when we would use one or the other.

Our response and proposals

8.7 We consider that our proposals under the price and value outcome will prevent harm for consumers. In response to other concerns from respondents, we note the following.

- **Groups of consumers in different circumstances:** We do not propose that firms must charge the same price to all consumers. Differential pricing between new and existing customers in the form of clear, transparent up-front discounts for new customers are not prohibited by the Consumer Duty. However other practices, such as complex and opaque pricing techniques or engaging in practices that discourage customers from shopping around, are unlikely to be consistent with the Consumer Duty.
- Where firms charge different prices to different groups of customers, we expect them to provide fair value for each group. We expect firms to pay extra consideration to consumers who have characteristics of vulnerability or share protected characteristics under the Equality Act 2010 and may be disadvantaged. The proposals set out that firms should consider cognitive and behavioural biases and potential vulnerabilities and avoid exploiting these factors.
- **Price vs value:** Fair value is about more than just price. The Consumer Duty aims to tackle factors that can result in unfair or poor value, such as unsuitable product features that can lead to foreseeable harm or frustrate the customer's use of the product, or poor communications and consumer support. The specific focus of the price and value outcome rules is on the relationship between the price the consumer pays to the overall benefits they can reasonably expect to obtain from a product. Value needs to be considered in the round and low prices do not always mean fair value. We expect firms to think about price when assessing fair value but not at the expense of other factors.
- Where there is an absence of effective competition in a market, it is less likely that products will offer fair value. High pricing might indicate that some other element (eg transparency, simplicity of terms, ease of exit) isn't functioning properly. We expect firms to think about price when assessing fair value but not at the expense of other factors. The price and value rules do not prevent firms with an innovative product that provides additional benefits to customers charging more for it. It is not our intention for the price and value outcome – or any aspect of the Consumer Duty – to hinder innovation.
- **Application to firms that do not have a direct customer relationship:** Under our proposals, firms would need to consider the role they play in the value chain and how this affects the price the consumer pays. Firms, including those in the e-money and payment sector, which do not directly interact with consumers, can still have an impact on value. Clearly communicated pricing structures help, but firms should not rely on individual customers' willingness to buy the product or service as evidence of fair value.
- **Relationship to existing powers:** We do not intend to use the proposed rule 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 competition is not working or markets are failing to deliver fair value. But our aim here is to require firms to consider the price of the product or service and the role it plays in fair value. This should reduce the need for us to have to make any such future market-wide interventions.

8.8 Our draft non-Handbook guidance in Appendix 2 sets out more detail on this.

How fair value should be assessed

- 8.9** Many respondents said fair value assessments can be subjective and open to interpretation. There were calls for us to be more specific about how fair value should be assessed, ideally on a sector-by-sector basis, and to explain where the bar is to be set and when we expect firms to assess fair value.
- 8.10** Some respondents said that, if we were to set a high bar, it would effectively result in price regulation. Several firms and trade bodies questioned whether we can and should be a price regulator across the entire financial services industry. Some respondents said that, where we have previously intervened on pricing, our approach has generally been bespoke and specific to particular sectors.
- 8.11** Respondents were split on whether costs incurred by firms should be considered in determining whether a product or service represents fair value. Some respondents, mostly consumer organisations, said that these costs should not be considered. They said that fair value should strictly be the relationship between the price of the product or service and the benefits it offers. There was also a concern that higher costs, for example for distribution, should not be passed on to customers. Other respondents, mostly firms and trade associations, said that we should allow for risk-based pricing.
- 8.12** Some respondents asked when fair value should be assessed, for example only at point-of-sale or an ongoing basis. For example, general insurance premiums may appear fair value at the point-of-sale but not at the end of the contract if consumers have not made a claim. We were also asked if firms are effectively required to guarantee investment returns in order to demonstrate that investments provide fair value.
- 8.13** Consumer organisations said consumers can find it difficult to assess value and firms should have responsibility to ensure fair value.

Our response and proposals

- 8.14** Our intention is not to set prices and our proposals do not have this effect. The focus of the Consumer Duty is on firms ensuring that the price of their products and services are proportionate to their value, as set out above.
- 8.15** While customers have the ultimate responsibility for choosing whether to buy a product or service, they should be able to do so in the knowledge that the firm has taken steps to ensure it represents fair value.
- **Detailed requirements for the assessment:** We do not propose to set detailed requirements for the fair value assessment. Instead, we propose to set out the factors firms must consider, as a minimum, to assess value. In deciding on this approach, we have considered the need to align with existing sector-specific value rules, for example those in place for general insurance, funeral plans, asset management and pensions, as well as the need to apply the approach across other sectors, such as retail lending or banking.
 - **Consideration of costs for the firm:** We agree that when firms perform value assessments, they can consider many factors, including the costs they incur to manufacture and distribute the product or service. We are not proposing to limit the margins firms can earn, but firms still need to consider whether the total price paid by consumers is reasonable in relation to the benefits offered by the product or service.
 - **When the assessment is required:** We intend manufacturers to assess fair value at the product or service design stage. At the point-of-sale, distributor firms should assess whether their own distribution charges represent fair value. The distributor

firm, or the final firm in the chain, where more than 1 firm is involved, should also consider whether the overall proposition provides fair value. We also want firms to assess whether products or services provide fair value on an ongoing basis.

- Charges can reflect the performance or other risks inherent in the product or service, where reasonable. So, a fairly priced general insurance does not become poor value if an individual customer does not submit a claim. Insurance is not a pre-payment for a future claim and the insurance cover offered is important in determining value. However, firms should consider if the product provides fair value if, overall, there is a very low level of successful claims. For investment products, firms would not be required to guarantee returns. Returns on investment products can be affected by many external factors outside of the firms' control. Firms should consider the charge for each component product in a sale, and the totality of charges in more complex value chains.
- Products and services should always provide fair value to consumers. When a firm changes the benefits consumers should reasonably expect to get from a product or service, it must assess and ensure the product or service still represents fair value and communicate changes to consumers in a timely way.

Proposed requirements for the price and value outcome

8.16 Following our analysis of responses to CP21/13 and reflecting on existing sector-specific rules on the assessment of value, we are consulting on rules requiring firms to offer fair value to consumers.

8.17 In summary, for manufacturers, we propose that the assessment of whether the price of a product/service provides fair value must include consideration at least of:

- the nature of the product or service, including the benefits that will be provided or that consumers may reasonably expect, and their quality
- any limitations that are part of the product/service,
- the expected total price customers will pay, and
- any characteristics of vulnerability in the target market for the product or service

8.18 We also propose that distributors must not distribute products or services unless they are satisfied that their distribution arrangements are consistent with the product or service providing fair value. To do this, they must obtain information from the manufacturer to understand the intended value of the product or service and consider the impact that distribution arrangements, including remuneration, can have on value.

8.19 We expect firms to regularly review their value assessments to satisfy themselves that the products and services they manufacture or distribute continue to provide fair value. Our rules do not prescribe the form the assessment must take but set out both the criteria that firms must consider and the criteria that firms may consider in the assessment. We are of the view that giving firms this flexibility allows them to make judgments that take into consideration the variety of products and services in the market, and differences between business models.

Q10: Do you have any comments on our proposed requirements under the price and value outcome and the related draft rules and non-Handbook guidance?

9 The consumer understanding outcome

- 9.1** We want firms' communications to support and enable consumers 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.
- 9.2** This chapter discusses this outcome. It summarises the responses we received to our proposals in CP21/13 and sets out our analysis of them and the revised proposals we are consulting on.

Responses to CP21/13

- 9.3** In CP21/13, we set out proposals for all firms to:
- communicate in a way that is reasonably likely to be understood and that facilitates decision-making, and
 - take proportionate steps to review, and where appropriate, test communications to show the firm has taken reasonable steps to ensure they are reasonably likely to be understood and facilitate customers' decision-making

CP21/13 Q13: *What are your views on our proposals for the communications outcome?*

CP21/13 Q14: *What impact do you think the proposals would have on consumer outcomes in this area?*

- 9.4** Most respondents – including consumer representatives, firms and industry bodies – supported the proposals. Many thought they would help raise communication standards and promote simpler, more consumer-friendly explanations of products and services and their associated features, benefits, risks and costs. In turn, this would help consumers choose products and services that best meet their needs.
- 9.5** Respondents also thought that the proposals would support consumers in vulnerable circumstances and encourage firms to think more carefully about communications throughout the product lifecycle. Some thought the proposals have the potential to improve consumers' confidence and engagement with financial services, enhancing competition.
- 9.6** Some respondents did not think that the proposals would have a significant impact or asked how certain aspects of the proposals would operate in practice. Some thought that they already comply with the outcome's aims, others that the proposals do not add anything to existing rules, or that firms not compliant with existing requirements will not follow the new rules.
- 9.7** We summarise the points raised by respondents in further detail below.

Interaction of the outcome with existing rules

- 9.8** While some respondents thought the proposals set a higher standard than Principle 7, other industry respondents considered them duplicative, with some referencing existing sector-specific disclosure rules. In general, these respondents did not consider the proposals add much to existing requirements and said that introducing a new layer of rules creates complexity and makes the Handbook more difficult to navigate.
- 9.9** Some respondents thought existing disclosure requirements are prescriptive and can prevent firms from communicating in a consumer-friendly way that delivers the aims of this outcome. They highlighted some requirements of the Consumer Credit Act 1974 (CCA) in particular as potentially problematic. They recommended that we should review and amend existing Handbook disclosure requirements to give firms more flexibility to deliver good outcomes.

Our response and proposals

- 9.10** We are proposing to rename this outcome the 'consumer understanding' outcome to emphasise what we want firms to focus on.
- 9.11** The proposals build on, and go further than, Principle 7 by requiring firms to focus much more on consumer outcomes and understanding throughout the customer journey. As well as ensuring individual communications are fair, clear and not misleading, firms will need to consider their overall approach to communicating information to make sure they equip consumers to make effective, timely and properly informed decisions. They will need to monitor and, where appropriate, test and adapt their communications so they can demonstrate they have acted to deliver this outcome and support consumers.
- 9.12** Firms should continue to follow legislative and regulatory disclosure requirements, 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 and the outcomes they are focused on. For example, it may be that, while still complying with the prescriptive requirements, they could explain industry jargon, or highlight key information upfront and signpost to further detail.
- 9.13** Our draft non-Handbook guidance in Appendix 2 sets out more detail on this. This builds on our previous Smarter Consumer Communications work and explains how communications can be more effective in supporting consumers.
- 9.14** In March 2019, we submitted our report to the Treasury on our review of the retained provisions of the CCA. We noted the protections offered by these provisions continue to be important but suggested that it may be helpful to review them to modernise the tone and language used and to consider adopting a more principles-based, outcomes focused approach to the CCA's information requirements in some areas. We recommended that these requirements are moved across and put into our rules. However, this requires legislative change, and we will continue to work with the Government to bring this forward.

Consumer understanding and the tailoring of communications

9.15 While recognising that firms should communicate in a way that is reasonably likely to be understood by consumers, some respondents asked for more clarity on our expectations. They noted that finding an appropriate benchmark can be challenging, particularly for more complex products.

9.16 Some respondents asked for further clarity on the extent to which firms should tailor communications to the needs of different groups of individuals, including consumers in vulnerable circumstances, and noted the cost implications of more tailored information.

Our response and proposals

9.17 In assessing whether communications are likely to be understood, a firm should take steps to ensure that they consider the information needs of the likely recipients. For example, a communication about arrears:

- is more likely to be going to someone with characteristics of vulnerability, and
- involves greater risks if it is not understood

9.18 Firms' considerations of recipients' capabilities should be informed by their assessment of the make-up of a product or service's target market. They should also consider what they know, or could reasonably be expected to know, about the sophistication, financial capability and vulnerability of their customers, and the nature of the communication itself. For example, our work on vulnerability found that 1 in 7 adults have literacy skills at or below those expected of a 9 to 11-year-old.

9.19 We do not expect firms to tailor all communications to meet the needs of each individual consumer. However, firms should take particular care when communicating with consumers in vulnerable circumstances, taking account of their needs. Our draft non-Handbook guidance in Appendix 2 sets out more detail on this.

Channels of communication

9.20 Respondents thought that ensuring communications were tailored to the channel through which they were provided was a positive development that would improve consumer outcomes. Some also said that any requirements should be futureproofed given that digital channels are an increasingly popular means of purchase and communication. Others noted that requiring different communications and terms and conditions across different channels could disproportionately affect smaller firms.

Our response and proposals

9.21 We consider that communications should be effective regardless of the channel of communication that is used – for example, whether face-to-face in branch, on the telephone, over email or via social media. Digital communications should be compatible with different mediums, for example computers, tablets or smartphones. Communications should also be accessible to customers in vulnerable circumstances. Under our proposals, we would expect firms to ensure that the channel used for communication enables consumers to assess the options available to them and make decisions that are effective, timely and properly informed.

Ongoing communication

- 9.22** Respondents supported the proposal that firms should 'communicate at appropriate touch points throughout the product/service lifecycle'. They noted that product features can change over time, as can consumers' circumstances, so a communications approach that takes this into account could promote better outcomes by prompting consumers to consider if products still meet their needs.
- 9.23** However, some respondents said the requirement may be more challenging for certain products. For instance, this might be more difficult for longer-term products if firms need to understand how customers' needs have changed after the point of sale. Industry respondents also said that they may not always have consent from customers to make contact after the product has been sold.

Our response and proposals

- 9.24** We consider that firms should ensure that consumers receive relevant information after purchasing a product or service so that they are able to make properly informed decisions. This is particularly important for products or services where features change over time. For example, where introductory rates come to an end, variations are made to agreements or at other key decision points, firms should provide appropriate information to customers – as prescribed by some of our sector specific rules.
- 9.25** Consumers' circumstances can also change over time, meaning that products and services may no longer meet their needs. This is more likely to happen with longer-term agreements where there is greater scope for circumstances to change. In these scenarios, firms should consider if more frequent communications, to prompt consumers to consider if products or services continue to meet their needs, would support good outcomes. This is particularly relevant where a firm is providing an ongoing advisory service, as there is greater onus on the firm to ensure products meet consumers' needs.
- 9.26** Our proposed draft guidance in Appendix 2 sets out more detail on this.

Testing and monitoring of communications

- 9.27** Many respondents supported the proposal that firms should test their communications. Some firms said they already undertake such testing and that it is integral to their product development processes. However, others questioned the application of the requirement to all types of communication, or noted that widespread testing could be costly, particularly for smaller firms, or could slow down innovation. Most respondents felt that further guidance was needed, including to describe when testing would not be required.

Our response and proposals

- 9.28** Firms may consider their communications to be understandable, but that might only reflect the views of those involved in the design and sign-off of the communication – often legal, compliance and other financial services professionals. For communications to be effective, the key information needs to be understandable by their intended recipients.
- 9.29** To check this is achieved, we want firms to test relevant communications to make sure they comply with the requirements under this outcome and enable consumers to make effective decisions. We expect firms' approach to testing to be proportionate and take into consideration the type of communication, its purpose and context, the needs and types of recipients, and the scope for harm to the intended recipients.

- 9.30** We expect that testing consumer understanding is unlikely to be required for many communications, for example where there is no significant risk of harm to the consumer. Where this is the case, firms will however still need to ensure that communications meet other relevant requirements under this outcome, including that they equip consumers to make effective, timely and properly informed decisions.
- 9.31** We recognise that firms' approach in this area will reflect their capabilities and resources, but all firms should satisfy themselves they have a reasonable basis to believe that their communications are likely to be understood by consumers.
- 9.32** One question firms can ask themselves is whether they are applying the same standards when considering if their communications are delivering good consumer outcomes as they do sales and revenue. For example, where firms conduct consumer testing of communications to determine an effective approach to maximise sales, they should use testing capabilities of an equivalent standard to test other aspects of consumer understanding to ensure good consumer outcomes.
- 9.33** Our proposed draft non-Handbook guidance in Appendix 2 sets out a range of factors a firm should consider when deciding on their approach to testing.

The advice/guidance boundary

- 9.34** Some industry respondents said that, where firms are not authorised to provide advice, there is a limit to what they can achieve under the consumer understanding outcome. For example, they might not be able to provide such personalised communications explaining what is most likely to be in a customer's interests. This could make their communications less effective in helping customers make decisions.
- 9.35** A few respondents suggested that we could work to change the boundary at which it is judged a firm is providing advice. This would allow firms to suggest a course of action to consumers, without this amounting to advice.

Our response and proposals

- 9.36** Our expectations under this outcome, as for other elements of the Consumer Duty, would be informed by the firm's role. If they are not authorised to provide advice, or a customer relationship is on a non-advised basis, we would not expect firms to provide advice.
- 9.37** We are not proposing to change the point at which a communication is regarded as providing advice. While we acknowledge that some consumers might benefit from communications that provide a stronger call to action, we are wary of reducing the consumer protections that currently apply for advice. The rules for advised sales reduce mis-selling and we do not consider it appropriate to allow firms to recommend a course of action without meeting the additional regulatory requirements.

Proposed requirements for the consumer understanding outcome

9.38 Following our analysis of responses to CP21/13, we are consulting on rules that would require firms to ensure they:

- support retail consumer understanding so that their communications:
 - meet the information needs of customers
 - are likely to be understood by the average customer intended to receive the communication, and
 - equip customers to make decisions that are effective, timely and properly informed
- communicate information to retail customers in a way which is clear, fair and not misleading
- tailor communications taking into account the characteristics of the retail customers intended to receive the communication (including any characteristics of vulnerability), the complexity of the product, the communication channel used, and the role of the firm
- provide information to retail customers that is accurate, relevant and on a timely basis
- tailor communications to meet the information needs of individual customers and check the customer understands the information, where appropriate, when a firm is interacting directly with a customer on a one-to-one basis, and
- monitor, test and adapt communications to support understanding and good outcomes for retail customers

Q11: Do you have any comments on our proposed requirements under the consumer understanding outcome and the related draft rules and non-Handbook guidance?

10 The consumer support outcome

- 10.1** We want firms to provide a level of support that meets consumers' needs throughout their relationship with the firm. This means firms' customer service should enable consumers to realise the benefits of the products and services they buy and ensure they are supported when they want to pursue their financial objectives.
- 10.2** This chapter discusses the consumer support outcome. It summarises the responses we received to our proposals in CP21/13 and sets out our analysis of them and the revised proposals we are consulting on.

Responses to CP21/13

- 10.3** In CP21/13, we set out proposals for all firms to consider issues involving their customer service to consumers. These were, in summary, that firms should:
- consider the customer service needs of their customer base
 - design processes in a way that actively takes the consumers' needs into account, and not deliberately design processes that cause undue hindrance or cost on consumers, and
 - monitor the performance of and regularly review processes

CP21/13 Q17: *What are your views on our proposals for the customer service outcome?*

CP21/13 Q18: *What impact do you think the proposals would have on consumer outcomes in this area?*

- 10.4** Most respondents – including consumer representatives, firms and industry bodies – supported the proposals which they thought would provide helpful clarity on regulatory expectations and promote good outcomes. There was also broad support for the general principle that it should be at least as easy to exit a product as it is to enter.
- 10.5** Some respondents provided their own examples of poor practices in this area. These included:
- under-resourced customer service helplines
 - no option to communicate using certain channels, or it being mandatory to communicate via a certain channel
 - difficulty finding key information online
 - a focus on pre-sale, rather than after-sale, service
 - poor hand-off processes where third-party providers are involved in providing customer services, and
 - phone menus, systems or webchats that are difficult to navigate

- 10.6** Some respondents also referred to the competitive benefits of providing good customer service. They noted there is a natural competitive advantage in offering superior service and, if issues are not dealt with promptly and fairly, they are likely to drive more costs into firms' operations with further calls and correspondence. So, there is also a commercial driver to get service right first time for consumers.
- 10.7** Other respondents were less convinced of the benefits of this outcome. Some did not recognise the consumer harms the proposals aim to address, noting that the examples given in CP21/13 did not necessarily indicate conduct issues. We detail more of these points and our analysis below.

Interaction with existing rules

- 10.8** Some respondents thought the proposals were covered by existing rules and our guidance for firms on the fair treatment of vulnerable customers. Others said that they need to be compatible with, rather than replace, specific servicing requirements such as the Dispute Resolution: Complaints (DISP) rules.

Our response and proposals

- 10.9** This outcome will set overarching requirements in relation to the support firms provide their customers and should be read with other rules that cover specific elements of the servicing of customers, such as the DISP complaints handling rules.
- 10.10** Similar to our approach on the consumer understanding outcome, we are proposing to rename this the 'consumer support' outcome (rather than the 'customer service' outcome) to focus on what we want firms to deliver and to make clear that this outcome is not limited in relevance to after-sale service or a particular department within firms. Where we detail responses from respondents in this chapter we refer to 'customer service' as this was the term we used in CP21/13.

The standard of support required

- 10.11** Some respondents queried the level of customer service that would be required and how firms would know if they meet our expectations. Some thought that the general quality of customer service should be left to competitive forces, otherwise there is a risk that the proposals become anti-competitive.
- 10.12** Many respondents commented on the concept of 'undue hindrance', some suggesting it may be too onerous a standard, or too subjective. Others pointed out there are occasions where firms might add further steps into customer journeys for good reasons or in order to protect customers – and this should not be confused with 'undue hindrance'.
- 10.13** Some said we should provide further guidance on the need for firms to avoid consumers incurring unreasonable additional costs. We were also asked to consider that some factors are outside a firm's control (the Covid-19 pandemic was cited as an example).
- 10.14** Some consumer organisations asked if requirements might be different for different groups, such as consumers in vulnerable circumstances, and when and if different channels, eg digital or telephone, might be required.

Our response and proposals

- 10.15** The consumer support outcome aims to set an appropriate standard of support that all firms must provide, so that consumers can use the products and services they buy as anticipated and act in their interests without unreasonable barriers. We agree that firms should be able to compete and offer different levels of support to consumers provided they meet our expectations under this outcome.
- 10.16** We note the 'undue hindrance' language used in the first CP, differs to the language used throughout the Consumer Duty which focuses on the concept of 'reasonableness'. We are therefore proposing to change this to refer to 'unreasonable barriers'. The steps in a customer journey must have a purpose aligned with the Consumer Duty. This can include positive friction, for example to make customers aware of risks or prevent scams. Unreasonable barriers are those which frustrate the customer's use of the product or service without reasonable explanation.
- 10.17** Firms must ensure that the support they provide is designed and delivered to an appropriate standard such that consumers do not meet unreasonable barriers when they want to pursue their financial objectives.
- 10.18** We recognise that exceptional events may affect a firms' ability to maintain its usual level of consumer support. Where this is the case, firms should ensure that they keep consumers informed of events, in line with the consumer understanding outcome. We will consider all the relevant circumstances to assess whether firms have fallen short of our expectations. We remind firms that they must have systems and controls in place to effectively manage their businesses. To support this, in March this year, we set out our final rules and guidance for firms to strengthen operational resilience in the financial services sector.
- 10.19** In general, it should be at least as easy to exit a product as it is to enter. This relates to the means of entry and exit, and consumers should not be required to take unreasonable additional steps or processes to exit a product compared with taking it out. However, we recognise that product agreements may include contractual provisions for early termination – these should be clearly drawn to consumers' attention, as appropriate, in line with our expectations under the consumer understanding outcome.
- 10.20** Firms should consider the appropriate channels to meet our expectations under this outcome. In general, the channel through which a product is provided may be an appropriate channel to deliver support. However, this may not always be the case. Firms should ensure their consumer support meets the needs of consumers in vulnerable circumstances as detailed in our guidance on the fair treatment of vulnerable consumers.
- 10.21** Our proposed draft non-Handbook guidance in Appendix 2 sets out more detail on our expectations under this outcome.

Proposed requirements for the consumer support outcome

10.22 Following our analysis of responses to CP21/13, we are consulting on rules that would require firms to ensure

- they provide an appropriate standard of support to retail customers such that it meets the needs of customers, including those with characteristics of vulnerability
- retail customers can use products as reasonably anticipated
- retail customers do not face unreasonable barriers (including unreasonable additional costs) when they want to pursue their financial objectives, and
- regularly monitor whether they are providing an appropriate standard of support that meets the needs of – and does not disadvantage – retail customers, including those with characteristics of vulnerability

Q12: Do you have any comments on our proposed requirements under the consumer support outcome and the related draft rules and non-Handbook guidance?

11 Consumers in vulnerable circumstances

- 11.1** In this chapter, we discuss how the Consumer Duty aligns with our work to improve outcomes for consumers in vulnerable circumstances and on diversity and inclusion. We summarise the responses we received to CP21/13 on this issue and set out our analysis of those responses and proposals.

Responses to CP21/13

- 11.2** We want firms to consider the diverse needs of their customers. As set out in our guidance for firms on the fair treatment of vulnerable consumers, characteristics of vulnerability may mean some consumers have additional or different needs that may limit their ability or willingness to make decisions and choices. These consumers may be at greater risk of harm. In CP21/13, we explained that vulnerability is a relevant factor for firms to consider in relation to the Consumer Duty.

CP21/13 Q8: *To what extent would these proposals, in conjunction with our Vulnerability Guidance, enhance firms' focus on appropriate levels of care for vulnerable consumers?*

- 11.3** Although many respondents felt that the Consumer Duty proposals were a useful addition to our guidance for firms on the fair treatment of vulnerable consumers, several said it was difficult to see how the Consumer Duty improved protection for consumers in vulnerable circumstances.
- 11.4** Some industry respondents thought that the requirement for firms to test the impact of their communications on consumer understanding could be disproportionate if applied to consumers in vulnerable circumstances, given the broad spectrum of customer vulnerabilities and mass market communications. They asked for example case studies to support firms' understanding of how testing should be used in practice.
- 11.5** One respondent raised the issue of consistency of language. For example, while the guidance on the fair treatment of vulnerable customers refers to fair treatment, the Consumer Principle would refer either to good outcomes or best interests.
- 11.6** Consumer organisations were keen to ensure the consideration of customers in vulnerable circumstances was a central part of the Consumer Duty. Some suggested doing this through a new cross-cutting rule. This could, for instance, require firms to take all reasonable steps to ensure that consumers in vulnerable circumstances consistently experience outcomes as good as other consumers. Alternatively, they said there could be clear, simple, and consistent reference to vulnerability in the supporting rules for each of the outcomes.
- 11.7** Some respondents also said that we should monitor outcomes against the Equality Act 2010.

Our analysis and proposals

- 11.8** We consider that the Consumer Duty should have a positive impact for all consumers, including those in vulnerable circumstances.
- 11.9** The Consumer Duty raises the standard we expect from firms across the board. Our existing vulnerability guidance sets out what firms should do to ensure that customers in vulnerable circumstances experience outcomes as good as those for other consumers – judged against that new standard.
- 11.10** Where the Consumer Duty rules reference consumers in vulnerable circumstances, they do so in a way that is consistent with our guidance for firms on the fair treatment of vulnerable customers. The proposed draft rules embed consideration of these consumers at every stage of the customer journey.
- 11.11** As set out in Chapter 5, this existing guidance will remain relevant to firms in considering their obligations under the Consumer Duty and failure to act in accordance with existing guidance on Principles 6 and 7 which would have amounted to a breach of those Principles, would be likely to breach the Consumer Duty.
- 11.12** When developing our proposals, we have taken account of respondents' concerns. We discuss this further in relevant sections of this paper. For example, in Chapter 7 we discuss concerns that the Consumer Duty may have a negative impact on the availability of products or services and concerns over exclusion for some customers. In Chapter 9, we summarise our proposals for the testing of customer communications
- 11.13** The Equality Act 2010 requires us to have due regard to the need to eliminate discrimination, harassment, victimisation and other conduct prohibited under the Act, and to advance equality of opportunity between people who have a relevant protected characteristic and those who do not. In Northern Ireland, where the Equality Act 2010 has not been enacted, other anti-discrimination legislation applies, and firms should ensure they comply with the applicable legislation. In general, we consider that a breach of the Equality Act 2010 or other anti-discrimination legislation would likely be a breach of the Consumer Duty.
- 11.14** We expect firms to take account of the diverse needs of their customers. They should consider whether their actions are likely to disadvantage a customer or group of customers, whether this relates to:
- customers that share protected characteristics under the Equality Act 2010
 - discrimination under other anti-discrimination legislation, including in Northern Ireland, where the Equality Act 2010 does not apply, or
 - the treatment of customers with characteristics, or in circumstances, which mean they are especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care
- 11.15** Firms should be aware that particular groups of customers, for example who share different demographic characteristics such as age, race, socioeconomic background or characteristics of neurodiversity may have or be more likely to have characteristics of vulnerability. Our Financial Lives research for example shows black, Asian and minority ethnic adults are disproportionately represented among the growing number of consumers in vulnerable circumstances and so at greater risk of financial harm. The

need to give consideration to the needs of different groups of customers therefore forms part of our draft rules.

- 11.16** The approach we propose to take on the Consumer Duty is consistent with the aims of our discussion paper on advancing standards of diversity and inclusion in the financial sector (DP21/2). In DP21/2, we set out the importance of considering the diverse needs of consumers to avoid harm or poor outcomes for customers with different characteristics, and to avoid any unlawful discrimination under the Equality Act 2010. DP21/2 also drew parallels to CP21/13 which already included an expectation that firms should be able to identify when particular groups of customers receive systematically poorer outcomes and should investigate the root cause and what they can do to improve outcomes for those customers least well served.
- 11.17** Respondents to DP21/2 broadly recognised the relevance of diversity characteristics to understanding the needs of different groups of customers. Many firms felt that such considerations were already being given. There was also a desire to embed this thinking as part of wider frameworks and approaches rather than introducing a new or distinct diversity and inclusion regime in relation to the provision of products and services. The proposals on the Consumer Duty in this CP allow us to respond to this feedback.
- 11.18** We will include further feedback and our analysis in our upcoming consultation on advancing diversity and inclusion in the financial sector, expected in Q2 2022.
- 11.19** We are interested in the views of respondents on whether the proposed rules and guidance on the Consumer Duty go far enough in ensuring that firms consider the diverse needs of consumers, or whether there would be support for us to make more explicit reference to diversity and inclusion within each of the main elements of the Consumer Duty, for example where we discuss product manufacture, disadvantaged consumers and tailoring communications. We would also be interested in views on whether it would be useful to provide further rules or guidance on the interaction between diversity characteristics and our existing definition of vulnerability to provide greater clarity around the characteristics needing additional consideration.

Q13: Do you think the draft rules and related non-Handbook guidance do enough to ensure firms consider the diverse needs of consumers?

Q14: Do you have views on the desirability of the further potential changes outlined in paragraph 11.19?

12 A private right of action

- 12.1** In this chapter we discuss a private right of action (PROA) for breaches of the Consumer Duty.

Feedback to CP21/13

- 12.2** FSMA provides that a private person (generally, individuals, not businesses) who has suffered a loss through a firm's breach of one of our rules has a right to take legal action for damages from the firm. We can switch off the PROA when making or changing a rule. Most rules in our Handbook are actionable, but the Principles are not.
- 12.3** The proposed Consumer Duty is unusual in that it is a package – comprising a principle, cross-cutting rules, and outcome rules.
- 12.4** In CP21/13, we explained that, in our view, a PROA is 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, other redress schemes and the Financial Services Compensation Scheme (FSCS).
- 12.5** We asked for stakeholders' views on the PROA specific to the proposals for a Consumer Duty. We also asked to what extent would a future decision to provide or not provide a PROA for breaches of the Consumer Duty have an influence on respondent's answers to the other questions in the CP.

CP21/13 Q21: *Do you have views on the PROA that are specific to the proposals for a Consumer Duty?*

CP21/13 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?*

- 12.6** The PROA is a polarising issue. Most consumer representatives strongly supported it and most industry respondents warned against it.
- 12.7** Most consumer representatives recognised that individual PROA claims were likely to be unusual and unnecessary for most customers, as the Financial Ombudsman would be sufficient and provide the best solution to resolve complaints. They nonetheless felt the 'deterrent' effect would still be worthwhile, with some citing the option of group litigation.
- 12.8** Some consumer representatives said that we should not enable a PROA as it was wrong for us to expect consumers to take on the burden of enforcing our expectations against firms.

- 12.9** Many industry respondents said that the Financial Ombudsman provided a better avenue to resolve complaints for most consumers. They said a PROA might lead more consumers to choose the option of court proceedings, which they said is more burdensome. They said this would outweigh any benefit to the few customers whose claims were so large and technically complex as to genuinely justify court action.
- 12.10** Most industry respondents opposing the PROA also felt that it could exacerbate potential unintended consequences if it were to drive risk averse reactions by firms in ways that might harm consumers, such as through for withdrawal of products.
- 12.11** Several respondents also highlighted the inconsistency of applying a PROA to the Consumer Duty but not to other Principles.

Our response and proposals

- 12.12** If a PROA were made available for the Consumer Duty, it would enable us to establish industry-wide consumer redress schemes under section 404 FSMA where there had been a breach of the Principle. In addition, it would enable the FSCS to pay compensation for breaches of the Consumer Duty, in situations where FSCS protection applies.
- 12.13** A PROA would also allow retail clients to bring court proceedings against a firm that caused a loss through a breach of our Consumer Duty rules. The benefit of this is that it would provide an alternative redress route for consumers, especially those whose losses from a breach exceed the Financial Ombudsman compensation limits. This would be a small proportion of claims, however, especially given the recent increase in the value of award limits within the jurisdiction of the Financial Ombudsman.
- 12.14** Overall, we think that the existing redress framework is likely to be a more appropriate route for almost all consumers to seek redress. It is designed to make it straightforward for consumers to pursue complaints at no additional cost to them, and without the need for representation. Consumers can pursue redress in a way that is low cost and consumer friendly. We, the Financial Ombudsman and other regulatory partners, and firms all play a part in making this an effective system for consumers.
- Firms are required under our DISP rules to investigate complaints competently, diligently and impartially. We act where we have evidence that firms are not resolving complaints effectively. The Consumer Duty, in particular the consumer support outcome, will strengthen the requirements on firms to support their customers (including customers with complaints).
 - Complainants then have the option of referring their complaint to the Financial Ombudsman if they are unhappy with the firm's resolution or if 8 weeks have passed from the date the firm received the complaint. Firms are required to provide clear and comprehensive information about the Financial Ombudsman to eligible complainants.
 - The Financial Ombudsman provides a free, impartial, service for complainants where complaints are assessed on their individual merits, and a decision is reached as to whether the way the firm acted was, or was not, fair and reasonable, considering relevant rules, regulations and law. DISP 3.6.4R also requires the Financial Ombudsman to consider regulator's guidance and standards, codes of practice and where appropriate what the Financial Ombudsman considers to have been good industry practice at the relevant time. Complainants can access this service directly and free of charge.

- We recently consulted on and published final rules on capping the costs of claims management services which means that where consumers do use these services, they will keep a larger proportion of their redress.

- 12.15** As set out in Chapter 1, we are working closely with the Financial Ombudsman to ensure a common understanding of the Consumer Duty within the regulatory family. This is part a strand of work the Financial Ombudsman and FCA are jointly taking forward to continue to ensure cooperation is effective.
- 12.16** We are also working closely with the Financial Ombudsman to improve awareness of the redress system. The Consumer Duty will provide a further opportunity to help consumers 'know their rights'. The consumer support outcome of the Consumer Duty will itself improve firms' approach to redress.
- 12.17** Consumer bodies can also raise issues with us about features of the market that may be affecting consumer interests through super complaints. Under this process, we must investigate and respond to these within 90 calendar days.
- 12.18** We acknowledge a PROA may deter misconduct among firms. However, we do not at this stage think a PROA is necessary to shift firms' incentives to deliver better outcomes for consumers as there are other alternatives for ensuring firms comply. As we set out in the next chapter, the Consumer Duty will be an integral part of how we supervise and take enforcement action to deliver outcomes for consumers.
- 12.19** We also acknowledge the strong concerns of many industry respondents about the potential impact and unintended consequences of attaching a PROA to the Consumer Duty from Day 1. The Consumer Duty is a significant change. As set out in Chapters 1 and 13, implementation is likely to be iterative. Firms and consumers will gain greater understanding of the impact of the Duty over time through supervisory action, complaints and our communications.
- 12.20** We consider that allowing the industry adequate time to embed the Consumer Duty, without the prospect of private action being brought, is important to fully realising the consumer benefits of the cultural and mindset changes the Consumer Duty aims to achieve.
- 12.21** Therefore, while we recognise the potential benefits of a PROA, we are proposing not to provide a PROA for breaches of any part of the Consumer Duty at this time. We expect firms to fully embed the Consumer Duty into their culture, policies and processes and will use our regulatory tools to make sure this happens. We will keep the possibility of a PROA under review, including in light of the evidence we see of firms' embedding of and compliance with the Consumer Duty

Q15: Do you agree with our proposal not to attach a private right of action to any aspects of the Consumer Duty at this time?

13 Implementation timetable

- 13.1** In this chapter, we discuss the proposed implementation timetable for the Consumer Duty. We summarise the responses we received to CP21/13 on this issue and set out our analysis of those responses and proposals.

Responses to CP21/13

- 13.2** Based on our high-level proposals in CP21/13, we asked respondents how long they think would be needed to implement the Consumer Duty.

CP21/13 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?*

- 13.3** Around half of the industry respondents answering this question said they would expect to take around a year. The other half recommended periods of 2 or even 3 years. Others were less clear, calling for firms to be granted a reasonable period to implement the rules, taking account of other regulatory changes currently in train and our aim to change culture in firms.
- 13.4** Consumer respondents tended not to recommend a specific time period but generally called for us to implement the Consumer Duty without delay, giving the industry the minimum possible time. Several said that the time needed may vary by sector.
- 13.5** Respondents raised several issues for us to consider in determining the implementation period. These include:
- Firms are already working on several significant regulatory reforms. These include work on vulnerability, the Senior Managers and Certification Regime (SM&CR) as well as dealing with the ongoing impact of the pandemic and the UK's withdrawal from the EU.
 - The time needed to implement the Consumer Duty is likely to vary from sector-to-sector, or by the size of the firm.
 - As the Consumer Duty aims to change culture, a phased approach might be needed, with one implementation period to introduce new processes and a longer period to embed them.

Our response and proposals

- 13.6** The Consumer Duty is a significant change and a unique regulatory intervention, which:
- affects all retail firms, products and services
 - requires firms to focus on matters of market conduct that involve complexity and judgment – such as fair value, unfairness, and sludge practices, and
 - comes at a time of significant wider market and economic change

- 13.7** As set out in Chapter 4, firms will also have to consider their back books and existing products and services. Some firms will have hundreds of product lines to review. Others will have fewer products but may also have less capacity to do the review.
- 13.8** We have also heard the concerns raised by consumer organisations and firms about the potential unintended consequences of the Consumer Duty. As set out in Chapter 1, we do not expect these consequences to materialise in practice. But we accept the concerns and think that a rushed implementation could lead to a greater risk that they emerge.
- 13.9** We expect the draft rules and non-Handbook guidance published today, if made, will provide enough clarity to allow firms to begin implementation. But we do not rule out additional guidance, or amendments to these rules and guidance, if implementation shows that to be essential.
- 13.10** All of this means that firms need:
- an appropriate implementation period that reflects the factors set out above, and
 - clear expectations from us on how that implementation period is to be used
- 13.11** Based on this, and our analysis of responses to CP21/13, we consider at this stage, firms should have until 30 April 2023 to fully implement the Consumer Duty. We are however keen to hear the views of respondents on this now that they have seen the full package.
- 13.12** As set out in Chapter 1, we expect the implementation of the Consumer Duty to be iterative. We will learn more from firms' implementation and reviews of products and services. As part of this, we are considering whether and how we can give more regular updates on what we are seeing and our views of it.
- 13.13** We are also keen to work closely with firms, trade bodies and wider stakeholders during the implementation period, through new or existing fora. This could, for example, help identify and work through examples of good and poor practice that have relevance for the wider industry and consider how these could be communicated to other stakeholders.
- 13.14** We will also use this time to identify whether there any specific areas of the Handbook that should be amended in future in light of the Consumer Duty.
- 13.15** We expect firms to use the implementation period fully and to be able to demonstrate progress when asked. We expect to carry out work during the implementation period to monitor firms and to assist them. This engagement is likely to include:
- supervisory work to understand firms' implementation plans and progress
 - reviewing implementation plans and proposed change programmes
 - engaging with firms and trade bodies to answer questions and discuss issues they raise, and
 - publishing regular updates on our work with firms and further guidance and case studies

Q16: Do you have any comments on our proposed implementation timetable?

14 Monitoring and the FCA's approach to the Consumer Duty

- 14.1** In this chapter, we provide an overview of how we expect firms to ensure that they are meeting their obligations under the Consumer Duty. We also provide further details of what firms can expect from us in terms of our regulatory approach to the Consumer Duty.
- 14.2** The Consumer Duty aligns with our own transformation. Under the Consumer Duty, firms, and our supervisors, would increasingly focus on the outcomes being experienced by consumers. Firms will need to monitor the outcomes their customers are experiencing and consider whether they are consistent with the Consumer Duty and act where they identify issues or concerns.
- 14.3** Below we have provided some examples of how firms might monitor outcomes and examples of data they could use. The information in this chapter is illustrative. It is not intended to be complete or prescriptive in terms of how firms monitor, nor in terms of the types of data they could use to monitor.
- 14.4** We also provide further detail on our regulatory approach, which would link to our expectations on monitoring. Firms can expect at every stage of the regulatory lifecycle to be asked to demonstrate how their business model, the actions they have taken, and their culture are focussed on good consumer outcomes.

Our expectations of firms monitoring consumer outcomes

- 14.5** Under the Consumer Duty we would expect firms to:
- monitor and regularly review the outcomes that their customers are experiencing
 - ensure that the products and services they provide are delivering the outcomes that they expect in line with the Consumer Duty, and
 - identify where they are leading to poor outcomes or harm to consumers
- 14.6** Monitoring in this way would allow firms to determine whether they are achieving good outcomes, understand which activities and processes work well, and which they need to adapt to improve consumer outcomes.
- 14.7** Firms will need to identify sources of data to enable them to assess whether the outcomes that their customers are experiencing are consistent with their obligations under the Consumer Duty.
- 14.8** Through the monitoring of consumer outcomes, we would expect firms to:
- identify and manage any risks to good outcomes for consumers
 - spot where consumers are getting poor outcomes, and understand the root cause
 - have processes in place to adapt and change products/services or policies/practices to address any risks or issues as appropriate, and

- to be able to demonstrate how they have identified and addressed issues leading to poor outcomes

14.9 How firms intervene in these circumstances would depend on a range of variables, but potential interventions could include discontinuing a product or service, adapting product design/fees/charges, operation or distribution channels, or, where customers have suffered harm, redress.

14.10 The Consumer Duty is intended to improve outcomes for all consumers, and we would expect firm monitoring to identify where distinct groups of consumers get worse outcomes.

14.11 Where monitoring indicates that distinct groups of customers get 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 or other legislation) 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.

14.12 We do not propose to require firms to report on specific metrics, but firms need to ensure that they can demonstrate effectively how they are monitoring the outcomes that their customers receive, identifying harm or risk of harm and addressing the issues that they identify.

14.13 If asked, we would expect firms to be able to explain how they reached a decision on the most appropriate intervention, demonstrate how it has addressed the concerns that they identified, and delivered good consumer outcomes and, if it has not, what they have done further to address the issue.

Governance

14.14 We would expect a firm's board, or equivalent management body, to consider a report from the firm assessing whether it is acting to deliver good outcomes for its customers which are consistent with the Consumer Duty, at least annually.

14.15 This assessment should include:

- the results of any monitoring that the firm has undertaken to assess whether their products and services are delivering the outcomes that they expected
- new and emerging risks to good outcomes for consumers
- any evidence of consumers or groups of consumers who are not achieving good outcomes and an evaluation of the impact and the root cause
- any evidence of consumers or groups of consumers who have characteristics of vulnerability and are not achieving good outcomes
- actions taken to address any risks or issues, and
- whether the firm's future business strategy is consistent with it acting to deliver good outcomes under the Consumer Duty

14.16 Before signing off the assessment, the board or governing body should agree the action required to address any issues which are impacting the firm's ability to act to deliver good outcomes and agree whether any changes to the firm's future business strategy are required.

What firms should monitor

- 14.17** The proposed Consumer Duty would apply to many different sizes and types of firm, so it would not be possible to have a 'one size fits all' approach to monitoring. Firms will need to use their judgement to identify relevant sources of data to give them the insights they need. The type of information, and how frequently it is collected, will depend on the type of firm, their products and target market.
- 14.18** We would expect firms to produce and regularly review management information (MI) on consumer outcomes. This MI should be appropriate to the nature, scale and complexity of their business, considering the size of the firm, the products or services they offer, and the consumer base they serve.
- 14.19** We have not introduced specific record keeping requirements, but we would expect firms to comply with existing rules on record-keeping which require firms to have records that are sufficient to enable us to monitor the firm's compliance with regulatory requirements, including the Consumer Duty.

The types of data/information firms could use

- 14.20** We do not propose to introduce new requirements for firms to regularly report information to us to comply with the Consumer Duty. However, we would expect firms to collect suitable data and information to assess consumer outcomes for themselves. We would expect firms to be able to give us evidence of such actions if we request it.
- 14.21** The type of information firms would collect would vary depending on the firm's size, its client base, and the types of products or services it offers. Firms should tailor their approach to reflect these factors, ensuring that they have sufficient information to be able to identify whether they are delivering good consumer outcomes.
- 14.22** Types of information firms may want to collect include:
- **Business persistence:** analysis of customer retention records – eg claims and cancellation rates and details of why customers leave. This may flag where poor treatment is contributing to high turnover of customers.
 - **Distribution of legacy products/pricing and fees and charges:** review of whether these consumers are more likely to pay particular fees and charges or are getting outcomes that are worse than other customers.
 - **Behavioural insights:** consumer interactions and drop off rates; use of different communication channels including digital; consumer testing of financial promotions. This may flag where firms need to improve policies, processes and systems (eg where there are barriers to consumer engagement or understanding).
 - **Training and competence records:** analysis of records of staff training, including remedial actions where staff knowledge or actions are found to be below expectations.
 - **File reviews:** reviewing customer files and monitoring calls to check for errors and assess if customers received good outcomes (this is particularly useful for sales processes).
 - **Customer feedback:** using formal and informal feedback from customers to identify trends and areas for improvement (eg complaints and comments made to the firm but also comments and complaints on social media).
 - **Numbers of complaints:** trends in numbers of complaints involving poor consumer outcomes through the consumer-firm relationship.

- **Complaint root cause analysis:** investigating complaints fully to understand the cause of customer complaints, not just dealing with the symptoms.
- **Complaints data** (together with ensuring it is easy for consumers to make complaints, and that they can make complaints through multiple channels).
- **Outcome reviews:** the 4 outcomes include requirements for firms to review standards over time. The results of these reviews, together with any action taken would be relevant for consideration of whether the outcomes are being followed.
- **Compliance reports:** review compliance reports to check if standards are being met.
- **Testing customer experiences** through processes such as mystery shopping, auditing, focus groups and deep dives.
- **Allowing staff to feedback honestly** when they think processes could be improved.
- **Reviewing whether processes and policies are effective** in delivering good outcomes for consumers.

14.23 When considering which information to collect, firms should also consider how that information would enable them to assess whether consumers in vulnerable circumstances, or those with protected characteristics, are receiving different outcomes to other consumers.

Q17: Do you have any comments on our proposed approach to monitoring and the related draft rules and non-Handbook guidance?

What firms can expect from the FCA (our regulatory approach)

- 14.24** Several respondents to CP21/13 commented that the success of the Consumer Duty would be dependent on how we supervise and enforce it. We agree that we have a central role in the successful embedding of the Consumer Duty, though it will of course remain a firm's responsibility to ensure it is meeting the requirements of the Consumer Duty at all times.
- 14.25** Following its introduction, the Consumer Duty would be an integral part of our regulatory toolkit. We would increasingly focus on firms demonstrating the outcomes consumers are getting. This would support us in becoming a more data-led regulator and allow us to more quickly identify practices that cause poor consumer outcomes. We would identify and focus on practices that adversely affect consumer outcomes at an earlier stage, before harm becomes widespread.
- 14.26** Our approach would make the Consumer Duty integral to our processes, including our authorisation, supervision, policy and enforcement processes. We outline our approach at each stage below.
- 14.27** At least initially, we plan to focus on tackling the most serious misconduct and intervening before harmful practices become entrenched as market norms.
- 14.28** Across the FCA, in Authorisation, Supervision and Enforcement divisions, we would work to identify areas where the implementation of the Consumer Duty requires swift and decisive interventions.

- 14.29** We also want to take a bolder approach to communicating our expectations to firms, consumer organisations and wider stakeholders, particularly during the implementation period. This could include what we are seeing through any thematic and multi-firm work, as well as our authorisation, supervision and enforcement activities. It could include further examples of good and poor practice, and anonymised case studies.
- 14.30** As set out in Chapter 1, if we proceed with the Consumer Duty, it will drive our prioritisation, firm engagement and portfolio strategies, informed by our understanding of the difference in conduct in each sector against the requirements of the Consumer Duty. This will ensure the Consumer Duty is translated into a reduction in harm as quickly as possible.
- 14.31** We would communicate our expectations and the action we expect within different sectors through all our supervisory and communication channels, including the published results of supervisory and multi-firm work, portfolio and Dear CEO letters, speeches and industry engagement.

Authorisations

- As part of our Gateway assessment for retail permissions, we would expect firms to demonstrate they could meet the expectations of the Consumer Duty.
- We would also expect firms to demonstrate how they would monitor consumer outcomes after authorisation, and the processes they have in place to ensure they amend and adapt their policies and procedures if they identify they are not delivering good consumer outcomes.
- We would only authorise firms who can demonstrate that they meet, and would continue to meet, the requirements of the Consumer Duty.

Supervision

- The Consumer Duty would become a central part of our supervisory approach. We would embed it into our assessment criteria, including our firm and portfolio assessment models.
- We would challenge firms and intervene robustly to prevent harm, expecting them to be able to demonstrate how they achieve good consumer outcomes. Firms can expect to be asked to demonstrate how their business model, their actions and their culture are delivering good consumer outcomes.
- We would co-ordinate our engagement with firms to ensure they are delivering the Consumer Duty, and that firms are clear on our expectations. We would use data, technology and analytics to identify and tackle poor consumer outcomes.
- We would carry out multi-firm and/or thematic work to understand how firms are embedding the Consumer Duty in their day-to-day activities during the implementation period and subsequently. We would communicate our findings on good and bad practices to provide a steer to wider industry, taking further action against individual firms where required.

Enforcement

- Protecting consumers is at the heart of our enforcement work, where we seek to ensure that there are real and meaningful consequences for firms and individuals who do not follow our rules and who cause actual or potential harm to consumers, many of whom may be in vulnerable circumstances.
- We would work collaboratively with all areas of the FCA to detect, triage and act on breaches of the Consumer Duty. Detection is important because it increases public confidence in the regulatory process and shows that misconduct will be uncovered and dealt with.
- Where we identify serious misconduct by firms in relation to the Consumer Duty, we will use our full range of powers to tackle this, including investigating and where appropriate using our deterrent and remedial powers. This could include issuing fines against firms, and securing redress for consumers who have suffered harm through a firm's breach of the Consumer Duty.
- We would ensure that Enforcement staff are trained and equipped to investigate potential breaches of the Consumer Duty, and that we understand what good (and poor) consumer outcomes look like.

15 The Senior Managers and Certification Regime

- 15.1** We expect the focus on acting to deliver good outcomes to be at the centre of firms' strategy and business objectives.
- 15.2** Consumer organisation respondents to CP21/13 suggested, and we agree, that it should be embedded in the same way, and receive the same level of ongoing attention as, financial performance, risk and strategy. These respondents were keen to see clear, senior-level accountability as part of the Consumer Duty.
- 15.3** This will be supported by the interaction between the Consumer Duty and the Senior Managers and Certification Regime (SM&CR). The SM&CR establishes clear senior management responsibility for compliance with the requirements and standards of the regulatory system. The Consumer Duty raises this standard.

Our proposals

- 15.4** We propose to amend our SM&CR individual conduct rules in our Code of Conduct sourcebook (COCON) to reflect the higher standard of the Consumer Duty by adding a new rule requiring all conduct rules staff within firms to 'act to deliver good outcomes for retail customers' where their firms' activities fall within scope of the Consumer Duty.
- 15.5** Where this new rule applies, the existing individual conduct Rule 4, which requires conduct rules staff to 'pay due regard to the interests of customers and treat them fairly', would not apply. So, in effect, the proposed new rule would apply to conduct insofar as it relates to retail activity and Rule 4 would be limited in application to conduct related to non-retail activity. This mirrors the approach we are proposing to take for the Principles where the new Consumer Principle will apply to firms' retail activity and Principles 6 and 7 would continue to apply to non-retail activity.
- 15.6** We are also proposing to include obligations as part of this new individual conduct rule that reflect the Consumer Duty's cross-cutting rules. This means that, where the new rule applies, conduct rules staff will be required to:
- act in good faith towards retail customers
 - avoid foreseeable harm to retail customers, and
 - enable and support retail customers to pursue their financial objectives
- 15.7** Our draft non-Handbook guidance in Appendix 2 also makes clear that the obligations under the new individual conduct rule would apply to the extent that is reasonable and proportionate, meaning the scope of a person's job and their seniority may affect the scope of their duty under the new rule. So, the more senior a person is and the more relevant their role is to the Consumer Duty, the more we will expect of them to deliver good outcomes for customers. We expect firms to provide relevant training to their staff so that they understand their obligations under the Consumer Duty and the individual conduct rules.

Q18: Do you have any comments on our proposal to amend the individual conduct rules in COCON and the related draft rules and non-Handbook guidance?

Annex 1

Questions in this paper

- Q1:** Do you have any comments on the proposed scope of the Consumer Duty?
- Q2:** Do you have any comments on the proposed application of the Consumer Duty through the distribution chain and on the related draft rules and non-Handbook guidance?
- Q3:** Do you have any comments on the proposed application of the Consumer Duty to existing products and services, and on the related draft rules and non-Handbook guidance?
- Q4:** Are there any obstacles that would prevent firms from following our proposed approach to applying the Consumer Duty to existing products and services?
- Q5:** Do you have any comments on the proposed Consumer Principle and the related draft rules and non-Handbook guidance?
- Q6:** Do you agree with our proposal to disapply Principles 6 & 7 where the Consumer Duty applies?
- Q7:** Do you agree with our proposal to retain Handbook and non-Handbook material related to Principles 6 and 7 should remain relevant to firms considering their obligations under the Consumer Duty?
- Q8:** Do you have any comments on our proposed cross-cutting rules and the related draft rules and non-Handbook guidance?
- Q9:** Do you have any comments on our proposed requirements under the products and services outcome and the related draft rules and non-Handbook guidance?
- Q10:** Do you have any comments on our proposed requirements under the price and value outcome and the related draft rules and non-Handbook guidance?
- Q11:** Do you have any comments on our proposed requirements under the consumer understanding outcome and the related draft rules and non-Handbook guidance?

- Q12:** Do you have any comments on our proposed requirements under the consumer support outcome and the related draft rules and non-Handbook guidance?
- Q13:** Do you think the draft rules and related non-Handbook guidance do enough to ensure firms consider the diverse needs of consumers?
- Q14:** Do you have views on the desirability of the further potential changes outlined in paragraph 11.19?
- Q15:** Do you agree with our proposal not to attach a private right of action to any aspects of the Consumer Duty at this time?
- Q16:** Do you have any comments on our proposed implementation timetable?
- Q17:** Do you have any comments on our proposed approach to monitoring the Consumer Duty and the related draft rules and non-Handbook guidance?
- Q18:** Do you have any comments on our proposal to amend the individual conduct rules in COCON and the related draft rule and non-Handbook guidance?
- Q19:** Do you have any comments on our cost benefit analysis?
- Q20:** Do you have any other comments on the draft non-Handbook guidance?
- Q21:** Can you suggest any other examples you consider would be useful to include in the draft non-Handbook guidance?

Annex 2

Cost benefit analysis

Executive Summary

1. This Annex sets out our assessment of the costs and benefits of the proposed Consumer Duty.
2. The Consumer Duty introduces a framework of rules and provides guidance to set out the outcomes we want to see. It will raise general standards across all retail financial services markets. It will do this through:
 - explicitly setting a higher standard of care across all retail markets, informed by our work on things like cognitive and behavioural biases and vulnerability
 - ensuring firms consider the needs of their customers – including those with characteristics of vulnerability – and how they behave, at every stage of the product or service lifecycle
 - applying the key aspects of rules focused on product governance and fair value, which already exist in certain sectors, across all retail sectors, and
 - focusing on matters of market practice (eg sludge practices) that interfere in consumer decision making and, by doing so, cause harm
 - requiring all firms to focus on good customer outcomes and whether those outcomes are met
3. We expect these rules and guidance to enable us to better address harms and the drivers of those harms we have seen in the market. We see consumers currently being harmed in markets, including where they:
 - find it harder to make an informed or timely decision or take timely action to manage their financial affairs such that they are paying more or not getting the best deal for themselves
 - buy products and services that do not meet their needs or objectives, for example because they are too risky or otherwise harmful
 - pay prices which do not represent fair value, where the benefits or quality of service consumers receive are not reasonable relative to the price they pay, or
 - receive substandard treatment during their relationship with a firm
4. Where these harms occur, they lead to poorer wellbeing and impact consumer confidence.
5. The Consumer Duty will lead to a change in firms' behaviour to address these harms and bring about benefits to consumers. As a result, we expect to see significant benefits for consumers and competition arising from our proposals.
6. With better information, and firms' actions more aligned to their interest, consumers are more likely to purchase goods and services which better reflect their needs and

preferences. Therefore, each product will be more frequently purchased by consumers who derive greater value from it, creating a welfare gain.

7. Reducing the complexity and time-intensity of decisions and increasing the expected suitability of purchases reduces psychological stress both at the point of purchase and throughout the period for which the consumer holds the product. This is because consumers can be more assured in the purchases they are making so will not feel as stressed or anxious at the point of sale, and it is less likely that something will go wrong with their product, so they are less likely to need to complain or claim redress. If something does go wrong, the support they receive to resolve the issue will be higher quality.
8. We know that consumers' time is valuable, so saving time in the decision-making process and having less need to complain or seek redress later also creates a welfare gain for them.
9. The reduced probability of individuals experiencing harm, better information and higher standard of care are all likely to enhance consumer confidence and participation in financial markets.
10. We also see advantages from more effective competition because the higher, clearer standard of the Consumer Duty will create a fairer and more consumer-focused playing field on which firms can compete and innovate in pursuit of good consumer outcomes. Competition can more effectively act in the interests of consumers where firms design products and services to meet consumer needs, and consumers are put in a position to make informed decisions and act in their own interests.
11. Setting a new higher standard with healthy competition will also support growth in UK financial services. The international standing of the UK financial sector is based on high standards and we think the reinforcement of these standards will only make the UK more attractive to international investment.
12. It has not been possible to reasonably estimate the scale of benefits due to the broad and pre-emptive nature of our proposals. However, we expect the benefits to be significant because:
 - The proposals affect a wide range of financial services markets which serve a significant number of consumers. The aggregate value of the financial services products consumers currently hold and will buy in the future mean that the improvements we have outlined above will lead to significant benefits for those consumers. For example, in 2020 gross consumer credit lending totalled £240bn, with 85% (44.4m) of adults holding at least 1 credit or loan product or having done so at some point; and 33% (17.3m) of adults held an investment product, and the average value of investible assets was £38,000.
 - We have previously intervened in specific sectors seeking to realise these benefits, and our analysis indicates that those interventions have brought or would bring significant net benefit to consumers. For example, we estimated that our general insurance pricing intervention would lead to discounted savings of £4.2 to £11.2bn over the 10 years after the implementation of the policy through lower prices as a result of more effective competition and the reduction of prices for consumers in the back book in motor and home insurance. We use this example and others to illustrate the scale of potential benefits, recognising that the Consumer Duty may

not deliver the same level of benefits in all sectors, as some sectors already have some equivalent requirements to those in the Consumer Duty.

13. These benefits will only be delivered through firms making lasting changes to their culture, behaviour and processes. Some firms will need to adapt more significantly than others to meet these expectations. If firms adapt their behaviour as we expect, that will lead to higher costs for them at least in the short run and possibly in the longer term.
14. We therefore estimate that the implementation costs will be large. This reflects the scope of the proposals. We have estimated the total one-off direct costs firms may incur to comply with the Consumer Duty to be in the range of £688.6m to £2.4bn, and the ongoing annual direct costs to be in the range of £74.0m to £176.2m. These costs will be shared between the c. 51,000 firms which we regulate. This includes costs to firms to understand the Consumer Duty, perform gap analysis on their policies and processes, make relevant adjustments through change projects, train their staff on the new requirements, IT costs for any system changes and costs to monitor and test consumers outcomes. In addition to the direct costs, we think that firms may also incur indirect costs in the form of potential loss in profits due to changes they make to their product design and prices, but this loss of profits should be transferred to consumers.
15. Taking these expected benefits and costs together, and weighing up the qualitative and quantitative evidence we have, our judgment is that the proposals will be net beneficial.

Introduction

16. FSMA, as amended by the Financial Services Act 2012, requires us to publish a cost benefit analysis (CBA) of our proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made'. If, in our opinion, the costs or benefits cannot be reasonably estimated, or it is not reasonably practicable to produce an estimate, then under s.138I (8), we must include a statement of our opinion and an explanation of what we see as likely costs and benefits arising from the proposed policy.
17. In our view, it is not practicable to quantify many of the impacts of the proposed Consumer Duty. This is because of the inherent nature of the proposals, which are broad, high-level, and designed to prevent future harm from occurring. The potential impact also varies significantly between sectors and firms.
18. Although it is not practicable to reasonably estimate many of the costs and benefits, we have described those that we expect to arise, provided monetary values where it is reasonably practicable to do so (ie for firms' cost of implementation) and explained our rationale where it is not. To demonstrate that we have considered and understood the implications and impacts of our proposals, we have drawn out the likely costs and benefits that will accrue based on:
 - our experience of the harms that we are aiming to tackle, and the potential scale of those harms
 - the costs and benefits of past sector-specific interventions that we are applying more broadly, and
 - the qualitative responses from respondents to our first consultation

19. We explain why we expect the benefits to outweigh the costs and how the proposals advance our operational objectives, but we have not set out an estimate of the net costs and benefits arising from the proposals. Our proposals are based on weighing up multiple factors which include consideration of direct and indirect costs and benefits to firms and consumers, broader implications and reaching a judgment about the appropriate outcomes we expect to see for consumers, considering all impacts.
20. As part of our consultation, we would welcome feedback on this CBA, including the baseline and assumptions we have used, and any additional information which may inform our assessment of the costs and benefits.

Q19: Do you have any comments on our cost benefit analysis?

Responses to CP21/13

21. We considered responses to the following questions in CP21/13 in this analysis:

CP21/13 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?*

CP21/13 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?*

CP21/13 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?*

CP21/13 Q26: *What unintended consequences might arise from the introduction of a Consumer Duty?*

CP21/13 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?*

22. Firms which provided responses to CP21/13, including an impact assessment report from external economic consultants commissioned by the FCA Practitioner Panel, found it difficult to estimate the costs and benefits involved. They did however provide qualitative responses. We have taken these into consideration when estimating the costs and benefits.
23. The key concerns of some respondents were:
- whether we could tackle these harms under our current rules

- that outcome-based regulation would be inherently less clear than detailed rules, and/or that others, including the Financial Ombudsman Service, could take a different interpretation, and
- that higher standards of the Consumer Duty or increased compliance costs associated with it could lead to firms removing products from the market and that this could impact customers with characteristics of vulnerability

- 24.** We do not agree that we can deliver the expected benefits of the proposals without new rules. The Consumer Duty sets a higher standard that goes beyond, and delivers benefits not currently delivered by, our current rules and Principles. As set out in this CBA, we believe these benefits will outweigh the costs.
- 25.** As set out in our Consultation Paper (CP), we are not proposing to introduce unduly high standards that could result in firms reducing access to products and services that meet consumers' needs, and do not expect this to happen in practice as a result of the introduction of the Consumer Duty.
- 26.** We do not consider the proposed Consumer Duty to be inherently more uncertain than our current requirements. We have however set out in our CP (and below) how we propose to mitigate the risk of unintended consequences. While it is not possible to mitigate the risks of unintended consequences completely, we expect these actions to substantially mitigate the risks. We also note that better conduct should reduce regulatory costs to firms over time.

Problem and rationale for intervention

- 27.** In CP21/13, we outlined that we want to see a higher level of consumer protection in retail financial markets, where firms are competing vigorously in the interests of consumers.
- 28.** We see a range of good practices by firms in retail sectors. However, we also see firms that are not consistently prioritising good consumer outcomes and competition does not always work effectively in consumers' interests. We have found cases where firms have not acted in good faith, supported their customers or acted to prevent foreseeable harm. We also know that, even in the absence of deliberate exploitation, consumers' ability to make good decisions can be impaired by various factors, including asymmetries of information, lack of understanding or cognitive and behavioural biases. These factors can be intensified where consumers display characteristics of vulnerability.
- 29.** We have addressed harmful practices over time with our regulatory and supervisory tools, but we want to see more firms getting it right in the first place.
- 30.** The Consumer Duty is intended to set clearer and higher standards across the board for the culture of firms and the conduct we expect of them. It will do this through:
- explicitly setting a higher standard of care across all retail markets, informed by our work on things like cognitive and behavioural biases and vulnerability
 - extending rules focused on product governance and fair value, which already exist in certain sectors, across all retail sectors
 - focusing on matters of market practice (eg sludge practices) that interfere in consumer decision making and, by doing so, cause harm

- ensuring firms consider the needs of their customers – including those with characteristics of vulnerability – and how they behave, at every stage of the product or service lifecycle, and
- requiring all firms to focus on good customer outcomes and whether those outcomes are met

31. This would require all firms to focus on the actual outcomes experienced by consumers, and act in a way that reflects how consumers behave and transact in the real world. This will make it easier for consumers to access and assess information and to act to meet their needs and financial objectives. We will expect firms to monitor the outcomes that their customers are experiencing in practice and act where they are falling short.

32. This is particularly important in today's world where consumers are making more financial decisions, and where they're doing so in a complex and fast-moving landscape.

33. As we set out in the CP, we consider that the Consumer Duty will primarily advance our consumer protection and competition objectives.

- Consumer protection – by raising standards and requiring firms to ensure their products and services are fit for purpose and offer fair value, and helping consumers make effective choices and pursue their financial objectives. By focusing on outcomes, the Consumer Duty will help to ensure that the level of consumer protection is both appropriate for the environment in which consumers currently transact and for ones in which they will transact in the future. The Consumer Duty also supports our more agile and assertive supervision which should mean that, where harm does occur, it is addressed more quickly and so is ultimately reduced.
- Competition – by creating high standards and having a stronger focus on consumer outcomes so that firms can compete and innovate in pursuit of good consumer outcomes and in the interests of consumers. Competition can more effectively act in the interests of consumers where firms design products and services to meet consumer needs, and consumers are put in a position to make informed decisions and act in their interests. Setting a new higher standard will create a level playing field for healthy competition, supporting growth and investment in UK financial services.

Description of harm and drivers of harm

34. We know from experience that markets do not always work well, with competition in some cases not working effectively in consumers' interests. The market failures we have identified are not novel, they are common to many of the interventions we have made in the past. Most prominently, we continue to see information asymmetries in financial markets, and cognitive and behavioural biases that impact consumer outcomes.

35. Financial services products can be complicated and difficult to understand. Often the information required to understand them is difficult to process or does not enable consumers to make an informed decision. This makes purchasing the right, and best value, product or service difficult. Once a consumer has purchased a product or service, this information problem persists, and the consumer may not be able to use it effectively as a result or know whether they are receiving good value from it.

36. This issue is compounded by cognitive and behavioural biases. Consumers cannot reasonably be expected to process every piece of information available to them so tend

to pay attention only to the most prominent or eye-catching pieces. Consumers are also often reluctant to change from the status quo due to the uncertainty presented by change and the possibility of regretting their decision if they encounter problems in the future.

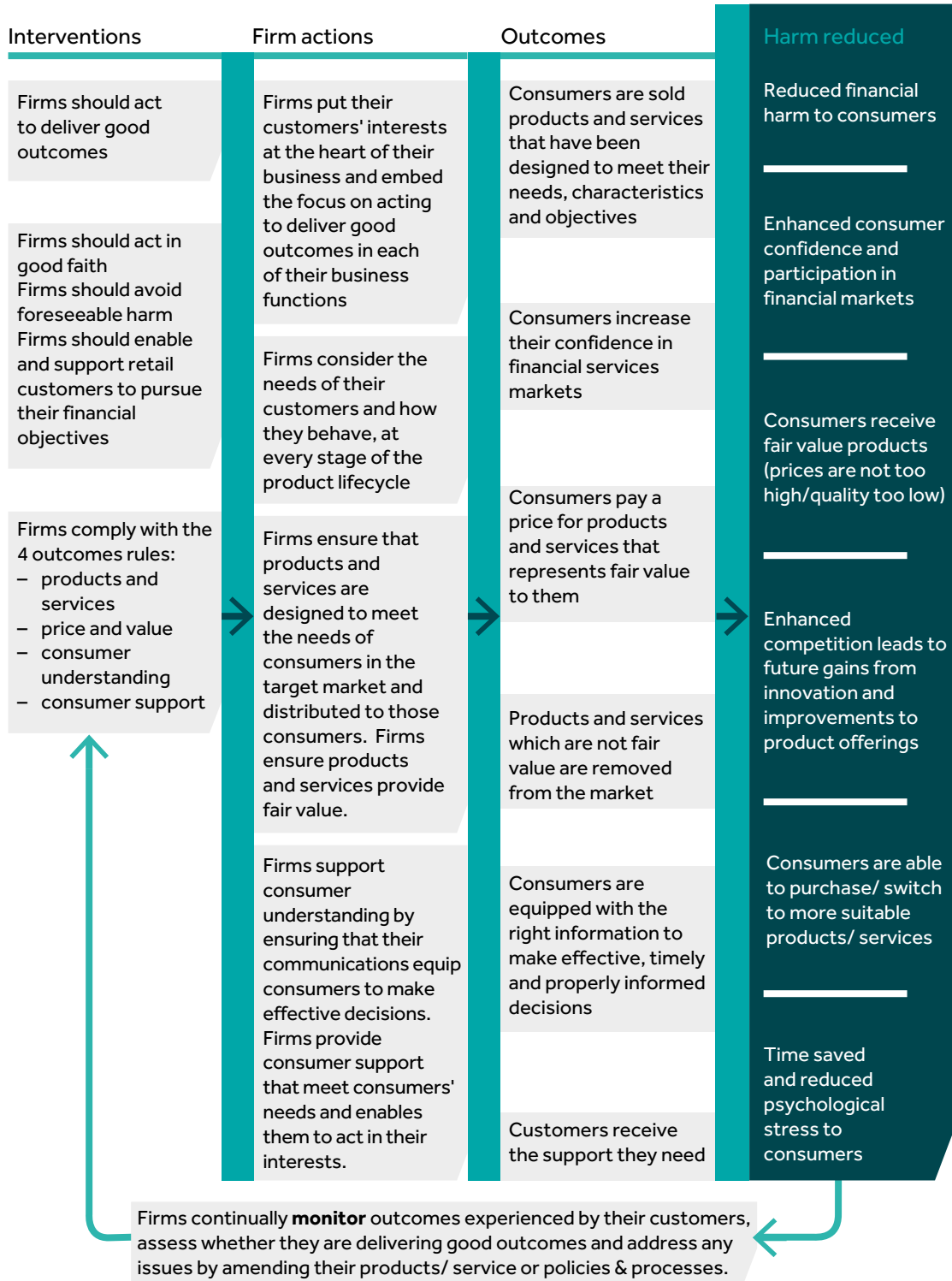
- 37.** We continue to see harmful practices arising from and exacerbating these market failures including:
- Appropriate information about products not being available, or information being made available that doesn't allow consumers to make well-informed decisions
 - Firms providing information which is misleadingly presented or difficult for consumers to understand.
 - Firms hindering consumers' ability to properly assess and use products or services, eg introducing unreasonable barriers in their processes known as 'sludge practices'.
 - Customers being sold products and services that are not fit for purpose in delivering the benefits they reasonably expect, which are not appropriate for the target market, or which are sold outside the target market.
 - Customers being sold products and services that do not represent fair value.
 - Poor customer support 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 loyalty or inertia, cognitive and behavioural biases or characteristics of vulnerability.
- 38.** We have seen firms exploit market conditions to consumers' detriment. This negative impact on consumers and their ability to make good decisions can be exacerbated by consumers' circumstances. Consumers who have characteristics of vulnerability are at greater risk of harm.
- 39.** We also know that, even in the absence of deliberate exploitation, consumers' ability to make good decisions can be impaired by many of the factors above. Where these practices occur, consumers may suffer harm. They may:
- Find it harder to make an informed or timely decision or find it harder to switch, such that they are paying more or not getting the best deal for them.
 - Buy products and services that do not meet their needs or objectives, for example because they are too risky or otherwise harmful.
 - Pay prices which do not represent fair value, where the benefits or quality of service consumers receive are not reasonable relative to the price they pay, or
 - Receive substandard treatment during their relationship with a firm.
- 40.** Where these harms occur, they lead to poorer wellbeing and impact consumer confidence.
- 41.** We have intervened to prevent these types of harm on a case-by-case or sector-specific basis under our current regulations. However, this response is, by definition, reactive, as the process of identifying and mitigating harm can take time. The reactive nature of these interventions affects our regulatory efficiency in the way we meet our consumer protection objective.

Our proposed intervention

- 42.** To address the harms and market failures above, we are proposing to introduce a 'Consumer Duty'. This would set clearer, higher expectations for the standard of care that firms provide to consumers and encourage more effective competition in the interests of consumers. The Consumer Duty would comprise:
- A new Consumer Principle that would replace Principles 6 and 7 for retail business and require firms to act to deliver good outcomes for retail customers
 - Three cross-cutting rules requiring firms to:
 - act in good faith towards retail customers
 - avoid foreseeable harm to retail customers, and
 - enable and support retail customers to pursue their financial objectives
 - Rules relating to 4 outcomes we want to see under the Consumer Duty, in relation to:
 - the governance of products and services
 - price and value
 - consumer understanding, and
 - consumer support
 - Expectations for how firms monitor consumer outcomes and assess whether those outcomes are consistent with their expectation and the Consumer Duty.
 - Detailed non-Handbook guidance giving firms greater clarity on our expectations, including through examples of good and bad practice.
 - Changes to the Senior Managers and Certification Regime (SM&CR) to ensure individual conduct, including senior accountability, aligns with the Consumer Duty.
- 43.** We propose to give firms 9 months after we publish the final rules to implement the proposals. Firms would need to start their implementation changes in good time so that they comply fully with the Consumer Duty by the end of the implementation period.
- 44.** We also intend to use this time to work collaboratively with firms, consumer groups and other stakeholders, for example by identifying and communicating examples of good and poor practice that have relevance for the wider industry which could be communicated to other stakeholders.
- 45.** This package would require all firms to focus on the outcomes experienced by consumers, and act in a way that reflects how consumers behave and transact in practice, to ensure the products/services support consumers to pursue their financial objectives.

46. Figure 1 below outlines how we think the Consumer Duty will drive change in firms' behaviour.

Figure 1: Causal Chain



Baseline and key assumptions

47. Our proposed Consumer Duty applies to all products and services offered to 'retail customers'. The definition of retail customer depends on, and is aligned with, the wider regulatory position in each sector rather than there being a single definition of a retail customer across all markets.

Baseline

48. The impacts of the proposals have been analysed against a baseline, or 'counterfactual' scenario, which describes what would happen in the absence of the proposed interventions (ie we compare a 'future' under the policy, with an alternative 'future' without the policy). The baseline reflects the current rules on how customers should be treated that firms have to comply with, including, for example:
- Principle 6: 'a firm must pay due regard to the interest of its customers and treat them fairly'.
 - Principle 7: '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'.
 - Rules and guidance in the DISP Handbook which set out how firms should 'deal promptly and fairly with complaints'.
 - Existing product governance and fair value rules for financial instruments (PROD 3), insurance (PROD 4) and funeral plans (PROD 7).
 - Existing rules requiring firms to act in the best interests of customers such as COBS 2.1.1R(1) and ICOBS 2.5.-1R.
49. We are not satisfied with the consumer outcomes we are seeing against this baseline. We have seen harms arise from a combination of:
- firms not adequately considering the needs of their customers or prioritising good consumer outcomes as part of their business activities
 - cognitive and behavioural biases which can cause people to misjudge important facts, and
 - risks that arise from the market itself changing with consumers making more financial decisions and doing so in a complex and fast-moving landscape
50. As we set out above, we do not think that the harms we have set out will be effectively addressed without the introduction of our proposed new rules and guidance which sets a higher standard of care across all retail markets and will drive better outcomes for consumers. As a result, our baseline for the harm in retail financial services markets is taken to be the existing level of harm.
51. Through our Transformation Programme, we are changing to become a more forward-looking, data-led proactive regulator. The proposals align with our transformation agenda by setting higher standards that enable us to intervene more quickly when we identify harm, but the benefits of our broader Transformation Programme should not be attributed to this policy. Therefore, the Transformation Programme is reflected in our baseline.

Key assumptions

- 52.** We have provided estimates for direct costs which firms may incur in complying with the Duty using our internal Standardised Cost Model (SCM). It has not been possible to quantify the indirect costs and benefits, but we have provided a qualitative analysis.
- 53.** Firms which provided responses to CP21/13, including an impact assessment report from external economic consultants commissioned by the FCA Practitioner Panel, found it difficult to estimate the costs and benefits involved. They did however provide qualitative responses. We have taken these into consideration when estimating the costs and explaining the benefits.
- 54.** Based on the FCA Register, we estimate the proposed Consumer Duty will apply to up to 51,000 firms (the total number of financial firms regulated by the FCA in July 2021). Practically, there will be some wholesale firms which do not engage in retail business and to which the Consumer Duty will not apply. However, we have taken a conservative approach and scaled up the total costs to the total number of firms we regulate. Where applicable, we use average cost/benefit per firm/consumer in the sector to estimate total costs and benefits. This avoids situations such as finding a net beneficial rule where only a small proportion of consumers benefit. We also present the estimated average costs per firm (by size) for further illustration.
- 55.** We distinguish, where practicable, between one-off impacts and those expected to be realised across a number of years.

Costs and benefits

Summary of costs and benefits

- 56.** In the sections below, we outline the costs and benefits arising from the Consumer Duty.
- 57.** We have estimated the total one-off direct costs firms may incur to comply with the Consumer Duty to be in the range of £688.6m to £2.4bn, and the ongoing annual direct costs to be in the range of £74.0m to £176.2m. This includes costs to firms to understand the Consumer Duty, perform gap analysis on their policies and processes, make relevant adjustments through change projects, train their staff on the new requirements, IT costs for any system changes and costs to monitor and test consumer outcomes.
- 58.** In addition to the direct costs, which we have estimated using our SCM, we think that firms may also incur indirect costs in the form of potential loss in profits due to changes they make to their product design and prices. As set out in paragraph 23, responses to CP21/13 suggested that there could also be indirect impacts to firms in the form of increased legal uncertainty. They suggested that this could be exacerbated by others, such as the Financial Ombudsman Service, taking a broader interpretation of the Consumer Duty than us. We describe these impacts in more detail and explain how we have sought to mitigate these risks, below.
- 59.** We acknowledge that firms will respond differently to the proposals. Some firms will need to adapt their culture, behaviour and processes significantly to meet these expectations while others may need to do less. If firms adapt their behaviour as we expect, that will lead to higher costs for them at least in the short run and possibly in

the longer term. If the Consumer Duty is to have a lasting impact on firms, the costs of making changes will, for some firms, be significant.

- 60.** While it has not been possible to reasonably estimate the benefits due to the broad and pre-emptive nature of our proposals, we have set out the harms that we are seeking to tackle, and how we expect the proposed interventions to tackle those harms and lead to benefits. We have also explained where there are factors which will limit the impact of the proposals in certain areas, such as the existence of similar or equivalent standards in some sectors. We expect all potential benefits to be ongoing.
- 61.** The benefits that we expect to see for consumers include:
- improved matching of products and services to consumers' needs
 - reduced need to seek compensation or redress
 - time saved
 - reduced psychological stress
 - reduced probability of individuals experiencing harm, and
 - enhanced customer confidence and participation in financial markets
- 62.** We also see advantages for most firms, with the higher, clearer standard of the Consumer Duty creating a level playing field on which firms can compete and innovate in pursuit of good consumer outcomes. This will be reinforced by our own activities which will enable us to more quickly identify and address poor practices that impact consumer outcomes.
- 63.** We have previously intervened in specific sectors seeking to realise these benefits, and our analysis indicates that those interventions would bring significant net benefit to consumers. We use some of these examples to illustrate the scale of potential benefits below, recognising that this intervention may not deliver benefits in sectors which already have equivalent requirements. However, restating these obligations will encourage firms to consider the extent to which they already comply and the manner in which they comply. This renewed focus could bring about benefits in all sectors.
- 64.** Our judgment, explained below and informed through consultation with firms, trade bodies, consumer groups and our own industry and consumer panels, is that the proposals will be net beneficial.

Costs

65. We set out the framework used to assess the costs which could arise from the proposals. We considered:

Costs	
Direct costs	Indirect Impacts
To firms: - Costs incurred by firms for compliance with the Consumer Duty. The majority would be one-off with some ongoing costs. - We provide lower and upper bounds of the likely level of costs using our SCM.	To firms: It is not possible to reasonably estimate indirect impacts. Instead, we describe the likely indirect effects of our proposals and explain the factors which will mitigate the impact and reduce the indirect cost to the industry.
To consumers: We do not consider there would be any direct costs to consumers from the proposals, unless firms lengthen consumer journeys to comply with new requirements.	To consumers: - We consider possible impacts on: - customer journeys - availability of financial products and services - increased costs being passed through as higher prices.
To FCA: Authorisation, supervision and enforcement activities to ensure firms embed the Consumer Duty and monitor consumer outcomes will be a priority for the FCA.	

Direct costs

Direct costs to firms

66. When the Consumer Duty is introduced, firms will incur costs to familiarise themselves with the new expectations. They will need to perform a gap analysis to assess the changes they need to make to comply with the new requirements. They will incur costs to implement and update operating processes to comply with the Consumer Duty. Firms will need to monitor on an ongoing basis, and review at least annually, whether they are meeting their obligations. There will be training costs involved to ensure that staff are clear what is required of them. It is important to note that firms can take a variety of actions to ensure compliance with the Consumer Duty but that it will require a significant shift in activity for some firms, which may lead to greater costs.
67. Most of these costs will be one-off as firms adjust their systems, processes and policies, but some costs may continue beyond the first year as firms adapt to meet the standards on an ongoing basis. This may include the cost of reviewing existing products on a forward-looking basis, testing of communications and adjustment and more customer services staff.
68. We used our SCM to give the lower and higher estimates of direct compliance costs which firms may incur as a result of the Consumer Duty. This is to give a sense of the order of magnitude of costs involved. This model factors in different costs for firms of different sizes and estimates some common cost elements of a CBA. As set out above, we would welcome feedback on our estimates, and any further data that firms can share on their estimation of the costs.

Why we took this approach

- 69.** The proposals are high-level and cross-cutting, and we assume all firms on the FCA Register will be affected. Using a firm survey to gather data on costs would require an extensive data request to get an adequate sample size across all the different sectors and business models for results to be representative. From experience, we know that firms can find it challenging to provide a view of the costs involved in implementing proposals and do not always answer survey questions consistently.
- 70.** As a result, we concluded that an extensive cost survey conducted before we consult on detailed rules may not bring in robust cost estimations from firms. This was reflected in the responses we received to CP21/13 and discussions with stakeholders. Instead, we have used internal FCA data gathered from previous CBAs which provides sensible estimates for the types of compliance costs, augmented by internal expertise, desk-based research, and discussions with firms and trade bodies. This is in line with our approach to CBA as set out in 'How we analyse the costs and benefits of our policies.'
- 71.** We sense checked our costs estimation using the SCM with the responses received from firms for CP21/13 where we have asked firms to provide us information about:
- the extent firms' existing culture, policies and processes enable it to meet the proposed requirements, and
 - what changes firms envisage needing to make, and any early indication of the scale of costs involved
- 72.** The main categories of direct costs to firms (most will be one-off with some ongoing annual costs) which we have attempted to estimate using the SCM are:
- **Understanding the Consumer Duty:** firms will incur costs to read through, familiarise and understand the proposed rules and guidance and to identify and analyse the changes they need to make to meet the expectations (gap analysis).
 - **Training and development:** firms will incur costs in training and developing their staff by adapting and developing existing programmes to embed the Consumer Duty. This could include external or in-house training, or purchasing e-learning courses, as well as the opportunity cost of staff time spent on more informal training or knowledge sharing sessions.
 - **Change project costs:** these arise from firms implementing changes to existing policies and processes, and reviewing product design and pricing, and establishing the necessary monitoring to meet the standards under the Consumer Duty over the implementation period. The key areas where we envisage firms changing their behaviour and bringing benefits to consumers as a result, are:
 - **Products and services design:** costs could arise from firms reviewing product and service governance processes and making any necessary changes. For example, this could include defining clear target markets for products and services and taking account of the needs, characteristics and objectives of customers in target markets. Firms will also need to set up processes for ongoing governance and incur costs from reviewing existing product lines. Some firms will not incur material costs for this because they would already have made changes to comply with existing rules in specific sectors, eg firms offering certain investment products and insurance.
 - **Price and value:** firms may have to incur costs to review their pricing models to ensure that prices of their product and services offer fair value to consumers. We recognise that not all firms will need to incur such costs as some may

already understand the impact of their pricing models. Firms will also incur costs from reviewing existing products and services to ensure they represent fair value.

- **Customer support:** firms will incur costs if they need to adapt customer service processes and systems to meet the expectations under the Consumer Duty. This could also include IT systems changes and increased staff costs such as staff training. For instance, this could be needed to improve customer experience by enabling consumers to carry out certain actions via a website or mobile app rather than spending time on the phone with a customer service representative and enabling customer service representatives to focus on requests of a more complex nature, or by customers who do not use websites/apps. These costs are estimated separately under 'IT system costs'.
- **Customer understanding:** if existing firm communications do not meet the standards under the Consumer Duty, addressing this could give rise to certain costs. For instance, firms may need to introduce new processes to review the language used in key documents, consider how to tailor communication channels or the timing of communications to ensure consumers' understanding and enable consumers to make timely decisions, and test outcomes. Firms may need to set up new processes to test consumer understanding.
- **Monitoring and evaluation:** firms could incur costs through efforts to monitor and evaluate their compliance with the expectations of the Consumer Duty. Firms may use feedback from customers and staff or carry out reviews of processes and policies. This may also include time spent by board and executive committee members to review and discuss firm approaches to the Consumer Duty.
- **Potential changes to customer journeys:** we think that some sales processes, especially those related to more complex products and services, may require additional staff to ensure consumers' understanding of communications which would lead to higher staff costs for firms.
- **IT systems costs:** firms will need to make changes or adjustments to their IT systems when they implement the new proposals. For example, firms might need to capture, analyse and store data or management information to help them monitor and demonstrate their adherence to the duty. There could also be some IT systems changes needed to improve customer experience, as outlined above.

73. Our estimates for one-off direct costs to firms are summarised in Table 1 below. We have taken the approach of showing the lower and higher estimates of what the costs might be. The cost scenarios capture different complexity of change and IT projects (with a certain level of project complexity translating into a given project duration based on a fixed set of assumptions within the SCM). The key drivers of project complexity derive from firms' individual circumstances such as sector, maturity, expertise and, importantly, the presence of a back book, which will be a material factor in the scope of the review each individual firm should undertake, therefore increasing one-off costs.

74. However, we do not expect a similar degree of variability with regards to (i) familiarisation costs, for which we expect a 'standard' size team (as outlined in Annex 1 of our approach to CBA document) would be required to read the CP, legal instrument and guidance given its complexity and (ii) training costs, for which we assume that 2 out of 3 employees (out of a total of 1.1m, based on 2020 figures reported by Statista)

will require 2 hours of bespoke training. The key underlying assumptions for the cost scenarios are outlined below:

- Low case: Change and IT projects are assumed to take 60 / 40 / 2 days per firm (for large / medium / small firms respectively) to be implemented. The resulting project cost is a function of project length and team size (underlying assumptions for the latter are available in our approach to CBA document).
- High case: For large and medium firms, change and IT projects are assumed to take 180 / 150 days to be implemented. For small firms, it is assumed that change and IT projects will take between 6 and 20 days, to reflect our expectation that there will be variability in past products and services portfolios within the small firms' population. This case covers firms with a back book, for whom the requirement to undertake a review of existing contractual relationships with customers will mean significantly higher time spent and costs incurred.

Table 1a: Total lower and higher estimated one-off direct costs to firms (£'000)

Low case					
Total costs ('000)	Familiarisation & gap analysis	Training	Change projects	IT projects	Total
Large firms	3,402	30,596	36,952	39,354	110,304
Medium firms	8,527	21,557	140,132	76,012	246,228
Small firms	49,119	99,125	98,689	85,170	332,103
Total	61,048	151,278	275,773	200,537	688,635

High case					
Total costs ('000)	Familiarisation & gap analysis	Training	Change projects	IT projects	Total
Large firms	3,402	30,596	110,142	118,063	262,203
Medium firms	8,527	21,557	518,857	285,046	833,988
Small firms	49,119	99,125	577,262	553,604	1,279,110
Total	61,048	151,278	1,206,262	956,713	2,375,301

Table 1b: Average (per firm) one-off direct costs to firms (£'000)

Low case					
Average costs per firm ('000)	Familiarisation & gap analysis	Training	Change projects	IT projects	Total
Large firms	18.5	166.3	200.8	213.9	599.5
Medium firms	6.6	16.7	108.8	59.0	191.2
Small firms	1.0	2.0	2.0	1.7	6.7

High case					
Average costs per firm ('000)	Familiarisation & gap analysis	Training	Change projects	IT projects	Total
Large firms	18.5	166.3	598.6	641.6	1,425.0
Medium firms	6.6	16.7	402.8	221.3	647.5
Small firms	1.0	2.0	11.7	11.2	25.8

75. In reality, the cost incurred by each firm will vary depending on the actions taken to implement the Consumer Duty. We think that costs will be correlated to the size of firms, with large firms incurring more on average compared to the medium and small firms. Costs may also vary depending on the sector firms are in. Whilst we envisage all firms having to incur costs for a gap analysis to identify areas which they would need to make changes, we think that firms in sectors where existing rules with similar policy intent are in place (eg general insurance and protection where PROD rules are in place and authorised fund managers where value assessment rules are in existence), may not need to incur as many costs for change projects as compared to firms in other sectors. However, we would expect them to incur costs to ensure compliance with other aspects of the Consumer Duty. Actual costs incurred by firms may be lower or higher than the average costs shown in Table 1.
76. In the long run, better conduct should reduce regulatory costs to firms through fewer complaints and lower redress, and lower regulatory costs in relation to the Financial Ombudsman Service and the Financial Services Compensation Scheme (FSCS).
77. We also assessed **ongoing direct costs** to firms.
- We used the SCM to estimate the direct costs firms may incur on an ongoing basis. We have identified 2 main areas where firms will likely face recurring costs. We assumed that the monthly time requirement for each of these areas will be 5% of the initial (one-off) project duration, and that each area will be overseen by 1 FTE (ie 2 FTE in total). The main drivers of ongoing costs to comply with the Consumer Duty are:
 - Actions to deliver improvements under the products and services and price and value outcomes and, to a lesser extent, consumer understanding and customer support outcomes. For example, we expect firms to perform regular fair value assessments over the lifetime of their products and services to ensure that they continue to represent fair value. This ongoing assessment based on customers' circumstances will require additional staff time and costs. We think that, whilst the majority of the costs in relation to communication and customer service would be one-off as firms make the step change to ensure compliance with the Consumer Duty, there will be some ongoing costs to check that they continue to meet expectations. The Consumer Duty's headline Principle and cross-cutting rules are broader than just the 4 outcomes, in that they provide an overarching requirement of behaviour. However, the change projects driven by the 4 outcomes will touch on the key aspects of the customer relationship. We therefore do not see significant incremental costs associated with the cross-cutting rules and headline Principle.
 - Monitoring and evaluation: we expect incremental time, and related salary cost, to arise in relation to data collection, storage and analysis to support the monitoring of consumer outcomes under the Consumer Duty.
 - We do not expect that there will be an incremental training cost on an ongoing basis, given the new guidance will either clarify or supersede existing rules without requiring additional learning time.
 - In addition, we acknowledge that changes to product or service offering and pricing by firms may lead to loss of revenue and profits for firms on an ongoing basis. This potential reduced profit by firms is not practically possible to quantify and could vary significantly between firms in and between sectors so we have not attempted to provide estimates of it.

- Table 2a shows the estimated low and high total ongoing costs and table 2b shows the estimated low and high average ongoing costs per firm. Like the one-off costs, these estimates of ongoing costs will vary between firms due to differences in business models, number of products/services and sectors. We would expect firms in sectors where similar rules are in place to incur less cost.

Table 2a: Total annual ongoing direct costs to firms (£'000)

Total costs ('000)	Low case	High case
Large firms	5,272	10,323
Medium firms	25,648	50,159
Small firms	43,081	115,723
Total	74,001	176,205

Table 2b: Average (per firm) annual ongoing direct costs to firms (£'000)

Average costs per firm('000)	Low case	High case
Large firms	28.6	56.1
Medium firms	19.9	38.9
Small firms	0.9	2.3

Direct costs to consumers

78. We do not think there would be any direct costs to consumers from the proposals unless firms seek to lengthen consumer journeys to comply with the Duty (eg to improve legal defences, firms could ask consumers for more info/docs, more confirmations of understanding, etc).

Direct costs for FCA

79. The implementation of the proposed Consumer Duty will require focused activities in areas such as authorisation, supervision and enforcement which will involve costs for the FCA. However, all work will be taken forward within existing resources. This involves an opportunity cost for the organisation, but we expect the Consumer Duty to support our wider priorities and align with our ongoing Transformation Programme.

Indirect impacts

80. In addition, there may be indirect costs arising from the Consumer Duty. However, indirect costs and wider market changes are more difficult to assess than compliance costs. Firms and consumers' reactions tend to be uncertain, and it is often not feasible to estimate effects that involve the uncertain reactions of multiple parties. This is especially the case for indirect effects further removed from the initial intervention. We have not therefore quantified indirect impacts, as it is not possible to reasonably estimate them. We have instead described the potential indirect effects of our proposals, most of which were highlighted by respondents to our first consultation. We explain the extent to which we think they might materialise, and the steps that we have taken to mitigate the impact.

Indirect costs to firms

81. Respondents to CP21/13 raised concerns that the Consumer Duty may result in unintended consequences and/or legal uncertainty for firms, for example if the Financial Ombudsman took a wider interpretation of what the Consumer Duty required than us. Firm responses indicated that this perceived increase in legal risk could lead to higher compliance costs for firms and/or risk aversion in relation to certain customer

groups or product areas. Respondents also said there could be further impact on firms' costs, eg further constraints on the availability of professional indemnity insurance leading to price increases or firms unable to get cover due to reduced insurers' risk appetites which may impact firms' ability to trade.

82. We understand firms' concerns around a lack of legal certainty leading to risk aversion and, in the CP, we set out a number of ways we have sought to address these concerns such as:

- providing greater clarity for firms by including examples of behaviour that will be more or less likely to satisfy the Consumer Duty
- providing further clarity on 'reasonableness' and evidential requirements
- providing assurance that implementation will not be retrospective
- working closely with firms throughout the implementation period to help them understand and embed the Duty
- working closely with the Financial Ombudsman to ensure that it is aware of our expectations of firms, and
- confirming our intention not to apply a Private Right of Action at this time

83. We recognise that some respondents felt that the new rules could have a negative impact on **competition**, with higher costs potentially leading to a reduction in the number of firms competing in the market. We do not agree. Although we are setting a higher standard of care across all retail markets, we consider our expectations to be in line with good business practice and anticipate the cost of implementation to be proportionate to the benefits. We do not expect the new Consumer Duty to disincentivise firms from engaging in healthy competition to provide good products and services that meet consumer needs. We think our proposals will change the nature of competition, not the intensity of competition in the relevant markets. We expect the Consumer Duty will create a fairer and more consumer-focused playing field on which firms can compete and innovate in pursuit of good consumer outcomes.

84. Competition can more effectively act in the interests of consumers where firms design products and services to meet consumer needs, and consumers are put in a position to make informed decisions and act in their interests. The international standing of the UK financial sector is based on high standards and we think the reinforcement of these standards will only make the UK more attractive to international investment.

85. There could be a potential loss of profit for firms resulting from the introduction of the Consumer Duty, eg from making changes to their pricing and product design, withdrawing from certain parts of the market or even possible market exit due to increased perceived legal risk. However, given the uncertainty, it is not possible to reasonably estimate potential lost profits from changes in firm behaviour.

Indirect costs to consumers

86. As described above, firms have indicated strongly that there could be a perceived increase in regulatory risk which may lead to firms taking decisions not to offer products for particular customer groups or to pull back from certain product areas. This could, in theory, lead to reduced access to products or services by some consumers and reduced consumer choice. In addition, firms which are facing higher direct costs (as a result of complying with the Consumer Duty) could pass the costs down through increased prices for consumers, reduce quality (hollowing-out products or services) and even possibly exit the market, which will affect consumer outcomes. However, as set out in the CP we are not proposing to introduce unduly high standards

and have taken steps to mitigate these risks. We do not expect firms to reduce access as a result. We acknowledge that such risks may exist, but we expect the proposals to lead to fairer and more consumer-focused competition by firms which will act as a deterrent and discourage excessive increases in prices or reduction in quality.

87. We set out in the distributional analysis below where there may be transfers between different groups of consumers.

Broader impacts

88. Some respondents have argued that there could be wider implications of the introduction of the Consumer Duty if consumer groups most at risk of losing access to certain products or services correlate with those with the lowest incomes and/or most likely to display characteristics of vulnerability. They argue that this is likely to impact negatively on wider policy measures to promote financial inclusion.

89. As set out above, we do not expect the rules on which we are consulting to restrict access to products in the way feared by some respondents. The Consumer Duty is underpinned by reasonableness, and we do not expect it to lead to unreasonably high standards resulting in retrenchment. Indeed, we expect the Consumer Duty to be beneficial in helping further embed consideration of the needs of customers at risk of being disadvantaged by having characteristics of vulnerability in firms' work. As set out earlier, we think that only in very extreme cases will firms decide to withdraw an offer of a product or service and then we expect competing firms to enter to fill the gap in the market.

Benefits

90. This section sets out how we expect the new Consumer Duty to lead to benefits for consumers.
91. We want to drive improvements by raising general standards across all retail financial services markets. We are introducing a framework of rules and providing guidance to set out the outcomes we want to see. We expect these rules and guidance to enable us to better address harms we have seen in the market. This will lead to a change in firms' behaviour and bring about benefits to consumers.
92. We estimate that the implementation costs will be large, but this reflects the scope of the proposals and the scale of the potential benefits given the size of the markets. As data from the Financial Lives survey and the Bank of England demonstrates, in 2020:
- 97% (50.6m) of adults had a current account
 - 65% (33.9m) of adults had a savings account and deposits totalled £1,764bn
 - gross consumer credit lending totalled £240bn, with 85% (44.4m) of adults holding at least 1 credit or loan product or having done so at some point
 - outstanding mortgage lending was £243bn
 - 33% (17.3m) of adults held an investment product, and the average value of investible assets was £38,000
 - 58% of UK adults had a private pension in accumulation and 22% had decumulated/ accessed a private pension
 - 88% of UK adults held at least 1 insurance product and the total value of non-life gross premiums paid in 2019 was £87bn

93. We have also highlighted examples of previous interventions that help illustrate:

- the harm we are seeking to address
- the potential benefit of firms getting things right in the first place, and
- why we think the scale of benefits exceeds the potential costs

94. While it is not possible to reasonably estimate the benefits due to the broad and pre-emptive nature of our proposals, the size of these markets and the harms we highlight in this section show the potential for harm where firms get things wrong. Given the number of consumers interacting with these markets, and the value of the financial services products they currently hold and will buy in the future, we expect that the improvements we have outlined in the benefits section will lead to significant net benefits for consumers.

95. We have also used data from various sources including our Financial Lives survey to provide scale to the ongoing harms we observe.

96. We have also explained those factors which may result in a different impact of the new Consumer Duty between sectors, for example the existence of equivalent standards in certain sectors. We expect all potential benefits to be ongoing. We set out below how the four outcome rules will deliver the benefits. We have not separately described the benefits of the cross-cutting rules. This is because:

- The rules relating to the 4 outcomes we want to see cover the key elements of the firm-customer relationship that firms will need to consider in complying with the Duty, and these will need to be interpreted in light of the cross-cutting rules. The benefits associated with these rules are therefore the converse of the costs (eg systems changes) highlighted in the previous section.
- These rules help deliver the outcomes described by the cross-cutting rules. For example, improvements to customer support and communications will make it easier for firms to 'enable and support customers to pursue their financial objectives'.

97. There will however be general benefits associated with the cross-cutting rules, for example in circumstances not envisaged in the 4 outcome rules.

Changes to competitive dynamics

98. We outline below how we expect our intervention to reduce information asymmetries, compel firms to act in consumers' interests and reduce the effect of cognitive and behavioural biases. By mitigating these market failures, we expect the following benefits to arise:

- improved matching of products and services to consumers' needs
- reduced need to seek compensation or redress
- time saved
- reduced psychological stress
- reduced probability of individuals experiencing financial loss or harm, and
- enhanced customer confidence and participation in financial markets

99. These benefits primarily advance our operational objectives of securing an appropriate degree of consumer protection and promoting effective competition in the interests of consumers.

100. Stopping firms from selling poor value and poorly designed products is likely to lead to profit margins on these types of products falling, so the price reflects the quality. Where this leads to products being withdrawn this is only likely to be where they are not in the interest of customers.
101. With better information, and firms' actions more aligned to their interest, consumers are more likely to purchase goods and services which better reflect their needs and preferences. Therefore, each product will be more frequently purchased by consumers who derive greater value from it, creating a welfare gain. We know that consumers value their time, so saving time creates a welfare gain for them, too. Reducing the complexity and time-intensity of decisions and increasing the expected suitability of purchases reduces psychological stress both at the point of purchase and throughout the period for which the consumer holds the product. This is because consumers can be more assured in the purchases they are making so will not feel as stressed or anxious at the point of sale, it is less likely that something will go wrong with their product and, if it does, the support they receive to resolve the issue will be higher quality.
102. We expect another set of net benefits stemming from enhanced competition. In the immediate term, better informed consumers will be better positioned to identify fair value products from poor value products. In the longer run, the Consumer Duty will clarify expectations for how firms treat consumers throughout their lifetime and give us greater scope to stop firms from mistreating consumers. This means firms will be incentivised to compete by improving their whole product offering, both the price and non-price aspects, with reduced risk that those firms that seek to take advantage of informational asymmetries and consumers' cognitive and behavioural distortions will unfairly take customers away from them. Therefore, we would expect more innovation and improving quality of service.
103. We set out below how we expect our proposals to address harm and lead to benefits. We have used past interventions to illustrate how we have addressed similar harm in the past, and how our interventions have led to significant projected net benefits. Clearly, these examples are not the benefits of the Consumer Duty as the interventions were carried out under existing rules, but they illustrate how stopping harms of this type can lead to large benefits. We expect the Consumer Duty to help us replicate and improve upon the success of sector specific interventions across all retail sectors.
104. Intervening as we have in the past has been effective at resolving these harms, however the process can take time, allowing poor practices to become entrenched and the cumulative impact of the harm to grow as we undertake the required process to stop it. As we continue to see the features that cause this harm present across other retail financial services markets, introducing the Consumer Duty is necessary to help stop the harm from occurring in the future, and to ensure we can intervene quickly where harmful practices remain.

Products and services are designed to meet the needs, characteristics and objectives of consumers in the target market and prices provide fair value for consumers leading to improved matching of products and services to consumer needs, time saved and reduction in the probability of harm

105. We know that some consumers lack confidence when it comes to financial services and can find it difficult to find products which meet their needs. According to Financial Lives survey data, in October 2020, 14.6m adults (28%) had a low confidence in their ability to manage their money, 7.1m adults (14%) did not consider themselves to be

confident and savvy when it comes to financial services and products, and 15.9m (30%) felt they had a low knowledge about financial matters. Adults with low financial capability are more likely to suffer harm: 57% of adults with low financial capability felt nervous, overwhelmed or stressed speaking to financial services providers or found it hard to find suitable financial products or services; 37% struggled to assess financial products or found it difficult to shop around; while 16% had fallen into debt which might have been avoidable if they had understood their options better.

- 106.** As a result, firms need to create an environment in which consumers can make decisions in their interest and pursue their financial objective, yet we continue to see examples of products that are designed with:
- aspects that exploit cognitive and behavioural biases/features that make it difficult for consumers to assess whether they are right for their needs, and
 - distribution strategies that do not always effectively target products and services towards the right consumers
- 107.** In the past, where we have seen poorly designed products with these features and distribution strategies, it has led to harm for consumers, and we have intervened and introduced new rules in specific sectors to mitigate this harm. In these cases, we have estimated that the impact of our intervention will have significant net benefits for consumers of those products.
- 108.** For example, we intervened to encourage firms to stop credit card debt becoming persistent. This was because catalogue, store and credit cards were not the best tool for long-term borrowing, with customers only making the minimum payment for extended periods. When intervening we estimated benefits to credit card customers to peak at between £300m to £1.3bn a year.
- 109.** We also found evidence of harm occurring as a result of the poor design and distribution of insurance products. The GI add-ons market study found that firm profits on some add-on products were high. For example, intermediaries reported that profits in excess of 70% were being earned on add-on home emergency insurance. We concluded that stronger product governance measures could have reduced overpayment in these and other insurance markets. To illustrate the scale of the potential benefit of the measures we put in place to address these issues, we highlighted that there has been £27.1bn in redress and compensation paid to date as a result of PPI mis-selling. If the product governance measures had been in place at the time, for each 0.1% reduction in mis-selling as a result of improved product design and target market focus, there would have been a reduction in consumer loss of £27.1m.
- 110.** We also concluded that setting standards for sales processes and disclosure was not always effective in preventing detriment arising from the sale of unsuitable investment products and that product governance rules were necessary as part of the implementation of the second Markets in Financial Instruments Directive (MiFID II).
- 111.** We continue to see examples of poor value products and opaque pricing practices, which are not meeting consumers' needs. For example, Financial Lives survey data tell us a quarter (24%) of adults in February 2020 pay a fee for their current account and, while over half (57%) of these adults said the fee offers good value for money, 1-in-10 (9%) felt it offers poor value for money. The data also shows that 1-in-3 consumers (34%) believe that insurance companies rarely pay out, up from around 1-in-5 (22%) in February 2020.

- 112.** Our general insurance pricing practices market study found that firms in the insurance market use complex and opaque pricing techniques to identify consumers who are more likely to renew with them. Firms then increased prices to these customers at renewal each year, resulting in some loyal customers paying very high prices. In addition, some firms used practices that could discourage consumers from shopping around. We estimated that our pricing remedy would lead to discounted savings of £4.2 to £11.2bn over the 10 years after the implementation of the policy through lower prices as a result of more effective competition and the reduction of prices for consumers in the back book in motor and home insurance.
- 113.** Our asset management market study found evidence of weak price competition in a number of areas of the asset management industry. As a result, we introduced measures requiring firms to undertake annual review of their funds and take action where they are not delivering value for consumers. We did not fully estimate benefits, but by virtue of our break-even analysis we considered it to be likely that annual benefits would be considerably greater than the ongoing costs of £27.7m.
- 114.** We have also intervened in relation to funeral plans to address plans that were not designed to meet the needs of consumers, commission arrangements and consumers paying for services which represent no or limited benefits to them. Again, it was not possible to accurately assess the benefits due to a lack of data, but we expect the benefits would have exceeded a break-even figure of £16.8m to £25.3m per year.
- 115.** Under the Consumer Duty, we will extend a number of similar requirements to all retail sectors. This includes rules similar to the product governance provisions for investment (PROD 3) and insurance sectors (PROD 4) and the fair value rules for insurance (PROD 4), funeral plans (PROD 7) and value assessment rules for authorised fund managers (COLL 6). We expect these new rules to help stop similar harms arising in other retail sectors, and in some cases, help address harm that is already occurring.
- 116.** The proposals will require firms involved in the development and distribution of products to design those products to meet the needs, characteristics and objectives of consumers in a target market and distribute products to consumers in the target market, thus reducing the burden on consumers to acquire, filter and effectively use the information required to make informed decisions about financial services products. This should lead to improved matching of products and services to consumer's needs, saving consumers time and reducing the probability of individuals' financial loss by reducing the need to seek compensation or redress.
- 117.** The proposed price and value outcome rules will require firms to assess the price of the products and services that they offer, at the design phase and on an ongoing basis, to ensure that the benefits of the products and services are reasonable relative to their price. This should stop firms from exploiting consumers' capability and cognitive and behavioural biases which impact on their assessment of value and lead to improved matching of products and services to consumers' needs and reduce the probability of consumers experiencing financial loss/ harm.
- 118.** We have not quantified the benefit of the proposed products and services outcome and price and value outcome rules. However, given the size of the net benefits in the sector-specific examples of these interventions, and the emergence of features in other retail products similar to the features that drove these interventions, we expect the size of the benefit from extending these rules to all retail sectors to be significant.

Customer support meets the needs of consumers, enabling them to realise the benefits of products and services, reducing psychological stress to customers and saving time

- 119.** Poor customer support can make it difficult for consumers to get the full benefit from products and services, or act in their own interests. Data from our Financial Lives survey shows that one of the most common problems across all retail sectors is poor customer service. The most common impacts include increased stress and time spent resolving the issue. Taking retail banking as an example, for all those that experienced a customer service problem, over a third (34%) spent significant time resolving the problem and almost a quarter (23%) suffered stress.
- 120.** We are concerned that firms may lack the commercial incentive to provide effective customer support throughout the customer journey, and that this can lead to poor outcomes for consumers. For example, firms may focus their resources on attracting new customers at the expense of providing effective service to existing customers after the initial point of sale.
- 121.** The way that consumers are treated by their financial services providers is critical to their confidence in financial markets. If customer service is effective, consumers are more likely to engage with financial services, enhancing competition. However, 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.
- 122.** Dealing with poor customer service can be time consuming and stressful for consumers, and it can lead to additional cost if they are unable to utilise the products and services, they purchased in the way they expected, or act in their interests (for example by making a complaint or switching product or provider). We have seen examples of customer service processes which are designed or delivered in a way that create barriers to consumers taking action which would benefit them. For example, we found that some insurance providers have customer service processes that make it difficult for customers to stop their policy from automatically renewing, which could deter them from switching to a different provider. Other examples flagged in responses to CP21/13 included requiring consumers to send a letter by post to make a claim under s.75 of the Consumer Credit Act (CCA) or requiring consumers to visit a branch to close saving accounts opened online.
- 123.** The proposed consumer support outcome rules will help address the fact that commercial incentives will not always drive all firms to deliver customer support that meets customers' needs. They do this by requiring firms to ensure that their customers are adequately supported throughout the lifecycle of their product or service and that their customers are able to act in their own interests. In practice, we expect to see firms review their existing customer service processes and make changes where they do not meet the new standards. This, in turn, should make it easier for consumers to fully utilise their products and services and act in their interests to pursue their financial objectives by accessing better deals and outcomes.
- 124.** Improving the levels of customer service that firms provide will benefit consumers by saving them time and reducing the psychological stress caused by dealing with complex processes or excessive delays. It will tackle the practices that we have seen which create barriers to consumers taking action or discourage consumers from engaging, which, were they to do so, would reduce the probability of individuals experiencing harm.

- 125.** Research by Mintel (*Customer Service Preferences in Financial Services UK – May 2021*) shows varying quality of customer service in financial services, with many firms falling short of what customers judge to be 'good'. While banks and building societies lead the way, closely followed by price comparison sites, perceptions of the companies that typically sell through price comparison websites, such as insurers and credit card providers, are much less positive. This suggests general distrust of those sectors and higher likelihood of previous bad experiences. Investment companies come last among the sectors surveyed, with only 31% regarding their customer service as good. This highlights the need for improvement across a range of firms and sectors.
- 126.** Further research by Mintel (*Customer Service Preferences in Financial Services UK – May 2021*) tells us that consumers like to have a variety of options to contact firms, dependent on their needs. Telephone (61%) and in-person (35%) are the top choices for dealing with serious or urgent issues, but when it comes to routine issues, preference for these channels falls drastically. E-mail is the favoured channel to deal with ordinary/routine issues meaning that this remains a vital channel.
- 127.** Having the right channels available for consumers is important. Mintel (*Financial Services: The Path to Purchase UK – Jun 2021*) report that although 53% of consumers say they are happy to prove their identity when applying for new products by using their phones to take a photo or video, 37% are not. This increases to 56% of those aged 55 or over who are not working or retired, and who, in theory, have the time and opportunity to visit a branch.
- 128.** Firms should however provide support that meets the needs of their customer base and target market providing multiple different channels, where possible, so consumers have a choice. Evidence from the Institute for Customer Service shows that this is not always the case. They reported that making it easier to contact the right person to help, website navigation, and more helpful, knowledgeable staff are the top issues customers want organisations to improve.
- 129.** The proposed consumer support rules will set overarching expectations in this area and will work with other rules that cover specific aspects of the servicing of customers, such as our DISP complaint handling rules. We expect they will also benefit consumers by ensuring firms provide a sufficient range of channels where possible for consumers to contact them, reducing the frictions which may hinder them from making good decisions and resolving issues with regards to the financial services products they hold. The rules will apply in all sectors. Data from the Institute for Customer Service shows that consumers value good customer service. We therefore expect the customer service rules to provide significant benefits for consumers in all sectors.

Improved communications support consumer understanding and equip consumers to make effective, timely and properly informed decisions leading to greater engagement, less confusion and more appropriate consumer transactions

- 130.** Firm communications play a key role in equipping consumers with the information they need to make effective decisions. 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. Poor or badly timed communications impact on consumer decision-making. We continue to see examples of poor or badly timed communications, communications that exploit information asymmetries

and consumers' cognitive and behavioural biases or encourage consumers to make decisions without full possession of the relevant information.

131. Research by Mintel (*Financial Services: The Path to Purchase UK – Jun 2021*) shows that poor communication is inhibiting good decision making: 14% of UK adults say they delayed or cancelled arranging a new financial services product after starting the research process in the 12 months to April 2021. This increases to over 21% for those under-35, with confusion about product details and changes in personal circumstances given as the main reasons among this age group.
132. A lack of understanding about financial terms could be undermining the ability to make good choices. Mintel (*Attitudes towards Advertising in Financial Services UK – Feb 2021*) report that protection for purchases is one of the main reasons for choosing to pay by credit card, yet just 16% are very confident they understand the meaning of s.75 CCA protection. Clarity in how products are marketed is especially important among young adults for whom understanding of the terms used in advertising is even lower. While 55% of consumers agreed with the statement: 'I find most adverts for financial products/services are not aimed at people like me' only 48% of consumers agreed with the statement: 'I often read the small print on a financial advert.'
133. The Financial Ombudsman also recognises the importance of good communications. In its *Annual complaints data and insight 2020/21* it highlighted that many complaints might have been avoided with better communication. Recent work, such as *Plain Numbers Project*, has demonstrated how this can be achieved and the positive impact it can have on consumer comprehension and outcomes.
134. We have encountered examples of poor communication harming consumers in our previous interventions. For example, our **high-cost credit review** found that overdraft pricing was complex so consumers could not easily compare prices between different providers or compare overdrafts against other forms of credit. We concluded that these complexities may accentuate consumers' cognitive and behavioural biases, like inertia, leading to poor outcomes as consumers do not choose and use products in the best way. We estimated our package of remedies, including remedies to improve levels of consumer awareness and engagement would lead to benefits of £101m per annum for the 30% of personal current account consumers living in the most deprived areas in the UK. On top of this we expected significant benefits through avoiding the psychological distress of debt.
135. Significant harm can arise even in smaller size markets. We introduced a new information requirement for firms in the **home-collected credit** market when discussing further borrowing with their customers. We estimated a net benefit of between £3.8m to £34.2m per year would result from our intervention.
136. We have also seen firms failing to draw customers' attention to key information, communications not being tailored to the channel that is used, and information being provided to consumers at a time when they don't have enough opportunity to reflect and consider their options such as information about the end of an introductory rate being sent out very close to its expiry date.
137. These practices can hinder effective consumer decision-making and contribute to poor outcomes such as consumers purchasing inappropriate products, not switching to a more appropriate product, or overpaying for products and services.

- 138.** The proposed consumer understanding rules will address these harms by requiring firms to design their communications to better meet the information needs of consumers, to communicate in a timely way across all retail markets and to tailor their communications to the channel which is being used. This should reduce the scale and impact of the information asymmetry between firms and consumers, and ensure this information is delivered in a way that does not exploit their cognitive and behavioural biases and act against their interests. Addressing these issues will encourage more engagement with financial products, equip consumers to make effective decisions and support good outcomes leading to more appropriate consumer transactions thereby reducing financial losses from inappropriate product purchases.
- 139.** It is not possible to reasonably estimate the benefits of improved communications brought about by the new consumer duty. However, our past interventions show that improving communications about products and services, where opacity and information asymmetries result in poor outcomes, can lead to significant benefits. Furthermore, market intelligence suggests communication with consumers is not conducted at the high standard we would like in many financial services markets. We therefore expect that expanding similar principles to those implemented in the past interventions to all retail financial services products will lead to significant benefits for consumers of those products.

The Consumer Duty sets higher expectations of firms driving a cultural reset which leads to enhanced confidence in financial markets and future gains from innovation

- 140.** It is important that financial services markets work well and deliver good outcomes for consumers, but we know from experience that markets do not always work well, with competition not always working effectively in consumers' interests. This can undermine trust 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'.
- 141.** The Consumer Duty will set higher, clearer expectations for the standard of care that firms provide to consumers. This will be achieved by the introduction of cross-cutting and outcomes rules which build on the Principle and clarify firms' obligations under the duty.
- 142.** As well as focusing on the outcomes being delivered to consumers, firms will need to review their approaches and make changes to ensure that they are meeting our expectations that they act in good faith, avoid causing foreseeable harm and enable and support consumers to pursue their financial objectives. They will also need to regularly review and revise their approach if it is not delivering good outcomes and ensuring that they are evidencing these outcomes.
- 143.** This cultural reset will encourage firms to reconsider how they deal with circumstances where they possess more information than consumers, and review how their practices may be exploiting consumers' cognitive and behavioural biases or taking advantage of market conditions that are creating consumer cognitive and behavioural biases. A new duty will ensure they do not exploit these factors but resolve them in the consumer's interest.
- 144.** It has not been possible to quantify the benefits of this reset, but we expect the combined impact of the outcomes set out above, and the cultural reset to lead to better outcomes for consumers and, in turn, improve consumer confidence and participation in financial markets.

145. The Consumer Duty should also lead to competition benefits for firms and consumers. Several respondents to CP21/13 argued that a reset would allow them to compete on a level playing field based on high standards of conduct. This should result in benefits as firms compete to attract and retain customers in areas which benefit consumers such as better-quality products and services. We would also expect benefits in the longer run as enhanced competition encourages firms to innovate to attract more customers, and clearer standards encourage new market entrants.

146. Better conduct by firms from the outset should also reduce costs to both consumers and firms through fewer complaints, lower redress, and lower regulatory costs in the long run.

Distributional effects

147. Some of the welfare gain that arises will be because the new consumer duty leads to a more efficient allocation of resources whereby consumers receive products and services that better match to their needs and preferences, and they therefore value more. Some of the benefits are from competition leading to lower prices and better quality in both the short and longer term. However, some of the changes to welfare are new gains, but arise from transfers between groups.

Transfers from firms to consumers

148. While we expect a net welfare gain from changes to the competitive dynamics of the market, a portion of this gain to consumers will be a transfer from firms. Firms that are currently making profits from selling poorly designed, poor value products and underinvesting in customer service, and other systems and controls will have to change their pricing and invest more in the relevant aspects of their product offering. Better information and reduced exploitation of behavioural distortions will enhance competition, constraining those firms' ability to pass on costs from implementing the Consumer Duty.

149. We expect firms which fall shortest of the new standards, and thus have to make the largest changes, to see the largest transfer from profit to consumer welfare.

Transfers between consumers

150. We expect our proposals to be of greater benefit to consumers that are currently more likely to buy poor value or poorly designed products as it should result in these consumers being less likely to experience harm. The Consumer Duty may appear to reduce access to financial products for some consumers if the products are withdrawn from the market. However, we expect this only to happen in relation to products that are poor value or poorly designed, so we believe that these consumers will benefit.

Annex 3

Compatibility statement

Compliance with legal requirements

1. This Annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).
2. When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules is (a) compatible with its general duty, under s. 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives, and (b) its general duty under s. 1B(5)(a) FSMA to have regard to the regulatory principles in s. 3B FSMA. The FCA is also required by s. 138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
3. This Annex also sets out the FCA's view of how the proposed rules are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (s. 1B(4)). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.
4. In addition, this Annex explains how we have considered the recommendations made by the Treasury under section 1JA FSMA about aspects of the economic policy of Her Majesty's Government to which we should have regard in connection with our general duties.
5. This Annex includes our assessment of the equality and diversity implications of these proposals.
6. Under the Legislative and Regulatory Reform Act 2006 (LRRRA) the FCA is subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex sets out how we have complied with requirements under the LRRRA.

The FCA's objectives and regulatory principles: Compatibility statement

Strategic objective

7. We consider these proposals are compatible with our strategic objective of ensuring that the relevant markets function well because they will drive higher standards and provide greater consumer protection. For the purposes of the FCA's strategic objective, 'relevant markets' are defined by section 1F FSMA.

Operational objectives

8. The proposals set out in this consultation are primarily intended to advance our operational objectives of consumer protection and effective competition.

Consumer protection

9. The Consumer Duty sets a higher, clearer standard by requiring firms to ensure their products and services are fit for purpose and offer fair value, and helping consumers make effective choices or act in their own interest. The world is changing rapidly, and transactions are increasingly digital. The Consumer Duty will help to ensure that this level of protection is both appropriate for the environment in which consumers currently transact and for those in which they will transact in the future.
10. The Consumer Duty requires firms to consider consumer needs in everything they do. The proactive, anticipatory nature of the Consumer Duty is the strongest and most efficient way for us to meet our consumer protection objective. The Consumer Duty also supports more agile and assertive supervision which should mean that where harm does appear to occur, it is addressed more quickly and so ultimately reduced. In this consultation, we have had regard to the 8 matters listed in section 1C(2)(a)-(h) FSMA on consumer protection.

Competition

11. These policy proposals are as much about our competition objective as they are about consumer protection. The Consumer Duty will create a fairer and more consumer-focused playing field on which firms can compete and innovate in pursuit of good consumer outcomes. Competition can more effectively act in the interests of consumers where firms design products and services to meet consumer needs, and consumers are put in a position to make informed decisions and act in their interests. In this consultation, we have had regard to the 8 matters listed in section 1E(2)(a)-(e) FSMA.

The FCA's regulatory principles

12. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in s. 3B FSMA.

The need to use our resources in the most efficient and economic way

13. The proposals set out in this consultation are consistent with an efficient and economic use of our resources. We want to bring about an environment where

the consumer harms we currently see too often do not occur in the first place, because firms are consistently placing their customers' interests at the centre of their businesses. If firms ensure that their products and services are fit for purpose and offer fair value, and that their communications and consumer support enables consumers to make and act on well-informed decisions, there will be benefits for all parties. Consumers will not suffer so much harm, the industry will not need to consider so many complaints and the FCA will have less need to intervene to put things right.

The principle that a burden or restriction should be proportionate to the benefits

14. We have considered the impact of our proposals on both firms and consumers and have undertaken a cost-benefit analysis (CBA) which is included in Annex 2 of this consultation paper. We consider the costs are proportionate to the benefits.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

15. Our overall proposals have regard to the desirability of sustainable growth in the medium and long term. By improving consumer outcomes and better aligning competition with the interests of consumers, there should be less time and resource spent putting things right when they suffer harm. This should make the industry more sustainable and improve consumer trust in financial services.

The general principle that consumers should take responsibility for their decisions

16. 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. 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. Our proposals aim to address issues that interfere with this and allow consumers to take responsibility for their decisions.

The responsibilities of senior management

17. We consider that our proposals place appropriate responsibility on senior managers to create good outcomes for consumers. We are proposing to amend our SMCR rules to ensure clear accountability in firms for complying with the Consumer Duty.

The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation

18. Our proposals are not relevant to this principle. Our proposals will not discriminate between different business models. This is intended to ensure a level playing field for all entities in the market.

The desirability of publishing information relating to persons subject to requirements imposed under FSMA, or requiring them to publish information

19. Our proposals are not relevant to this principle.

The principle that we should exercise of our functions as transparently as possible

20. In developing our proposals, we have acted as transparently as possible.
21. In July 2018, we published a discussion paper on 'A duty of care and potential alternative approaches' (DP18/05). The 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.
22. 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.
23. We consulted in May 2021 on 'A new Consumer Duty' (CP21/13), taking account of responses received so far and setting out the next stage of our thinking, together with a package of high-level proposals. In this consultation, we take account of responses received to the earlier work and consult on a package of remedies, including the rules we propose to introduce.

Financial crime

24. In formulating these proposals, the FCA has had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by section 1B(5)(b) FSMA).

Expected effect on mutual societies

25. The FCA does not expect the proposals in this paper to have a significantly different impact on mutual societies.

HM Treasury recommendations about economic policy

26. In the remit letter from the Chancellor of the Exchequer to the FCA on 23 March 2021, the Chancellor affirms the FCA's role in protecting consumers, promoting competition in financial services and protecting and enhancing the integrity of the UK financial system.

27. We have had regard to this letter and its recommendations. Of particular relevance, the letter calls on us to take into account considerations of competition, growth, competitiveness and innovation. As set out in this consultation paper, we consider that our proposals are proportionate, aim to increase consumer protection and promote effective competition.

Equality and diversity

28. We are required under the Equality Act 2010 in exercising our functions to 'have due regard' to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, to and foster good relations between people who share a protected characteristic and those who do not. As part of this, we ensure the equality and diversity implications of any new policy proposals are considered.
29. Our proposals in this consultation aim to improve outcomes for all consumers, including those who share different demographic characteristics who may have or be more likely to have characteristics of vulnerability. As such, we would expect it to have a positive impact for consumers who share protected characteristics and those who do not.
30. 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 under 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.
31. Overall, we would consider the proposals in this CP to be aligned with and supportive of the aims of the Equality Act 2010. We would view a firm that unlawfully discriminates between customers in breach of the Equality Act 2010 as likely to be in breach of the Consumer Duty.

Legislative and Regulatory Reform Act 2006 (LRRRA)

32. We have had regard to the principles in the LRRRA for the parts of the proposals that consist of general policies, principles or guidance and consider that the proposals will be effective in helping firms understand and meet regulatory requirements more easily. We consider that this will lead to improved outcomes for consumers and addresses the issue identified in the market. We also believe the proposals are proportionate and will result in an appropriate level of consumer protection when balanced with impacts on firms and competition.

- 33.** We have had regard to the Regulators' Code for the parts of the proposals that consist of general policies, principles or guidance. This consultation is a way for firms to let us know their views of our proposals. We have identified the potential risks of not taking action by articulating potential harms and how firms' behaviour could cause those harms. The CP and instrument will allow firms to understand the requirements. We are also setting out transparently what our policy aims are so that firms can take those into account.

Annex 4

List of non-confidential respondents to CP21/13

4Keys International

abrdn

Adam Samuel

Aegon

AFS Group

Age UK

AJ Bell

Amigo Holdings Plc

Amplified Global Ltd

Andrew Godwin, Wai Yee Wan and Qinzhe Yao

Association for Financial Markets in Europe (AFME)

Association of British Credit Unions Limited (ABCUL)

Association of British Insurers (ABI)

Association of Consumer Support Organisations (ACSO)

Association of Financial Mutuals (AFM)

Association of Investment Companies (AIC)

Association of Mortgage Intermediaries (AMI)

Association of Professional Compliance Consultants (APCC)

AXA UK Group

Bar Council

Better Finance

BGL Insurance

Brewin Dolphin Limited

British Insurance Brokers' Association (BIBA)

British Retail Consortium (BRC)

British Vehicle Rental and Leasing Association (BVRLA)

Building Societies Association (BSA)

Bupa Insurance Limited and Bupa Insurance Services Limited

Cabot Credit Management Group Limited

Capital Credit Union

Capital Life and Pensions

Capital One Europe

Centre for Commercial Law Studies, Queen Mary University of London and Forum Chambers

Chartered Banker Institute

Chartered Institute for Securities & Investment (CISI)

Chartered Institute for Securities & Investment (CISI) – Financial Planning Forum Committee

Chartered Institute of Credit Management (CICM)

Chartered Insurance Institute (CII)

Citizens Advice

Citizens Advice Scotland

City of London Law Society (CLLS) Regulatory Law Committee

Clarity Advice & Management Ltd

Community Money Advice

Consumer Credit Trade Association (CCTA)

Create Solutions Ltd

Credit Kudos

Credit Services Association (CSA)

Curtis Banks

Debt Hacker

Debt Managers Standards Association (DEMSA)

Dolly Das

Dr Mark Shaw

Dr Martin Brennncke

Dr Thomas Coendet

Electronic Money Association (EMA)

Emerging Payments Association (EPA)

Emma Howey

Eris FX Ltd

Exeter Friendly Society

Fair By Design

Fair4All Finance

FCA Practitioner Panel

FCA Smaller Business Practitioner Panel

Federation of Small Businesses

Financial Inclusion Centre

Financial Inclusion Commission

Financial Services Consumer Panel

Gary Bush

GHC Capital Markets Limited

GKFX Financial Services Limited

Glassbox Ltd

Group Risk Development (GRiD)

Harshan Kollara

HOPE Home Ownership Protection Enterprise

Hse-Yu (Iris) Chiu

Innovate Finance Limited

Institute and Faculty of Actuaries (IFoA)

Institute of Chartered Accountants in England and Wales (ICAEW)

Interactive Investor

Intermediary Mortgage Lenders Association (IMLA)

Invesco Asset Management

Invest & Fund Limited

Investment and Life Assurance Group (ILAG)

Investment Association (IA)

Investor in Customers (IIC)

JD Williams & Co Ltd

John Hunter

Just Group plc

Keith Thompson

Lending Standards Board (LSB)

Life Moments Limited

LifeSearch

Lloyd's Market Association

London Metal Exchange

M&G plc

Macfarlanes LLP

Macmillan Cancer Support

Make My Money Matter (MMMM)

Managing General Agents Association (MGAA)

Mental Health UK

Money Advice Scotland

Money Advice Trust

Money Alive

Money and Mental Health Policy Institute

Money and Pensions Service (MaPs)

Money Saving Expert (MSE)

Moneyfacts Group plc

Moneysworth Ltd

Mr R Robb

National AIDS Trust (NAT)

National Consumer Federation

National Franchised Dealers Association (NFDA)

National Pawnbrokers Association (NPA)

Neatebox

New City Agenda

NICE Systems Inc

Nucleus Financial Group Plc

Pensions and Lifetime Savings Association (PLSA)

Personal Investment Management and Financial Advice Association (PIMFA)

Philip Bower

Philip J Milton & Company Plc

PRIMIS Mortgage Network and TMA club

Provident Financial Group

Registry Trust

Responsible Finance

Retirement Bridge Management Limited

Rod Hilditch

Royal London

Salad Money

Salary Finance

Schroders

Secure Trust Bank Plc

Shoosmiths LLP

Skerritts Consultants Limited

Society of Lloyd's

Sovereign Health Care

Sparrows Capital Limited

SS&C Financial Services International Limited

StepChange Debt Charity

Surviving Economic abuse

The Compliance Company

The Consumer Council for Northern Ireland

The GI Consultant

The Investing and Savings Alliance (TISA)

The Law Society

The Money Charity

The Nottingham Building Society

The Prepaid International Forum (PIF)

The Society of Pension Professionals

The Wisdom Council

TheCityUK

Theo van Hensbergen

threesixty services LLP

Tobias Haynes

Totemic Limited

Toynbee Hall

Transpact

Transparency Task Force

UCL Centre for Ethics and Law

UK Finance

UK Individual Shareholders Society (ShareSoc)

UK Mortgage Prisoners Action Group

UKCreditUnions Ltd

United Kingdom Shareholders' Association (UKSA)

Vanguard Asset Management

Vanguard Consulting Limited

Voyager Insurance Services

Wescot Credit Services Limited

Which?

Zurich Insurance

Annex 5

Abbreviations used in this paper

Abbreviation	Description
BCOBS	Banking: Conduct of Business Sourcebook
CBA	Cost benefit analysis
CCA	Consumer Credit Act 1974
COBS	Conduct of Business Sourcebook
COCON	Code of Conduct sourcebook
CP	Consultation Paper
DISP	Dispute Resolution: Complaints sourcebook
FCA	Financial Conduct Authority
FSCS	Financial Services Compensation Scheme
FSMA	Financial Services and Markets Act 2000
GAR	Gibraltar Authorisations Regime
GFSC	Gibraltar Financial Services Commission
HNW	High net worth individuals
ICOBS	Insurance: Conduct of Business Sourcebook
LRRA	Legislative and Regulatory Reform Act 2006
MCOB	Mortgages and Home Finance: Conduct of Business Sourcebook
MGA	Managing general agents
MI	Management Information
PROA	Private Right of Action
PROD	Product Intervention and Product Governance Sourcebook
PSR 2017	Payment Services Regulations 2017

Abbreviation	Description
SM&CR	Senior Managers and Certification Regime
SMEs	Small and medium enterprises
TCF	Treating customers fairly
TPR	The Pensions Regulator

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

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Appendix 1

Draft Handbook text

CONSUMER DUTY INSTRUMENT 2022

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 64A (rules of conduct);
 - (b) section 64C (Requirements for authorised persons to notify regulator of disciplinary action);
 - (c) section 137A (The FCA’s general rules);
 - (d) section 137R (Financial Promotion rules);
 - (e) section 137T (General supplementary powers);
 - (f) section 138C (Evidential provisions);
 - (g) section 139A (Power of the FCA to give guidance); and
 - (2) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA’s Handbook.
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [*date*].

Revocation of the Responsibilities of Providers and Distributors for the Fair Treatment of Customers (RPPD)

- D. The Responsibilities of Providers and Distributors for the Fair Treatment of Customers (RPPD) is revoked.

Amendments to the Handbook

- E. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below.

(1)	(2)
Glossary of definitions	Annex A
Principles for Businesses (PRIN)	Annex B
Code of Conduct sourcebook (COCON)	Annex C
General Provisions (GEN)	Annex D

Notes

- F. In the Annexes to this instrument, the “notes” (indicated by “**Note:**” or “*Editor’s note:*”) are included for the convenience of readers, but do not form part of the legislative text.

Citation

- G. This instrument may be cited as the Consumer Duty Instrument 2022.

By order of the Board
[date]

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>closed product</i>	a <i>product</i> which: (1) has existing contracts with <i>retail customers</i> entered into before [date instrument comes into force]; and (2) is not marketed or <i>distributed</i> to <i>retail customers</i> (including by way of renewal) after [date instrument comes into force].
<i>COCON firm activities</i>	(as defined in more detail in <i>COCON</i> 1.1.7AR and in relation to conduct of a <i>person</i> in relation to a <i>firm</i>) the corresponding activities of the <i>firm</i> as referred to in <i>COCON</i> 1.1.6R to <i>COCON</i> 1.1.7R (To what conduct does it apply?).
<i>existing product</i>	a <i>product</i> which: (1) was created, marketed or <i>distributed</i> before [date instrument comes into force]; and (2) is marketed or <i>distributed</i> to <i>retail customers</i> (including by way of renewal) after [date instrument comes into force].
<i>non-complex financial instrument</i>	a <i>financial instrument</i> which meets all the following criteria: (1) it is traded on an exchange in the <i>United Kingdom</i> and regularly traded on or under the rules of such an exchange; (2) there are frequent opportunities to dispose of, redeem, or otherwise realise that instrument at prices that are publicly available to market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer; (3) it does not involve any actual or potential liability for the <i>client</i> that exceeds the cost of acquiring the instrument; (4) it does not incorporate a clause, condition or trigger that could fundamentally alter the nature or risk of the investment or pay out profile, such as investments that incorporate a right to convert the instrument into a different investment; (5) it does not include any explicit or implicit exit charges that have the effect of making the investment illiquid even

though there are technically frequent opportunities to dispose of, redeem or otherwise realise it;

- (6) adequately comprehensive information on its characteristics is publicly available and is likely to be readily understood so as to enable the average *retail client* to make an informed judgment as to whether to enter into a transaction in that instrument;
- (7) it is a *real economy security*; and
- (8) it is not a *speculative illiquid security*.

[**Note:** paragraphs (2) to (6) derive from article 57 of the MiFID Org Regulation]

non-retail financial instrument

a *financial instrument*, other than a *speculative illiquid security*, in respect of which the following conditions are met:

- (1) the marketing materials for the *financial instrument* (including the *prospectus*, if there is one) feature prominent and clear disclosures to the effect that the *financial instrument*:
 - (a) is being offered only to investors eligible for categorisation as *professional clients* or *eligible counterparties* under the *FCA's rules*; and
 - (b) is not intended for retail investors;
- (2) the *issuer* of the *financial instrument* or, in relation to secondary market offers, the distributor, has taken reasonable steps to ensure the offer and any associated promotional communications are directed only to investors eligible for categorisation as *professional clients* or *eligible counterparties*; and
- (3) a minimum denomination or otherwise a minimum investment of £100,000 applies to the *financial instrument*, or equivalent amount for a *financial instrument* denominated in another currency, where the equivalent amount is calculated not more than three *business days* before the date of issue of the *financial instrument*.

real economy security

a *security*, which is a *share* or *debt security*, in respect of which the following conditions are met:

- (1) if the *security* is a *debt security*, the level of any interest payable, the *issuer's* default risk, and any fluctuations in the market value of the *security* are wholly or predominantly determined by the actual or anticipated economic performance of the commercial or industrial activities of the

issuer (or, where the *debt security* is guaranteed by another person in the *issuer's* group, that *person*);

- (2) if the *security* is a *share*, the level of any dividends or other distributions and any capital gain or increase in market value for the *share* are wholly or predominantly determined by the actual or anticipated economic performance of the commercial or industrial activities of the *issuer*; and
- (3) in either case, the *security's* returns or investment risks are not:
 - (a) subject to the operation of a *derivative* or any contractual feature that modifies its relationship to the *issuer's* commercial or industrial activities, for example by introducing conditionality or structuring of returns; and
 - (b) determined, linked to or materially dependent on lending, investment, or any other financial sector activities of the *issuer*, which for avoidance of doubt are not commercial or industrial activities for the purposes of the above.

product any *specified investment*, or the provision of a service in the course of carrying on a *regulated activity*, or an *ancillary activity*, *distributed* or to be *distributed* to *retail customers* and which, unless the context otherwise requires, is not intended to refer to an individual contract.

target market a group or groups of *retail customers* sharing common characteristics whose characteristics, needs and objectives the *product* is or will be designed to meet, as identified by:

- (1) the *manufacturer* in accordance with PRIN 2A.3.7R;
- (2) the *distributor* in relation to a *financial instrument* or a *structured deposit* in accordance with PRIN 2A.3.23R;

retail market business the *regulated activities* and *ancillary activities* to those activities, *payment services*, issuing *electronic money* and activities connected to the provision of *payment services* or issuing of *electronic money*, of a *firm* in connection with a *product* which has been *distributed* or will be *distributed* to *retail customers*, but not including the following activities:

- (1) the *manufacture* of a *product* not designed for *retail customers*;
- (2) activities carried on in relation to *non-retail financial instruments*;

- (3) offers of *non-complex financial instruments* directly from issuer to investor; and
- (4) activities carried on in relation to a *contract of large risks* for a commercial customer or where the risk is located outside the United Kingdom.

Amend the following definitions as shown.

distribute

...

- (4) (in PRIN) in relation to a retail customer, offering, selling, recommending, advising on, proposing or providing a product (including a renewal), or otherwise making arrangements with a view to a retail customer entering into an agreement for a specified investment.

distributor

...

- (3) (in PRIN) a firm which offers, sells, recommends, advises on, proposes or provides a product, or otherwise makes arrangements with a view to a retail customer entering into an agreement for a specified investment; or

For the purposes of this definition retail customer has the same meaning as in PRIN.

*financial
promotion rules*

...

- (7) (in relation to PRIN) any or all of the rules in PRIN that impose requirements in relation to a financial promotion (including, in particular, Principles 7 and 12 and the rules in PRIN 2A.2 and 2A.5) but only to the extent that they apply to a financial promotion.
- (8) (otherwise, in accordance with section 417(1) of the Act) a rule made under section 137R of the Act.

firm

- (1) ...

...

- (11) (in PRIN 2 and PRIN 2A) includes an *electronic money institution*, a *payment institution* and a *registered account information service provider*.

retail customer

- (1) (other than in PRIN) an individual who is acting for purposes which are outside his their trade, business or profession.
- (2) (in PRIN):

- (a) in relation to activities to which BCOBS applies, or to ancillary activities, a banking customer or prospective banking customer;
- (b) in relation to activities to which ICOBS applies, or to ancillary activities, a policyholder or prospective policyholder, excluding a policyholder or prospective policyholder who does not make the arrangements preparatory to the conclusion of the contract of insurance;
- (c) in relation to activities to which COBS applies, or to ancillary activities, a customer who is not a professional client; and
- (d) in relation to any other activities, a customer;

including any person who is, or would be, the end retail customer in the distribution chain whether or not they are a direct client of the firm.

[Note: article 2(d) of the Distance Marketing Directive]

manufacture

- (1) ...
- ...
- (4) (in PRIN)
 - (a) creating, developing, designing, issuing or operating or underwriting a product; or
 - (b) in relation to a closed product or an existing product:
 - (i) having created, developed, designed or issued the product; or
 - (ii) currently operating or underwriting the product.

manufacturer

- (1) ...
- ...
- (3) (in PRIN) a firm which:
 - (a) creates, develops, designs, issues, operates or underwrites a product; or
 - (b) in relation to a closed product or an existing product:
 - (i) created, developed, designed or issued the product; or

(ii) operates or underwrites the *product*.

[*Editor's note:* The amendments in this Annex are based on the version of PRIN incorporating all amendments that come into force on 29 July 2022.]

Annex B

Amendments to the Principles for Businesses (PRIN)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

1 Introduction

1.1 Application and purpose

...

~~Responsibilities of providers and distributors under the Principles~~

- 1.1.10 G ~~RPPD contains guidance on the responsibilities of providers and distributors for the fair treatment of customers under the Principles.~~
[deleted]

1.2 Clients and the Principles

Characteristics of the client

- 1.2.1 G *Principles 6 (Customers' interests), 7 (Communications with clients), 8 (Conflicts of interest), 9 (Customers: relationships of trust) and 10 (Clients' assets) and 12 (Consumer Duty) impose requirements on firms expressly in relation to their clients or customers. These requirements depend, in part, on the characteristics of the client or customer concerned. This is because what is "due regard" (in Principles 6 and 7), "fairly" (in Principles 6 and 8), "clear, fair and not misleading" (in Principle 7), "reasonable care" (in Principle 9), or "adequate" (in Principle 10) or "good outcomes" (in Principle 12) will, of course, depend on those characteristics. For example, the information needs of a general insurance broker will be different from those of a retail general insurance policyholder.*

...

2 The Principles

2.1 The Principles

2.1.1 R The Principles

...	
<u>12 Consumer duty</u>	<u>A firm must act to deliver good outcomes for retail customers.</u>

Insert the following new chapter PRIN 2A, after PRIN 2 (The Principles). All of the text is new and is not underlined.

2A The Consumer Duty

2A.1 Application and purpose

Application

- 2A.1.1 R References within *PRIN* to the obligations on *firms* under *Principle 12* include the obligations imposed by *rules* in *PRIN 2A*.
- 2A.1.2 R References within *PRIN* to obligations imposed on *firms* under *PRIN 2A* include the obligation imposed by *Principle 12*.
- 2A.1.3 G The application of *Principle 12* is set out in *PRIN 3.2.6R* to *PRIN 3.2.11G*. *Principle 12* only applies in relation to a *firm's retail market business*. To the extent that *Principle 12* applies, *Principles 6* and *7* do not apply.
- 2A.1.4 R References in this chapter to *regulated activities* are to be interpreted as including *payment services* and issuing *electronic money* (whether or not the activity of *issuing electronic money* specified in article 9B of the *Regulated Activities Order*).
- 2A.1.5 G *Principle 12* and *PRIN 2A* concern themselves not just with obligations of *firms* with their own direct customers but also with *firms* in a distribution chain, and in that context, *ancillary activities* includes activities connected with a regulated activity which are carried out by a *firm* in the same distribution chain.
- 2A.1.6 G *Firms* should be aware that particular groups of *retail customers*, for example those who share age, race, socioeconomic background or characteristics of neurodiversity may have or be more likely to have “characteristics of vulnerability” as referred to in this chapter.

Purpose

- 2A.1.7 G *Principle 12* reflects a general expectation by the *FCA* that *firms* should conduct their business to a standard which ensures an appropriate level of protection for *retail customers*.
- 2A.1.8 G While recognising the general principle that *consumers* should take responsibility for their actions, having regard to the other factors set out in s.1C of the Financial Services and Markets Act 2000, it is appropriate to require a high level of protection for *retail customers* for reasons including:
- (1) that they typically face a weak bargaining position in their relationships with *firms*;
 - (2) that they are susceptible to cognitive and behavioural biases;

- (3) that they may lack experience or expertise in relation *products* offered through *retail market business*; and
 - (4) that there are frequently information asymmetries involved in *retail market business*.
- 2A.1.9 G (1) The main elements of *firms*’ conduct obligations under *Principle 12* are set out in *PRIN 2A.2.1R* to *PRIN 2A.6.6G*.
- (2) The cross-cutting obligations at *PRIN 2A.2* set out the overarching conduct which *firms* must demonstrate when they act to deliver good outcomes for *retail customers*.
- (3) The *retail customer* outcome rules and guidance at *PRIN 2A.3* to *PRIN 2A.6* set out *firms*’ key obligations in relation to product governance, price and value, consumer understanding and supporting consumers.
- (4) There are particular provisions concerning *closed products* and *existing products* held by *retail customers* before [date instrument comes into force] in *PRIN 2A.3* and *PRIN 2A.4*.
- 2A.1.10 G *Principle 12* does not change the nature of a *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 a *firm* to provide advice where it would not otherwise have done so.
- 2A.1.11 G The *FCA* has issued guidance on the Consumer Duty in FG[XX] which *firms* 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.

2A.2 Cross-cutting obligations

Act in good faith

- 2A.2.1 R A *firm* must act in good faith towards *retail customers*.
- 2A.2.2 R 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*.
- 2A.2.3 G Examples of where a *firm* is not acting in good faith would include:
- (a) failing to take account of *retail customers*’ legitimate interests, for example in the way it designs a *product* or presents information;
 - (b) seeking inappropriately to manipulate or exploit *retail customers*, for example by manipulating or exploiting their emotions or behavioural biases to mis-lead or create a demand for a *product*;
 - (c) taking advantage of a *retail customer* or their circumstances in a manner which is likely to cause detriment.

- 2A.2.4 G Acting in good faith does not mean a *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 a *firm* to act in a fiduciary capacity where it was not already obliged to do so.

Avoid foreseeable harm

- 2A.2.5 R A *firm* must avoid foreseeable harm to *retail customers*.

- 2A.2.6 G Avoiding foreseeable harm to *retail customers* requires a *firm* to be both proactive and reactive, including to:

- (1) ensure that no aspect of the design, terms, marketing, sale of and support for its *products* or services cause foreseeable harm;
- (2) identify the potential for harm that might arise if its *products* and services change or its understanding about the impact on *retail customers* changes; and
- (3) take appropriate action to mitigate the risk of actual or foreseeable harm.

- 2A.2.7 G A *firm* which has an ongoing relationship envisioning ongoing review of the *product* with a *retail customer* (for example portfolio management or debt management) would need to act to avoid harm to that *retail customer* throughout the life of the *product* or relationship, for example by rebalancing a customer's portfolio of assets or updating previous advice if appropriate.

- 2A.2.8 G A *firm* which is involved with the provision of a *product* at a point in time and without an ongoing relationship with the *retail customer* does not need to act to avoid harm which only later becomes foreseeable.

- 2A.2.9 G Avoiding foreseeable harm to *retail customers* does not mean a *firm* has a responsibility to prevent all harm. For example:

- (1) a *product* may have inherent risks which *retail customers* accept by selecting that *product*. Where a *firm* reasonably believes a customer understands and accepts such risks, it will not breach the *rule* if it fails to prevent them;
- (2) whether such a belief is reasonable will depend (among other things) on the nature of the *product* offered by the *firm*, the adequacy of the *firm's* product design, pricing, communications and customer services; and the extent to which it is compliant with applicable law in relation to the sale of that *product*, including the *rules* set out in *PRIN 2A*; and
- (3) examples of risks which are inherent to a *product* include that a mortgage carries a risk of repossession and most investments carry a risk that the market may move.

Enable and support retail customers

- 2A.2.10 R A *firm* must enable and support *retail customers* to pursue their financial objectives.
- 2A.2.11 G The conclusions a *firm* can properly reach about the financial objectives of *retail customers* will depend on the type of *product* or service it provides.
- 2A.2.12 G A *firm* which provides an execution-only service or a non-advised service can assume (unless it knows or could reasonably be expected to have known otherwise) that the financial objectives of *retail customers* are to purchase, use and enjoy the full benefits of the *product* in question.
- 2A.2.13 G An example of where a *firm* knew or could reasonably be expected to have known otherwise for the purposes of 2A.2.12G is where it is required to gather information on a *retail customer* by a provision of *UK law* (including, but not limited to, information required by *ICOBS 5.2.2R*, *CONC 5.2A.5R*, *MCOB 11.6.2R*, *COBS 10.2.1R* and *COBS 10A.2.1R*).
- 2A.2.14 G A *firm* which provides advisory or discretionary services can assume that the financial objectives of *retail customers* are those objectives that *retail customers* have disclosed unless it knows or could reasonably be expected to know that information disclosed is manifestly out of date, inaccurate or incomplete.
- 2A.2.15 G Enabling and supporting *retail customers* to pursue their financial objectives includes acting to empower *retail customers* to make good choices in their interests, including by:
- (1) ensuring that all aspect of the design, terms, marketing, sale of and support for its *products* or services are designed to meet and not frustrate the objectives and interests of its *retail customers*;
 - (2) making sure *retail customers* have the information and support they need, when they need it, to make and act on informed decisions; and
 - (3) ensuring that *retail customers* can enjoy the use of their *product* or service without unreasonable barriers or delay.
- 2A.2.16 G To the extent that a *firm* becomes aware or should reasonably have become aware of a specific financial objective sought by a *retail customer* in connection with a *product*, it should consider how to support progress towards achieving that objective in its interactions with that *retail customer*.
- 2A.2.17 G Enabling and supporting *retail customers* to pursue their financial objectives does not mean that a *firm* is expected to go beyond what a prudent *firm* carrying out the same activity in relation to the same *product* and making the assumptions referred to in *PRIN 2A.7.1R* or *PRIN 2A.7.2R* (as appropriate) would do.

Guidance on the cross-cutting obligations

- 2A.2.18 G Each of the cross-cutting obligations applies at all stages of the customer journey and during the whole lifecycle of a *product*. *Firms* will therefore need to keep *products* and services under regular review and consider the impact of any changes they make to those *products* or services.
- 2A.2.19 G Each of the cross-cutting obligations in this section requires *firms* to understand and take account of cognitive and behavioural biases and the impact of characteristics of vulnerability and/or lack of knowledge on *retail customers'* needs and decisions.
- 2A.2.20 G A *firm* will not be acting in good faith or reasonably where it seeks to exploit its interactions with *retail customers* and that exploitation is likely to lead to *retail customer* detriment; nor where it fails to take account of the reasonable expectations of *retail customers* in relation to a *product*.

2A.3 Consumer Duty: retail customer outcome on products and services

General nature of product governance obligations

- 2A.3.1 G The product governance obligations on *firms* under *Principle 12* are general in nature and should be considered alongside any other legal or regulatory obligations that may apply, for example any marketing restrictions in relation to the *product*.

Manufacturer product governance arrangements

- 2A.3.2 R A *manufacturer* must maintain, operate and review a process for the approval of:
- (1) each *product*;
 - (2) significant adaptations of the *product*,
- in each case before it is marketed or *distributed* to *retail customers*.
- 2A.3.3 G *PRIN 2A.3.2R* includes any *product* whether a new *product* manufactured on or after [date instrument comes into force], an *existing product* or a *closed product*. In relation to an *existing product* or a *closed product*, “marketing” or “distributing” includes reference to any future activity regardless of whether the product has previously been made available for marketing or distribution.

Manufacturers: product approval process for products that are not closed products

- 2A.3.4 R For each *product* that is not a *closed product*, a *manufacturer's* product approval procedures must:
- (1) identify the *target market* for the *product*;
 - (2) specify the *target market* at a sufficiently granular level, taking into account the characteristics, risk profile, complexity and nature of the *product*;

- (3) consider any group or groups of *retail customers* with characteristics of vulnerability in the *target market* and takes account of (and documents the *firm's* understanding of) any particular additional or different needs, characteristics and objectives of those *retail customers*;
- (4) ensure that all relevant risks to the *target market*, including any relevant risks to *retail customers* with characteristics of vulnerability, are assessed;
- (5) ensure that the design of the *product*:
 - (i) meets the needs, characteristics and objectives of the *target market*;
 - (ii) does not adversely affect *retail customers*, including any *retail customers* with characteristics of vulnerability; and
 - (iii) prevents or mitigates *retail customer* detriment, including) detriment to any *retail customers* with characteristics of vulnerability,
- (6) ensure that the intended distribution strategy is appropriate for the *target market*; and
- (7) require the *manufacturer* to ensure that the *product* is *distributed* to the identified *target market*.

Manufacturers: product approval process for closed products

- 2A.3.5 R (1) A *manufacturer* of a *closed product* must maintain, operate and review a process to assess and regularly review whether any aspect of the *product* results in the *firm* not complying with the cross-cutting obligations (*PRIN* 2A.2) in relation to existing *retail customers*.
- (2) The *manufacturer's* process in (1) does not have to comply with *PRIN* 2A.3.2R, *PRIN* 2A.3.4R, *PRIN* 2A.3.7R, *PRIN* 2A.3.12R, *PRIN* 2A.3.13R, *PRIN* 2A.3.14R or *PRIN* 2A.3.15R.
- 2A.3.6 R The *manufacturer's* process must also assess and regularly review whether the *closed product* affects groups of *retail customers* in different ways and in particular whether any *retail customers* with characteristics of vulnerability are adversely affected by any aspect of the *product*.

Manufacturer: review

- 2A.3.7 R A *manufacturer* must regularly review its *products* taking into account any event that could materially affect the potential risk to the *target market*. In doing so, the *manufacturer* must assess at least the following:
- (1) whether the *product* meets the identified needs, characteristics and objectives of the *target market*, including identified needs,

characteristics and objectives of *retail customers* with characteristics of vulnerability; and

- (2) whether the intended distribution strategy remains appropriate, including whether the *product* is being *distributed* to the *target market* or reaching *retail customers* outside the *target market*.

Manufacturer: action following review of products

- 2A.3.8 R Where a *manufacturer* identifies any circumstances related to the *product* that may adversely affect *retail customers*, the *manufacturer* must:
- (1) take appropriate action to mitigate the situation and prevent any further harm; and
 - (2) where appropriate, promptly inform each other *person* in the distribution chain about the remedial action taken.

Manufacturer: vested rights

- 2A.3.9 R Where a *product* has existing contracts entered into before [date instrument comes into force], unless the *firm* has identified a breach of *rules* existing before [date instrument comes into force], the appropriate action a *manufacturer* must take does not require a *manufacturer* to waive its vested rights that have arisen in respect of those existing contracts.
- 2A.3.10 G For the purposes of *PRIN* 2A.3.9R, vested rights are likely to include the following:
- (1) payments already due under the terms of the contract;
 - (2) remuneration for services already wholly provided under the contract; and
 - (3) remuneration for services partly provided.
- 2A.3.11 G Whether a right is a vested right or not will depend on all the facts of the case and interpretation of the relevant contract.

Manufacturers: testing products

- 2A.3.12 R
- (1) *Manufacturers* must test their *products* appropriately, including scenario analyses where relevant.
 - (2) A *manufacturer* must, as part of discharging its obligations in (1), assess whether the *product* meets the identified needs, characteristics and objectives of the *target market*, including identified needs, characteristics and objectives of *retail customers* with characteristics of vulnerability.
 - (3) *Manufacturers* must test their *products* in a qualitative manner and, depending on the type and nature of the *product* and the related risk of detriment to *retail customers*, quantitative manner.

- 2A.3.13 R If the results of the testing show that the *product* does not meet the identified needs, characteristics and objectives of the *target market*, including identified needs, characteristics and objectives of any group or groups of *retail customers* with characteristics of vulnerability:
- (1) in relation to a new *product* or a significant adaptation of an *existing product*, the *manufacturer* must not bring the new or adapted *product* to the market;
 - (2) in relation to an *existing product*, it must immediately:
 - (a) cease marketing or distributing the *product* (whether directly or indirectly), including any renewal for an existing *retail customer*; and/or
 - (c) make such changes as are necessary for the *product* to meet the identified needs, characteristics and objectives of the *target market*, including identified needs, characteristics and objectives of any group or groups of *retail customers* with characteristics of vulnerability.

Manufacturers: collaborating on manufacture

- 2A.3.14 R Where *firms* collaborate to *manufacture* a *product*, they must outline in a written agreement:
- (1) their collaboration to comply with the product governance obligations in this section; and
 - (2) their respective roles and responsibilities in the product approval process.

Manufacturer: selecting distribution channels and providing information to distributors

- 2A.3.15 R
- (1) A *manufacturer* must select distribution channels that are appropriate for the *target market*.
 - (2) A *manufacturer* must provide each *distributor* with adequate information in good time to enable it to comply with the *rules* applicable to it in this section.
 - (3) The information to be made available under (2) includes all appropriate information regarding the *product* and the product approval process from time to time to enable the *distributor* to comply with *PRIN* 2A.3.19R.

Distributors: unregulated manufacturer

- 2A.3.16 R Where a *distributor* distributes a *product* manufactured by a person to whom the *rules* in *PRIN* 2A.3 do not apply, it must take all reasonable steps to comply with *PRIN* 2A.3.20R to *PRIN* 2A.3.30G.

Distributor: distribution arrangements

- 2A.3.17 R A *distributor* must maintain, operate and review product distribution arrangements for each *product* it *distributes* that:
- (1) aim to prevent and mitigate *retail customer* detriment;
 - (2) support a proper management of conflicts of interest; and
 - (3) ensures the needs, characteristics and objectives of the *target market* are duly taken into account.
- 2A.3.18 G *PRIN* 2A.3.17R includes any *product* whether a new *product distributed* on or after [date instrument comes into force] or an *existing product*. In relation to an *existing product*, “distributes” includes reference to any future distribution activity regardless of whether the product has previously been made available for distribution, for example, renewing a contract with an existing *retail customer*.

Distributors: obtaining information from manufacturers

- 2A.3.19 R A *distributor* must ensure that the product distribution arrangements contain effective measures and procedures to obtain sufficient, adequate and reliable information from the *manufacturer* about the *product* to:
- (1) understand the characteristics of the *product*;
 - (2) understand the identified *target market*;
 - (3) consider (and document its understanding of) the needs, characteristics and objectives of any *retail customers* with characteristics of vulnerability;
 - (4) identify the intended distribution strategy for the *product*; and
 - (5) ensure the *product* will be *distributed* in accordance with the needs, characteristics and objectives of the *target market*.

Distributors: identification of target market for financial instruments or structured deposits

- 2A.3.20 R
- (1) Where a *distributor distributes* a *financial instrument* or *structured deposit*, it must determine the *target market* and the distribution strategy for the *financial instrument* or *structured deposit*.
 - (2) The *distributor* must identify the *target market* and the distribution strategy for the *financial instrument* or *structured deposit* using:
 - (a) the information obtained from *manufacturers*; and
 - (b) information it has on *retail customers*.

- (3) Where (1) applies, *distributors* must have in place adequate product governance arrangements to ensure that:
- (a) the *financial instruments* (including *structured deposits*) and *investment services* they intend to *distribute* are consistent with the needs, characteristics and objectives of the identified *target market*;
 - (b) the intended *distribution* strategy is appropriate for the identified *target market*; and
 - (c) they identify any groups of *retail customers* for whose needs, characteristics and objectives the *financial instrument*, *structured deposit* or *investment service* is not compatible.

Distributors: specific distribution strategy

- 2A.3.21 R Where *PRIN* 2A.3.20R does not apply, a *distributor* must ensure that any specific distribution strategy that it sets up or applies is:
- (1) consistent with the intended distribution strategy; and
 - (2) the *target market*,
- in each case, as identified as part of the *product's* approval process.

Distributors: providing sales information to manufacturers

- 2A.3.22 R To support *product* reviews carried out by *manufacturers*, a *distributor* must, upon request, provide *manufacturers* with relevant sales information including, where appropriate, information on the regular reviews of the product distribution arrangements.

Distributors: review

- 2A.3.23 R (1) A *distributor* must regularly review its distribution arrangements to ensure that they are still appropriate and up to date.
- (2) When reviewing the distribution arrangements, a *distributor* must verify that each *product* is *distributed* to the identified *target market*.

Distributor: action following review of products

- 2A.3.24 R Where appropriate, in view of the outcome of a review, a *distributor* must:
- (1) amend the product distribution arrangements;
 - (2) take appropriate action to mitigate the situation and prevent any further harm; and
 - (3) promptly inform each other *person* in the distribution chain about the remedial action taken.

Distributor: vested rights

- 2A.3.25 R Where a *product* has existing contracts entered into before [date instrument comes into force], unless the *firm* has identified a breach of *rules* existing before [date instrument comes into force], the appropriate action a *distributor* must take does not require a *distributor* to waive its vested rights that have arisen in respect of those existing contracts.
- 2A.3.26 G For the purposes of *PRIN* 2A.3.25R, vested rights include the following:
- (1) payments already due under the terms of the contract;
 - (2) remuneration for services already wholly provided under the contract; and
 - (3) remuneration for services partly provided.
- 2A.3.27 G Whether a right is a vested right or not will depend on all the facts of the case and interpretation of the relevant contract.

Compliance with other Handbook provisions

- 2A.3.28 E (1) Where either (a) or (b) applies, a *firm* should continue to comply with the *rules* in *PROD* 3, 4 or 7 as applicable.
- (a) This paragraph applies if a *firm* is required to comply with *PROD* 3, 4 or 7 for any *product* it *manufactures* or *distributes*.
 - (b) This paragraph applies if a *firm* is the *manufacturer* or *distributor* of an *existing product* to which the guidance in *PRIN* 2A.3.29 applies, and the *firm* has elected to comply with the product governance arrangements in *PROD* for the *existing product*.
- (2) Compliance with (1) may be relied on as tending to establish compliance with *PRIN* 2A.3.
- 2A.3.29 G Where a *firm* is a *manufacturer* or *distributor* of an *existing product* which either:
- (1) would have been subject to *PROD* 3 if it had been created or significantly adapted on or after 3 January 2018; or
 - (2) would have been subject to *PROD* 4 if it had been created or significantly adapted on or after 1 October 2018 and is not a *legacy non-investment insurance product*,
- the *firm* may choose whether to comply with the product governance arrangements in this section for the *existing product* or whether to elect to comply with the product governance arrangements set out *PROD* 3 or *PROD* 4 as appropriate to the *product*.

- 2A.3.30 G The provisions in *PRIN* 2A.3.8R to *PRIN* 2A.3.11G and *PRIN* 2A.3.24R to *PRIN* 2A.3.27G apply to *firm* which has elected to comply with *PROD* 3 or *PROD* 4 under *PRIN* 2A.3.29G.

2A.4 Consumer Duty: retail customer outcome on price and value

What is value?

- 2A.4.1 R For the purposes of this outcome:
- (1) value is the relationship between the amount paid by a *retail customer* for the *product* and the benefits they can reasonably expect to get from the *product*; and
 - (2) a *product* provides fair value where the amount paid for the *product* is reasonable relative to the benefits of the *product*.

Price and value: manufacturers general obligation

- 2A.4.2 R A *manufacturer* must:
- (1) ensure that its *products* provide fair value to *retail customers* in the *target markets* for those *products*; and
 - (2) carry out a value assessment of its *products*.
- 2A.4.3 R In ensuring that a *product* provides fair value, a *manufacturer* must be satisfied that this will be the case from the point at which the *manufacturer* completes the assessment for a reasonably foreseeable period, including, where the *product* is one that renews, following renewal.
- 2A.4.4 G What constitutes a ‘reasonably foreseeable period’ will depend on the type of *product* and the expected length of time a *retail customer* in the *target market* will keep it, including, where relevant, the number of occasions the *firm* would reasonably expect that a *retail customer* would renew the *product*.

Price and value: distributors general obligation

- 2A.4.5 R
- (1) A *distributor* must not *distribute* a *product* unless its distribution arrangements are consistent with the *product* providing fair value to *retail customers*.
 - (2) Arrangements will be consistent with providing fair value to *retail customers* where they enable the *distributor* to obtain enough information from the *manufacturer* to understand the outcome of the value assessment and in particular to identify:
 - (a) the value the *product* is intended to provide to a *retail customer*; and
 - (b) the impact that the *distribution* arrangements (including any remuneration it or another person in the distribution chain

receives) has on the overall value of the *product* to *retail customers*.

Product packages

- 2A.4.6 R Where a *product* is intended to be provided with one or more other *products*, a *manufacturer* must ensure that:
- (a) each component *product*; and
 - (b) the package as a whole,
- provides fair value to *retail customers* in the *target market*.

The value assessment: manufacturers

- 2A.4.7 R A *manufacturer's* assessment of whether or not a *product* provides fair value must include (but is not limited to) consideration of the following:
- (1) the nature of the *product*, including the benefits that will be provided or may be reasonably expected and its quality;
 - (2) any limitations that are part of the *product*;
 - (3) the expected total price to be paid by the *retail customer* or that may become due from the *retail customer*. The expected total price includes:
 - (a) the price paid by the *retail customer* on entering into a contract for the *product*;
 - (b) any regular charges or fees payable over the lifetime of the *product*, for example an annual management charge;
 - (c) any contingent fees or charges, for example, administrative charges for changes of address, charges falling into arrears on a loan, or charges for transferring investments; and
 - (d) any non-financial costs the *retail customer* is asked to provide to the *firm*; and
 - (4) any characteristics of vulnerability that *retail customers* in the *target market* display and the impact these characteristics have on the likelihood that *retail customers* may not receive fair value from its *products*.

The value assessment: distributors

- 2A.4.8 R A *distributor* must ensure that its distribution arrangements contain effective measures and procedures to enable it to obtain sufficient, adequate and reliable information from the *manufacturer* on the outcome of the value assessment and to understand that assessment. In particular,

distribution arrangements must enable the *distributor* to obtain sufficient information to comply with *PRIN* 2A.4.5R(2).

- 2A.4.9 R In understanding the value assessment, a *distributor* must consider at least the following:
- (1) the benefits the *product* is intended to provide to a *retail customer*;
 - (2) the characteristics, objectives and needs of the *target market*;
 - (3) the interaction between the price paid by the *retail customer* and the extent and quality of any services provided by the *distributor*; and
 - (4) whether any remuneration the *distributor* receives in relation to the *product* would result in the *product* ceasing to provide fair value to the *retail customer*.

The value assessment: general

- 2A.4.10 R In determining whether a *product* provides fair value, or distribution arrangements are consistent with fair value being provided, a *firm* must not rely on individual *retail customers* to consider whether they believe the *product* provides fair value in place of the *firm*'s own assessment.
- 2A.4.11 G A *firm* may consider one or more of the following in its assessment of whether or not a *product* is providing fair value:
- (1) the costs incurred by the *firm* in *manufacturing* or *distributing* the *product*;
 - (2) the market rate and charges for a comparable *product* provided by the *firm*;
 - (3) whether the *firm* has been able to achieve savings and benefits from economies of scale which could be shared with *retail customers*; and
 - (4) how the intended distribution arrangements support, and will not adversely affect, the intended value of the *product*.
- 2A.4.12 G (1) Where a *firm* identifies that there is an unreasonable relationship between the price paid by the *retail customer* and the benefits they can reasonably expect to get from the *product*, the *product* will not be providing fair value. *Firms* should consider all aspects of value and come to an overall conclusion as to whether the *product* provides fair value.
- (2) A *product* that has negligible or no obvious benefit for *retail customers* does not provide fair value, regardless of the price charged to the *retail customer*.
- 2A.4.13 G (1) The types of benefits that *retail customers* may reasonably expect to obtain may include non-financial benefits such as an enhanced level

of customer service providing extra assistance to *retail customers* in using the *product*.

- (2) Examples of non-financial costs include the provision of personal data and the granting of permission to use that data.
- (3) A *firm* should consider *retail customer* cognitive and behavioural biases when carrying out the value assessment.
- (4) Where one group of *retail customers* is charged more for the *product* than another group of *retail customers* purchasing the same *product*, the *product* is less likely to be fair value if the use of differential pricing is not objectively justified, and either:
 - (a) *retail customers* cannot meaningfully compare *products*; or
 - (b) there are limited options to change *product* or provider.

Guidance on the value assessment: characteristics of retail customers

- 2A.4.14 G In considering the value assessment and how it applies when *firms* have different types of *retail customer* in their *target market* for a *product*, *firms* should have regard in particular to the following:
- (1) whether any *retail customers* who have characteristics of vulnerability may be disadvantaged; and
 - (2) where the *firm* charges different prices to separate groups of *retail customers*, whether the price charged for the *product* provides fair value for an average *retail customer* in each pricing group.

Stage at which manufacturers and distributors assess value

- 2A.4.15 R *Manufacturers* and *distributors* are responsible for the value assessment as follows:
- (1) A *manufacturer* must consider the fair value assessment at every stage of the product approval process, including in particular when:
 - (a) designing the *product*;
 - (b) identifying *retail customers* in the *target market* for whom the *product* needs to provide fair value; and
 - (c) selecting distributions methods/channels.
 - (2) A *distributor* must consider the fair value assessment when determining the distribution strategy for the *product* and in particular where the *product* is to be *distributed* with another *product* whether as part of a package or not.

Manufacturers: collaboration with another firm or with unregulated persons

2A.4.16 R Where *firms* collaborate to *manufacture a product*, they must outline in a written agreement:

- (1) their collaboration to comply with the price and value obligations in this chapter; and
- (2) their respective roles and responsibilities in the value assessment.

2A.4.17 R Where a *firm* collaborates with a person who is not a *firm* to *manufacture* or *distribute a product*, it remains fully responsible for discharging all its obligations under this outcome.

Closed products

- 2A.4.18 R
- (1) The obligation on *manufacturers* in *PRIN 2A.4.2R* to act reasonably to ensure that a *product* provides fair value applies to *closed products* as well as new and *existing products*.
 - (2) In the case of a *closed product*, the reference to a *target market* in *PRIN 2A.4.2R* should be read as referring to the *retail customers* who are *customers* of the *closed product*.

Guidance on the value assessment: closed and existing products

2A.4.19 G The assessment of whether a *closed product* or an *existing product* provides fair value should be on a forward-looking basis only. Unless required to do so by any other *rule*, *manufacturers* do not need to consider whether their *closed products* or *existing products* provided fair value prior to these *rules* coming into force.

2A.4.20 G In assessing whether a *closed product* or an *existing product* provides fair value, a *manufacturer* may take into account the benefits provided and the costs charged prior to these *rules* coming into effect.

[**Note:** See also *PRIN 2A.4.24R* regarding appropriate action for *closed products* if the *product* no longer provides fair value.]

Information for distributors

2A.4.21 R The *manufacturer* of a *product* must ensure that *firms* distributing the *product* have all necessary information to understand the value that the *product* is intended to provide to a *retail customer*.

Reviewing the value assessment

2A.4.22 R A *firm* (whether a *manufacturer* or *distributor*) must regularly review the value assessment throughout the life of the *product* to ensure that the *product* continues to provide fair value to *retail customers* in the *target market*.

2A.4.23 R Where a *manufacturer* identifies in its review of its value assessment that the *product* no longer provides fair value, it must take appropriate action to:

- (1) mitigate, and where appropriate, remediate any harm caused to existing *retail customers*; and
 - (2) prevent harm to new *retail customers*.
- 2A.4.24 R In the case of a *closed product*, or an *existing product* held by a *retail customer* before [date instrument comes into force]], unless the *firm* has identified a breach of *rules* in existence before [date instrument comes into force], the appropriate action a *firm* may take does not require a *firm* to waive its vested contractual rights.
- 2A.4.25 G For the purposes of *PRIN* 2A.2.24R, vested contractual rights include the following:
 - (1) payments already due under the terms of the contract;
 - (2) remuneration for services wholly provided under the contract; and
 - (3) remuneration for services partly provided.
- 2A.4.26 G Whether a right is a vested right or not will depend on all the facts of the case and interpretation of the relevant contract.
- 2A.4.27 R Where a *distributor* identifies that the *product* no longer provides fair value, whether that is due to aspects of the *product* or the distribution arrangements, it must take appropriate action to:
 - (1) aim to mitigate the situation and prevent further occurrences of any possible harm to *retail customers*, including, where appropriate, amending the distribution strategy for that *product* (and, where relevant, the package); and
 - (2) inform any relevant *manufacturers* promptly about any concerns they have and any action the *distributor* is taking.

Distribution chains

- 2A.4.28 R
 - (1) A *firm* which distributes *products* to *retail customers* is responsible for ensuring the fair value obligations in relation to distribution are met in respect of any *product* it distributes to a *retail customer*.
 - (2) A *firm* which distributes *products* to other *firms* in the distribution chain must consider whether they are also a *manufacturer* and if they are, apply the rules in this section.
- 2A.4.29 R A *firm* which *distributes products* to other *distributors* must ensure that all information relevant to the value assessment is passed to the final *distributor* to the *retail customer*.

Compliance with other handbook provisions

- 2A.4.30 E
 - (1) Where a *firm*:

- (a) *manufactures or distributes a non-investment insurance product*, and is required to comply with *PROD 4* in respect of that *product*;
- (b) is required to comply with *PROD 7*; or
- (c) is an *authorised fund manager* and is required to comply with *COLL 6.6*,

the *firm* should continue to comply with the provisions of *PROD 4*, *PROD 7* or *COLL 6.6* as applicable.

- (2) Compliance with (1) may be relied on as tending to establish compliance with *PRIN 2A.4*.

2A.5 Consumer Duty: retail customer outcome on consumer understanding

Application

2A.5.1 R This section applies to:

- (1) all *firms* involved in the production, approval or distribution of *retail customer* communications, regardless of whether the *firm* has a direct relationship with a *retail customer*, and including where a *firm* produces or *approves financial promotions*, sales-related communications and post-sale communications (and references to a *firm's* communications or a *firm* communicating are to be read accordingly);
- (2) all communications throughout a *firm's* interactions with *retail customers*, including:
 - (a) before, during, and after any sale of a *product*; and
 - (b) interactions between *retail customers* and the *firm* that do not relate to a specific *product*; and
- (3) all communications, including verbal, visual or in writing, from a *firm* to a *retail customer*, regardless of the channel used or intended to be used for the communication.

Communications to *retail customers*

- 2A.5.2 R (1) A *firm* must ensure that it supports *retail customer* understanding so that its communications:
- (a) meet the information needs of *retail customers*;
 - (b) are likely to be understood by the average *retail customer* intended to receive the communication; and
 - (c) equip *retail customers* to make decisions that are effective, timely and properly informed.

- (2) A *firm* must ensure that it *communicates* information to *retail customers* in a way which is clear, fair and not misleading.
- 2A.5.3 R (1) In considering its approach to supporting the understanding of *retail customers*, the *firm* should tailor the communications provided to *retail customers*, taking into account:
- (a) the characteristics of the *retail customers* intended to receive the communication, including any characteristics of vulnerability;
 - (b) the complexity of the *product*;
 - (c) the communication channel(s) used; and
 - (d) the role of the *firm*, including whether the *firm* is providing advice or information only.
- (2) With regard to (1)(a):
- (a) for *product* specific communications, a *firm* should consider the information needs of the *target market* for that *product*; or
 - (b) for non-*product* specific communications, a *firm* should consider the information needs of the intended recipients of that communication, for example its *retail customer* base.
- 2A.5.4 R (1) The *firm* must ensure that the information provided to *retail customers* is:
- (a) accurate;
 - (b) relevant, with an appropriate level of detail; and
 - (c) provided on a timely basis, where the *firm* is responsible for the distribution of the *communication*.
- (2) With regard to (1)(c), in order for a *firm* to provide information on a timely basis, it must *communicate* in good time for *retail customers* to make effective decisions, including:
- (a) before the purchase of a *product*; and
 - (b) at suitable points throughout the lifecycle of the *product*.
- 2A.5.5 G (1) In considering its approach to supporting the understanding of *retail customers*, a *firm* should tailor the content of its communications, including to:
- (a) explain or present information in a logical manner;

- (b) use plain and intelligible language and, where use of jargon or technical terms is unavoidable, explain the meaning of any jargon or technical terms as simply as possible;
 - (c) make key information prominent and easy to identify, including by means of headings and layout, display and font attributes of text, and by use of design devices such as tables, bullet points, graphs, graphics, audio-visuals and interactive media;
 - (d) avoid unnecessary disclaimers; and
 - (e) consider whether the *firm* is providing too much information to *retail customers* such that it may prevent *retail customers* from making effective decisions.
- (2) In considering the methods of *communicating* with *retail customers*, a *firm* should consider whether the communication channel:
- (a) enables the communication of relevant information that *retail customers* are likely to need to support effective decision making; and
 - (b) provides an appropriate opportunity for a *retail customer* to review the information and, where relevant, assess its options.
- 2A.5.6 G When a *firm* is not carrying out an advisory role, the *firm* should equip *retail customers* with relevant information in a way that does not amount to the provision of advice.
- 2A.5.7 R When a *firm* is interacting directly with a *retail customer* on a one-to-one basis, such as in branch, during a telephone conversation or other interactive dialogue, the *firm* should:
- (1) (where appropriate) tailor the *communication* to meet the information needs of that *retail customer*, taking into account whether they have characteristics of vulnerability; and
 - (2) check the *retail customer* understands the information, particularly if the information is reasonably regarded as key information, such as where it prompts that *retail customer* to make a decision.

Testing, monitoring and adapting communications

- 2A.5.8 R (1) A *firm* must:
- (a) test communications before *communicating* them to *retail customers*; and
 - (b) (as set out in *PRIN* 2A.8.5R) regularly monitor the impact of the communications once they have been *communicated*,

to identify whether it is delivering good outcomes for *retail customers*.

- (2) Where a *firm* has identified any issues in its communications through (1), it must investigate and correct any deficiencies through:
 - (a) adapting communications; or
 - (b) (where appropriate) adapting its *products* or processes, for example its sales processes, if it is aware or ought to reasonably be aware that adapting its communications would not be sufficient in isolation to support good outcomes for *retail customers*.

2A.5.9 G With regard to the *firm's* role, it would be more appropriate for the *firm* to:

- (1) test its communications if the *firm* is or ought to reasonably be responsible for:
 - (a) the production of the communication; and
 - (b) adapting the communication after testing;
- (2) monitor its communications where the *firm* has direct interactions with the *retail customers* intended to receive the communication, such as through the provision of customer services (whether outsourced in whole or in part).

2A.5.10 G In determining whether testing of communications is appropriate under *PRIN* 2A.5.8R(1)(a), a *firm* should consider factors such as:

- (1) the purpose of the communication and, in particular, if it designed to prompt or inform a decision, and the relative importance of that decision;
- (2) the context of the communication (such as whether it is a tailored individual communication or mass marketing that could impact many *retail customers*), its timing and its frequency;
- (3) the reasonably foreseeable information needs or characteristics of vulnerability of *retail customers*; and
- (4) whether the scope for harm to *retail customers* is likely to be significant, including if the information being conveyed were misunderstood or overlooked by *retail customers*.

2A.5.11 G (1) A *firm* should adapt its communications in accordance with *PRIN* 2A.5.8R(2) to support consumer understanding if *firms* identify that:

- (a) there are areas of common misunderstanding; or

(b) *retail customers* are not experiencing good outcomes, including particular groups of *retail customers* such as those with characteristics of vulnerability.

(2) For the purposes of (1)(a), if there is a notably different response by *retail customers* than was reasonably anticipated by the *firm* or ought to have been reasonably anticipated, including a notably lower response rate, following a communication prompting *retail customers* to take action, then this would suggest that the communication has not been understood.

2A.5.12 R Where a *distributor* identifies or becomes aware of a communication produced by another *firm* that is not delivering good outcomes for *retail customers*, it must act to avoid harm, including promptly informing the issue to the relevant *firm* in the distribution chain, such as a *manufacturer*.

2A.6 Consumer Duty: retail customer outcome on consumer support

Application

2A.6.1 R This section applies:

- (1) to all *firms* who are responsible for interacting directly with, and providing support to, *retail customers*, such as through its customer services functions and including where the *firm* outsources its interactions with *retail customers* to a third party (in whole or part);
- (2) regardless of the channel used or intended to be used when interacting with, or providing support to, *retail customers*, including via *electronic communications* such as social media; and
- (3) to all interactions between a *firm* and *retail customers*, such as in the course of or in connection with the *firm* providing customer services, including:
 - (a) before, during, and after any sale of a *product*; and
 - (b) interactions between *retail customers* and the *firm* that do not relate to a specific *product*.

Design and delivery of consumer support

2A.6.2 R (1) A *firm* must ensure that it provides an appropriate standard of support to *retail customers* such that it:

- (a) meets the needs of *retail customers*, including those with characteristics of vulnerability;
- (b) ensures that *retail customers* can use the *product* as reasonably anticipated; and
- (c) ensures that *retail customers* do not face unreasonable barriers (including unreasonable additional costs) when they want to:

- (i) make general enquiries or requests to the *firm*;
 - (ii) amend or switch *product*;
 - (iii) transfer to a new *product* provider;
 - (iv) submit a claim;
 - (v) make a complaint; or
 - (vi) cancel the contract, agreement or arrangement or otherwise terminate their relationship with the *firm*.
- (2) A *firm* must design and deliver the support it provides to *retail customers* to meet the obligations in (1), such as through its customer services functions, including where they are outsourced to a third party (in whole or part).
- 2A.6.3 G (1) For the purposes of *PRIN* 2A.6.2R(1)(c), unreasonable additional costs includes where the design or delivery of support results in the *retail customer* incurring unreasonable charges, delays, distress or inconvenience or where a *retail customer* is unreasonably required to provide personal data and grant permission to use that data.
- (2) If the following are not necessary in the circumstances:
- (a) *retail customers* taking additional steps to progress the activities set out in *PRIN* 2A.6.2R(1)(c); or
 - (b) *retail customers* incurring additional costs,
- they are likely to be an unreasonable barrier unless they support or ought to reasonably support good customer outcomes.
- 2A.6.4 R Where a *person* is authorised by a *retail customer* or by law to assist in the conduct of the *retail customer*'s affairs (such as a power of attorney), the *firm* should provide the same level of support to that *person* that they would have provided to the *retail customer*.
- 2A.6.5 E (1) A *firm* should not:
- (a) cause unreasonable barriers to *retail customers* looking to:
 - (i) exercise any rights or options in relation to the *product*, including carrying out the activities set out in *PRIN* 2A.6.2R(1)(c); or
 - (ii) otherwise access the utility or benefit which the *product* is intended to provide; or
 - (b) act in a manner which otherwise appears intended to, or does in fact, unreasonably discourage or inhibit *retail customers* from pursuing their financial objectives.

- (2) Contravention of (1) may be relied on as tending to establish the contravention of *PRIN 2A.6.2R*.

- 2A.6.6 G (1) A *firm* would be unlikely to meet its obligations in *PRIN 2A.6.2R* if the design or delivery of its interactions with *retail customers* cause or would be likely to cause:
- (a) *retail customers* to take unreasonable steps to progress their aims, including those which are:
 - (i) unreasonably onerous;
 - (ii) unreasonably time consuming;
 - (iii) complex for a *retail customer* to achieve; or
 - (iv) difficult for a *retail customer* to understand;
 - (b) prospective *retail customers* to be prioritised over existing *retail customers*;
 - (c) unreasonable delays when *retail customers* attempt to engage with the *firm*, including disproportionately longer call waiting times to cancel or make changes to an existing *product* than to purchase a new *product*;
 - (d) unreasonable delays to:
 - (i) any payments due to the *retail customers* after they have been agreed;
 - (ii) the *firm* requesting necessary paperwork or evidence from *retail customers*; or
 - (iii) the *firm* processing paperwork or evidence received from *retail customers*; or
 - (e) the *firm* to otherwise not meet the needs of *retail customers*, taking into account any characteristics of vulnerability.

2A.7 **General**

Principle 12 and the obligations in this chapter as standards of what could reasonably be expected

- 2A.7.1 R *Principle 12* and the obligations in this chapter must be interpreted in accordance with the standard that could reasonably be expected of a prudent *firm*:
- (1) carrying on the same activity in relation to the same *product*; and

- (2) making assumptions about the needs and characteristics of its *retail customers* based on the needs and characteristics of an average *retail customer*.
- 2A.7.2 R (1) Where a *firm*, or another *firm* in its distribution chain, identifies a *target market*, the references in *PRIN* 2A.7.1R to an “average *retail customer*” mean the average member of that *target market*.
- (2) Where a *firm* becomes aware or could reasonably be expected to have become aware that individuals within a *target market* or (where a *firm* has an *existing product* or *closed product*) group of *retail customers* who hold the same *existing product* or *closed product*, share particular needs or characteristics (including any characteristics of vulnerability) that are different to the average member of that group, the references in *PRIN* 2A.7.1R to an “average *retail customer*” must also take into account those needs or characteristics.
- (3) Where a *firm* becomes aware or could reasonably be expected to have become aware of a particular *retail customer’s* needs or characteristics (including any characteristics of vulnerability), when dealing with that *retail customer* the references in *PRIN* 2A.7.1R to “average *retail customer*” must also take into account those needs or characteristics.
- 2A.7.3 G What is reasonable depends on all the relevant circumstances, including:
- (1) the nature of the *product* being offered or provided, in particular:
- (a) the risk of harm to *retail customers*. For example, if a *product* is higher risk, *firms* should take additional care to ensure it meets *retail customers’* needs, characteristics and objectives and is targeted appropriately;
- (b) the *product’s* relative complexity. *Retail customers* may find it more difficult to assess the features, suitability or value offered by more complex *products*. Long-term investments where the outcome is not easy to predict, or non-standard charging structures, or other features which may not be easy for *retail customers* to understand may require greater care from a *firm* to promote, monitor and respond to consumer understanding;
- (c) the costs, fees and charges involved with the *product*; and
- (d) the relative utility to *retail customers* of the *product* as a whole and of specific features, options, or services within the *product*, if subject to separate fees or charges;
- (2) the characteristics of the *retail customer* or *retail customers* including, in particular:
- (a) their resources, degree of financial capability or sophistication and characteristics of vulnerability (to the extent that a *firm*

either knows about or should reasonably have known about them); and

- (b) their reasonable expectations in relation to the *product* and the *firm*;
- (3) the *firm*'s role in relation to the *product*, including:
 - (a) the *firm*'s relationship with the *retail customer*. Acting reasonably does not require a *firm* to assume a fiduciary duty or require an advisory service where it does not already exist;
 - (b) whether the *firm* has provided or will provide advice to the *retail customer*. What is reasonable may be different where advice is being provided;
 - (c) the *firm*'s role in the *product*'s distribution chain, in particular its relative degree of control or influence over outcomes for *retail customers* in relation to the *product*;
 - (d) the stage in the *firm*'s relationship with the *retail customer*. There will be times when *retail customers* are particularly exposed to harm, for example when they fall into arrears or are considering long-term investment decisions. The actions a *firm* needs to take to be acting reasonably in such circumstances may be greater than when a *retail customer* is making decisions which carry a lesser risk of adverse outcomes.

- 2A.7.4 G Acting in a way that could reasonably be expected of a prudent *firm* requires more than adopting a single solution that is reasonable. It includes (among other things) considering whether the preferred solution provides good outcomes for all *retail customers* affected or only some; and if only some, why it does not work for all, and how best to identify additional actions which might mitigate the outcome for those adversely affected.

Guidance on responsibilities of firms in a product's distribution chain

- 2A.7.5 G (1) *Principle 12* imposes obligations on *firms* towards *retail customers* of their *products* irrespective of whether the customer is a *client* or *customer* of the *firm*.
- (2) This extended application aims to ensure the effectiveness of obligations under *Principle 12* which may properly relate to activities carried out or controlled by *persons* with whom the *retail customer* is not in a client relationship.
- 2A.7.6 G (1) Obligations on *firms* in the distribution chain of a *product* must be interpreted reasonably and proportionately, in a manner that reflects the *firm*'s role in that distribution chain and its ability to determine or influence the achievement of *retail customer* outcomes in relation to, or in connection with, the *product*.

- (2) A *firm* in a direct contractual relationship with a *retail customer* will likely have a material degree of influence over outcomes for *retail customers* and therefore will always be subject to at least some obligations under *Principle 12* (see also *PRIN 3.2.8R*).

- 2A.7.7 G (1) The extent of a *firm's* responsibilities under *Principle 12* in any one case will turn on the substance of the *firm's* role in the arrangements relating to the *product*. For example, if a *firm* in the distribution chain is capable of materially influencing or determining the *product's* ability to deliver good outcomes for *retail customers*, then that *firm* will bear proportionate responsibilities in respect of the respective *retail customer* outcomes. This is notwithstanding that the *retail customer* may not be its customer due to the indirect nature of their relationship.
- (2) A *firm's* role in the distribution chain may be so minor, indirect or remote that it is unable to determine or materially influence the achievement of any *retail customer* outcomes in connection with the *product*. If so, the *firm* may not be subject to any obligation under *Principle 12*.

Relevance of guidance about Principles 6 and 7

- 2A.7.8 G Given the high-level nature and breadth of application of the *Principles*, guidance about a *Principle* cannot exhaustively cover its implications (see also *PRIN 1.1.9G*).

- 2A.7.9 G (1) In general terms, *Principle 12* imposes a higher and more exacting standard of conduct in relation to a *firm's retail market business* relative to what *Principles 6* or *7* would have otherwise required. *Principle 12* also has a broader application in relation to a *firm's retail market business* relative to *Principles 6* and *7*, with a greater focus on consumer protection outcomes for *retail customers* of a *product* irrespective of whether those *retail customers* stand in a *client* relationship with the *firm* in the distribution chain who is best placed to secure or deliver a particular outcome.
- (2) While existing, formal guidance on *Principles 6* and *7* will remain relevant to *firms* in considering their obligations under *Principle 12*, *firms* should also take due account of the inherent limits of such guidance in light of the factors in (1).
- (3) To the extent that a *firm* is not acting in accordance with existing guidance on *Principles 6* and *7* and the behaviour would amount to a breach of *Principle 6* or *7* in the event that they had continued to apply, the behaviour is likely to amount to a breach of *Principle 12*.
- (4) Where a *firm* is acting in accordance with guidance on *Principles 6* and *7* that should not be relied on alone in considering how to comply with *Principle 12*. *Firms* also need to consider all their obligations not only under the *Principles*, but under any other

applicable *UK* law, including other *FCA rules* such as those expanding upon *Principle 12* as set out in *PRIN 2A*.

- 2A.7.10 G The effect of *PRIN 3.2.9R* is that the application of *Principles 6* and *7* is unchanged with respect to a *firm's* activities insofar as they are not subject to *Principle 12*.

Interaction between *Principle 12* and the cross-cutting obligations

- 2A.7.11 R The cross-cutting obligations (the *rules* in *PRIN 2A*) exhaust what is required under *Principle 12*.

- 2A.7.12 G The cross-cutting obligations define how *firms* should act to deliver good outcomes for *retail customers*.

2A.8 Monitoring of consumer outcomes

- 2A.8.1 R This section sets out the general obligation on *firms* to monitor under *Principle 12* and *PRIN 2A* the outcomes that *retail customers* are experiencing from their *products*.

- 2A.8.2 G The purpose of the monitoring obligation is to enable *firms* to identify whether there are any risks that they are not meeting the requirements of the cross-cutting obligations and the retail customer outcomes, and consequently they are not acting to deliver good outcomes for *retail customers*.

- 2A.8.3 G To the extent that a *firm* is also required to carry out specific monitoring or reviews under any of the outcomes in *PRIN 2A.3* to *PRIN 2A.6*, the specific monitoring or reviews form part of the general monitoring required by this section and *firms* may utilise the information gathered through these processes in preparing the report required under *PRIN 2A.8.12R*.

- 2A.8.4 G In relation to *retail customer* communications, *PRIN 2A.5.8R* to *PRIN 2A.5.12R* set out specific requirements on the testing and monitoring of communications.

Requirement to monitor retail customer outcomes

- 2A.8.5 R A *firm* must regularly monitor the outcomes *retail customers* receive from:
- (1) the *products* the *firm* manufactures or distributes;
 - (2) the communications the *firm* has with *retail customers*; and
 - (3) the customer support the *firm* provides to *retail customers*.

- 2A.8.6 R The monitoring carried out by a *firm* must enable it to determine at least:
- (1) whether *retail customers* are being sold *products* that have been designed to meet their needs, characteristics and objectives;

- (2) whether the *products* that *retail customers* purchase provide fair value;
- (3) whether *products* that do not provide fair value are removed from the *products* the *firm manufactures* or *distributes*;
- (4) whether *retail customers* are equipped with the right information to make effective, timely and properly informed decisions; and
- (5) whether *retail customers* receive the support they need.

- 2A.8.7 R The *firm's* monitoring must also enable it to identify:
- (1) whether the *firm* is complying with *Principle 12* and the cross-cutting obligations in *PRIN 2A.2*;
 - (2) whether for any *product* the *firm manufactures* or *distributes*, any group of *retail customers* is receiving worse outcomes compared to another group of *retail customers* of the same *product*; and
 - (3) whether any *retail customers* have suffered harm as a result of the *firm's* acts or omissions.

Action required of firms

- 2A.8.8 R A *firm* must have in place processes to identify:
- (1) whether they are delivering the outcomes listed in *PRIN 2A.8.6R* and *PRIN 2A.8.7R* for *retail customers*; and
 - (2) the root causes of any failure to deliver the outcomes listed in *PRIN 2A.8.6R* and *PRIN 2A.8.7R* for *retail customers*.

- 2A.8.9 R Where a *firm* identifies that:
- (1) *retail customers* are not receiving the outcomes listed in *PRIN 2A.8.6R*, or there is a risk that *retail customers* will not receive these outcomes;
 - (2) any group of *retail customers* for a *product* are receiving worse outcomes than another group of *retail customers* for the same *product*;
 - (3) foreseeable harm may be caused; or
 - (4) the *firm* is not complying with *Principle 12* and the cross-cutting obligations in *PRIN 2A.2*,

it must take appropriate action to address the situation.

- 2A.8.10 G *PRIN 2A.8.9R* does not require a *firm* to take action to remove the effects of risks inherent in a *product* that the *firm* reasonably believed the *retail customer* understood and accepted.

- 2A.8.11 R If a *firm* identifies as a result of its monitoring that *retail customers* have suffered harm as a result of any acts or omissions of the *firm*, it must take appropriate action to rectify the situation, including providing redress where necessary.
- 2A.8.12 G The frequency of monitoring, and the nature of the information a *firm* must collect to effectively monitor the outcomes received by *retail customers*, depends on the type of *firm* and its role in the distribution chain, the nature of the *product*, and the *target market*.

Record keeping

- 2A.8.13 G SYSC 3 and SYSC 9 contain high level requirements in relation to record keeping. *Firms* will need to decide, in line with these requirements, what records they need to keep in relation to their obligations under *Principle 12*, the cross-cutting obligations and the consumer outcomes.
- 2A.8.14 G *Firms* are reminded of their obligations under *Principle 11* to inform the FCA of anything of which the FCA would reasonably expect notice.

Governing body report and responsibilities

- 2A.8.15 R A *firm* must prepare a report for its governing body setting out the results of its monitoring under this section and any actions required as a result of the monitoring.
- 2A.8.16 R At least annually, the governing body of a *firm* must:
- (1) review and approve the *firm's* report on the outcomes being received by *retail customers*;
 - (2) confirm that it is satisfied that the *firm* is complying with its obligations under *Principle 12* and *PRIN 2A*; and
 - (3) assess whether the *firm's* future business strategy is consistent with its obligations under *Principle 12* and *PRIN 2A*.
- 2A.8.17 R When approving the *firm's* report under *PRIN 2A.8.15R*, the governing body of the *firm* must also agree:
- (1) any action required to address any identified risk that *retail customers* may not receive good outcomes;
 - (2) any action required to address any identified instance where *retail customers* have not received good outcomes; and
 - (3) any amendments to the *firm's* business strategy to ensure that it remains consistent with meeting the *firm's* obligations under *Principle 12* and *PRIN 2A*.

Amend the following as shown.

3 Rules about application

3.1 Who?

...

3.1.6 R A *firm* or other *person* will not be subject to a *Principle* or PRIN 2A to the extent that it would be contrary to the requirements of an *EU* measure passed or made before *IP completion day*, to the extent that those requirements continue to have effect after *IP completion day* under the *EUWA*.

3.1.7 G *PRIN 4* provides specific guidance on the application of the *Principles* and PRIN 2A for *MiFID business*.

3.1.8 R The *Principles* will not apply to the extent that they purport to impose an obligation which is inconsistent with requirements which implemented the *Payment Services Directive*, the *Consumer Credit Directive* or the *Electronic Money Directive*. For example, there may be circumstances in which *Principle 6 12* and PRIN 2A may be limited by the conduct of business obligations derived from the *Payment Services Directive* and the *Electronic Money Directive* and applicable to *payment service providers* and *electronic money issuers* (see Parts 6 and 7 of the *Payment Services Regulations* and Part 5 of the *Electronic Money Regulations*) or derived from the *Consumer Credit Directive* (see, for example, the information requirements in the *Consumer Credit (Disclosure of Information) Regulations 2010 (SI 2010/1013)*).

...

3.1.10 R Only *Principles* 1, 2, 3, ~~7~~, 9, 11, 12 and PRIN 2A, and to the extent that Principle 12 and PRIN 2A do not apply Principle 7, apply to a *TP UCITS qualifier* and a *TP AIFM qualifier*, and only with respect to the activities in *PRIN 3.2.2R* (Communication and approval of financial promotions).

...

3.1.12 R Principle 12 and PRIN 2A only apply where the client is a retail customer.

3.1.13 R Principle 12 and PRIN 2A apply to:

(1) a TP firm; and

(2) a Gibraltar-based firm.

3.2 What?

...

Principle 12 and PRIN 2A: additional application provisions

3.2.6 R Principle 12 and PRIN 2A apply to a firm's retail market business only, including in respect of existing products and closed products.

- 3.2.7 R Where a firm's retail market business involves operating in a distribution chain, Principle 12 and PRIN 2A apply only to the extent that the person is able through that retail market business to determine or materially influence retail customer outcomes.
- 3.2.8 R Principle 12 and PRIN 2A do not apply to activities to the extent that those activities are excluded by a rule from the scope of protections offered to retail customers by COBS, ICOBS, MCOB, BCOBS, CMCOB, FPCOB, PROD or CONC.

Interaction between Principle 12 and Principles 6 and 7

- 3.2.9 R Principles 6 and 7 do not apply to a firm's activities to the extent that Principle 12 and PRIN 2A apply.
- 3.2.10 G Activities to which Principles 6 and 7 rather than Principle 12 and PRIN 2A may apply include, for example, services provided to professional clients.
- 3.2.11 G Principle 12 and PRIN 2A have a broader application than Principles 6 and 7, for example it applies to firms in the distribution chain in relation to which the consumer may not be a client.

...

3.3 **Where?**

- 3.3.1 R Territorial application of the Principles

Principle	Territorial application
...	...
Principles 6, 7, 8, 9, and 10	Principle 8, in a prudential context, applies with respect to activities wherever they are carried on; otherwise <u>these Principles</u> apply with respect to activities carried on from an establishment maintained by the <i>firm</i> (or its appointed representative) in the <i>United Kingdom</i> , or in respect of <i>regulated claims management activities</i> , apply with respect to activity carried on in <i>Great Britain</i> , even if the establishment from which it is carried on is not located in the <i>UK</i> (see <i>PERG 2.4A</i>), unless another applicable <i>rule</i> or <i>onshored regulation</i> which is relevant to the activity has a wider territorial scope, in which case the <i>Principle</i> applies with that wider scope in relation to the activity described in that <i>rule</i> or <i>onshored regulation</i> .
Principle 11	applies with respect to activities wherever they are carried on.

<u>Principle 12 and PRIN 2A</u>	apply with respect to activities carried on with <i>retail customers</i> located in the <i>United Kingdom</i> unless another applicable rule or onshored regulation which is relevant to the activity has a different territorial scope, in which case <i>Principle 12 and PRIN 2A</i> apply with that scope in relation to the activity described in that rule or onshored legislation.
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...

3.4 General

...

Guarantors etc

- 3.4.3A R (1) Paragraph (2) applies in relation to an *individual* who:
- (a) has provided, or is to provide, a guarantee or an indemnity (or both) in relation to a *regulated credit agreement*, a *regulated consumer hire agreement* or a *P2P agreement*; and
 - (b) is not the *borrower* or the *hirer*.
- (2) If the *individual* is not a *customer*, they are to be treated as if they were a *customer* for the purposes of *Principles 6 and 7* and as if they were a retail customer for the purposes of Principle 12 and PRIN 2A.
- (3) For the purposes of this *rule*, a guarantee does not include a *legal or equitable mortgage* or a *pledge*.

...

4 Principles: MiFID business

4.1 Principles: MiFID business

- 4.1.1 G *PRIN 3.1.6R* gives effect to the provisions of the *EUWA* concerning the continuing application of the principle of the supremacy of *EU* law. It ensures that the *Principles* and PRIN 2A do not impose obligations upon *firms* which are inconsistent with a relevant *EU* measure. If a *Principle* or *PRIN 2A* does purport to impose such an obligation *PRIN 3.1.6R* disapplies that *Principle* or provision of PRIN 2A, but only to the extent necessary to ensure compatibility with the relevant *EU* measure. This disapplication has practical effect only for certain matters covered by *MiFID*, which are explained in this section.

Where?

- 4.1.2 G Under *PRIN 3.3.1R*, the territorial application of a number of *Principles* and PRIN 2A to a *UK MiFID investment firm* is extended to the extent that another applicable rule or onshored regulation which is relevant to an activity has a wider territorial scope.

...

What?

4.1.4 G (1) ...

(2) Under *PRIN 3.1.6 R*, these disapplications may affect *Principles 1, 2, 6, and 9, 12 and PRIN 2A*. *PRIN 3.1.6R* applies only to the extent that the application of a *Principle or PRIN 2A* would be contrary to the *UK's* obligations under a relevant *EU* measure in respect of a particular transaction or matter. In line with *MiFID*, these limitations relating to *eligible counterparty business* and transactions under the rules of a *multilateral trading facility* or on a regulated market only apply in relation to a *firm's* conduct of business obligations to its clients derived from *MiFID*. They do not limit the application of those *Principles or PRIN 2A* in relation to other matters, such as client asset protections, systems and controls, prudential requirements and market integrity. Further information about these limitations is contained in *COBS 1 Annex 1*.

(3) Principles 3, 4, 5, 7, 8, 10 and 11 are not limited in this way.

...

TP 1 Transitional provisions

TP 1.1

	Material to which the transitional provision applies		Transitional Provision	Transitional Provision: dates in force	Handbook provision: coming into force
1.	<i>PRIN 1 Ann 1R 1.2(2)</i>	R	A <i>firm</i> need not comply with <i>PRIN Ann 1R 1.2(2)</i> in relation to an <i>eligible counterparty</i> if the <i>client</i> was correctly categorised as a <i>market counterparty</i> on 31 October 2007 and the <i>firm</i> complied with <i>COB 4.1.12R(2)</i> (Large intermediate customer classified as market counterparty).	From 1 November 2007 indefinitely	1 November 2007

<u>2.</u>	<u>Principle 12 and PRIN 2A</u>	<u>R</u>	<u>Principle 12 and PRIN 2A apply in relation to ancillary activities or other connected activities in accordance with PRIN 3.2 where those activities are carried on after [date instrument comes into force] regardless of whether the underlying activities were carried on before or after [date instrument comes into force].</u>	<u>From [date instrument comes into force] indefinitely</u>	<u>[date instrument comes into force]</u>
<u>3.</u>	<u>Principle 12 and PRIN 2A</u>	<u>G</u>	<u>An example of how PRIN TP 1.1 paragraph 2 applies is that a firm which has accepted a deposit prior to [date instrument comes into force] would be subject to Principle 12 and PRIN 2A in respect of customer services or other ancillary activities related to that deposit carried on after [date instrument comes into force].</u>	<u>From [date instrument comes into force] indefinitely</u>	<u>[date instrument comes into force]</u>

Annex C

Amendments to the Code of Conduct sourcebook (COCON)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

1 Application and purpose

1.1 Application

...

To whom does it apply?

...

1.1.3 R *Rules 1 to ~~5~~ 6 in COCON 2.1 apply to all conduct rules staff.*

...

1.1.5A R The conduct of a member of the *conduct rules staff* of a *firm* is not within the scope of *Rule 6* in COCON 2.1 (You must act to deliver good outcomes for retail customers) unless the corresponding COCON *firm activities* of the *firm* are within the scope of PRIN 3.1 (Who?) so far as it applies to Principle 12.

To what conduct does it apply?

1.1.5B R The restrictions of the scope of COCON in COCON 1.1.7AR to COCON 1.1.7ER (when they apply) are in addition to those in COCON 1.1.6R to COCON 1.1.7R.

...

1.1.7-A R (1) The term “COCON *firm activities*” means (in relation to conduct of P in relation to Firm A) the corresponding activities of Firm A as referred to in COCON 1.1.6R to COCON 1.1.7R (To what conduct does it apply?).

(2) The terms “P” and “Firm A” have the same meaning as they do in COCON 1.1.6R to COCON 1.1.7R.

1.1.7A R (1) ...

...

(4) This rule does not apply to Rule 6 in COCON 2.1 (You must act to deliver good outcomes for retail customers).

...

- 1.1.7C R The conduct of a member of the *conduct rules staff* of a *firm* is not within the scope of *Rule 6* in *COCON 2.1* (You must act to deliver good outcomes for retail customers) unless the corresponding *COCON firm activities* of the *firm* are within the scope of *PRIN 3.2* (What?) so far as it applies to *Principle 12*.
- 1.1.7D G The effect of *COCON 1.1.7C* is that a *person's* conduct is not within the scope of *Rule 6* in *COCON 2.1* if the *firm's* activities in which that *person* is taking part fall outside the scope of *Principle 12*. If *Principle 12* applies, *Rule 6* in *COCON 2.1* only applies if the conduct is also within the scope of the other relevant *COCON* application rules (although one of the *COCON* application rules (*COCON 1.1.7AR*) does not apply to *Rule 6*).
- 1.1.7E R To the extent that *Rule 6* in *COCON 2.1* (You must act to deliver good outcomes for retail customers) applies to the conduct of a *person*, *Rule 4* in *COCON 2.1* (You must pay due regard to the interests of customers and treat them fairly) does not apply to that conduct of that *person*.
- 1.1.8 G (1) More than one of *COCON 1.1.6R* to ~~*COCON 1.1.7BR*~~ *COCON 1.1.7ER* may apply to the same individual performing several roles.

...

...

Where does it apply?

- 1.1.8B R The restrictions of the scope of *COCON* in *COCON 1.1.9R* to *COCON 1.1.10R* on the one hand and *COCON 1.1.11C* on other are cumulative.

...

- 1.1.11B G ...

- 1.1.11C R The conduct of a member of the *conduct rules staff* of a *firm* is not within the scope of *Rule 6* in *COCON 2.1* (You must act to deliver good outcomes for retail customers) unless the corresponding *COCON firm activities* of the *firm* are within the scope of *PRIN 3.3* (Where?) so far as it applies to *Principle 12*.

- 1.1.11D G The effect of *COCON 1.1.8BR* and *COCON 1.1.11CR* is that conduct of a member of a *firm's conduct rules staff* is only within the territorial scope of *Rule 6* in *COCON 2.1* if it is within the scope of *COCON 1.1.9R* to *COCON 1.1.10R* and the corresponding activity of their *firm* is within the territorial scope of *Principle 12* as set out in *PRIN 3.3*.

...

2 Individual conduct rules

2.1 Individual conduct rules

...

2.1.6 R Rule 6: You must act to deliver good outcomes for *retail customers*.

[Note: See COCON 2.4 for what this means]

...

Insert the following new section COCON 2.4, after COCON 2.3 (Firms: training and breaches). All of the text is new and is not underlined.

2.4 The Consumer Duty

Application

2.4.1 R This section applies to *Rule 6* in COCON 2.1 (You must act to deliver good outcomes for retail customers).

2.4.2 R In this section the term “you” means a member of a *firm’s conduct rules staff*.

Obligations

2.4.3 R (1) COCON 2.4.4R to COCON 2.4.6R exhaust what is required by *Rule 6*.

(2) Any reference in the *Handbook* to the obligations on a member of a *firm’s conduct rules staff* under *Rule 6* is a reference to the requirements imposed by COCON 2.4.4R to COCON 2.4.6R.

2.4.4 R You must act in good faith towards *retail customers*.

2.4.5 R You must avoid foreseeable harm to *retail customers*.

2.4.6 R You must enable and support *retail customers* to pursue their financial objectives.

Reasonable application of Individual Conduct Rule 6

2.4.7 R The obligations in *Rule 6* must be interpreted in accordance with the standard that could reasonably be expected of a prudent *employee*:

(1) carrying on the same activity in relation to the same *product*; and

(2) making assumptions about the needs and characteristics of their *employer’s retail customers* based on the needs and characteristics of an average *retail customer*.

2.4.8 R (1) Where the *employer* or another *firm* in its distribution chain identifies a *target market*, the references in COCON 2.4.7R to an “average *retail customer*” mean the average member of that *target market*.

- (2) Where an *employee* becomes aware or could reasonably be expected to have become aware that individuals within a *target market* or (where a *firm* has an *existing product* or *closed product*) group of *retail customers* who hold the same *existing product* or *closed product*, share particular needs or characteristics (including any characteristics of vulnerability) that are different to the average member of that group, the references in *COCON* 2.4.7R to an “average *retail customer*” mean a customer sharing those needs or characteristics.
- (3) Where an *employee* becomes aware or could reasonably be expected to have become aware of a particular customer’s needs or characteristics (including any characteristics of vulnerability), when dealing with that customer the references in *COCON* 2.4.7R to “average *retail customer*” must also take into account those needs and characteristics.

References to Principle 12

- 2.4.9 R Any reference in *COCON* to *Principle 12* must be read in accordance with *PRIN* 2A.7.11R (Interaction between Principle 12 and cross-cutting obligations).

Amend the following as shown.

4 Specific guidance on individual conduct rules

4.1 Specific guidance on individual conduct rules

...

4.1.18 G ...

Rule 6: You must act to deliver good outcomes for retail customers

- 4.1.19 G In general terms, Rule 6 imposes a higher or more exacting standard of conduct in relation to a firm’s retail market business relative to what Rule 4 in COCON 2.1 (You must pay due regard to the interests of customers and treat them fairly) would have otherwise required. Rule 6 also has a broader application in relation to a firm’s retail market business relative to Rule 4, with a greater focus on consumer protection outcomes for retail customers of a product irrespective of whether those retail customers stand in a client relationship with the firm in the distribution chain who is best placed to secure or deliver a particular outcome.
- 4.1.20 G While the guidance on Rule 4 in COCON 2.1 will remain relevant to someone in considering their obligations under Rule 6, a person should also take due account of the inherent limits of guidance on Rule 4 in light of the factors in COCON 4.1.19G.

- 4.1.21 G To the extent that the *guidance* on *Rule 4* in *COCON 2.1* says that behaviour would amount to a breach of *Rule 4* in the event that it had continued to apply, that behaviour is likely to amount to a breach of *Rule 6*.
- 4.1.22 G Where a *person* is acting in accordance with *guidance* on *Rule 4* that should not be relied on alone in considering how to comply with *Rule 6*. A *person* also needs to consider all their obligations not only under *COCON*, but under any other applicable *UK law*.
- 4.1.23 G *Rule 6* applies to all *conduct rules staff*, regardless of whether that *person* has direct contact or dealings with *retail customers*. *Persons* subject to the *rules* in *COCON* should consider how their actions (or their failure to act) can affect the interests of *retail customers* or result in *retail customers* not obtaining a good outcome.
- 4.1.24 G Obligations on a member of a *firm's conduct rules staff* under *Rule 6* apply to the extent that is reasonable (see *COCON 2.4.7R* and *COCON 2.4.8R*). The *guidance* in *PRIN 2A.7* (Reasonable application of Principle 12) on the corresponding *PRIN rules* will also be helpful in interpreting *COCON 2.4.7R* and *COCON 2.4.8R*.
- 4.1.25 G The scope of a *person's* job and their seniority may affect the scope of their duty under *Rule 6* and what can reasonably be expected of them.
- 4.1.26 G For example, the scope of the job of a junior staff member carrying out a back office function may not give much of an opportunity to take steps to ensure good outcomes for *retail customers* on the sale of a *product*. There may be greater scope in the ongoing administration of the *product*.
- 4.1.27 G A salesperson is likely to have a significant influence on the outcomes that a *retail customer* receives. This is the case even if they are junior or subject to a detailed set of sales procedures.
- 4.1.28 G As described in *COCON 4.1.4G* to *COCON 4.1.8G* (Acting with due skill, etc as a manager (*Rule 2*)) and, in the case of an *SMF manager*, *COCON 4.2* (Specific guidance on senior manager conduct rules), someone in a management position has a wide duty to understand, manage, control and oversee the business for which they are responsible. A manager should perform those duties with a view to ensuring that *retail customers* receive good outcomes.
- 4.1.29 G The ability of a manager of a business area to achieve good outcomes is likely to reflect the ability of their business area to do so. So for example the head of a business area dealing with *retail customers* will have a correspondingly significant responsibility to ensure that those *retail customers* get good outcomes.
- 4.1.30 G Seniority may be relevant to the extent to which it is reasonable for a member of a *firm's conduct rules staff* to be expected to analyse how their area of responsibilities fits into the overall systems and processes of the *firm* for ensuring good outcomes for *retail customers* and to make suggestions for changes to those things.

- 4.1.31 G Seniority may also be relevant to the extent to which it is reasonable to expect a member of a *firm's conduct rules staff* to make suggestions about the policies and procedures about *retail customers* the *firm* imposes on the part of the business for which they are responsible.
- 4.1.32 G Seniority may also be relevant to the extent to which it is reasonable to expect a member of a *firm's conduct rules staff* to be concerned with how *Principle 12* (Consumer duty) applies on a *firm-wide* basis and not just to their area of direct executive responsibility. This is particularly the case for *SMF managers* who are members of their *firm's governing body* or other senior management forums.
- 4.1.33 G The *guidance* in *PRIN 2A.2* (Cross-cutting obligations) will also be helpful in interpreting to *COCON 2.4.4R* to *COCON 2.4.6R* and thus *Rule 6*.

...

Annex D

Amendments to the General Provisions (GEN)

In this Annex, underlining indicates new text.

2 **Interpreting the Handbook**

...

2.2 **Interpreting the Handbook**

...

Guidance applying while a firm has temporary permission

...

- 2.2.35A G A *TP firm* should refer to the provisions listed below, which identify the *rules* and *guidance* in their sourcebooks that came into force after *IP completion day* and in respect of which special provision has been made to apply them to *TP firms*.

PRIN 3.1.13R

COBS 1.1.1CR

...

...

Appendix 2

Draft non-Handbook Guidance for firms on the Consumer Duty

Contents

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1 Introduction

1.1 The Consumer Duty sets the standard of care that firms should give to consumers in retail financial markets.

1.2 It sets expectations that can apply flexibly and dynamically to new products, services and business models as they continue to emerge and develop in a changing and increasingly digital environment. It therefore helps:

- protect consumers from current and new/emerging drivers of harm, and
- provide firms with certainty of our expectations to support innovation and new ways of serving customers

1.3 The Consumer Duty comprises:

- A **Consumer Principle** which reflects the overall standard of behaviour we want from firms and which is defined further by the other elements of the Consumer Duty.
- The '**cross-cutting rules**' which:
 - develop our overarching expectations for behaviour through 3 common themes that apply across all areas of firm conduct
 - set out how firms should act to deliver good outcomes for consumers, and
 - inform and help firms interpret the 4 outcomes
- The '**4 outcomes**' which are a suite of rules and guidance setting more detailed expectations for firm conduct in 4 areas that represent key elements of the firm-consumer relationship:
 - the governance of products and services
 - price and value
 - consumer understanding, and
 - consumer support

1.4 The Consumer Duty is underpinned by the concept of reasonableness. This is an objective test and means the rules and this guidance must be interpreted in line with the standard that could reasonably be expected of a prudent firm:

- carrying on the same activity in relation to the same product or service, and
- with the necessary understanding of the needs and characteristics of its customers based on the needs and characteristics of an average customer.

Our expectations of firms under the Consumer Duty

1.5 Overall, under the Consumer Duty, firms should:

- put consumers at the heart of their business
- provide products and services that are fit for purpose, that they know provide fair value, that help consumers achieve their financial objectives and which do not cause them harm

- communicate and engage with consumers so that they can make effective, timely and properly informed decisions about financial products and services and take responsibility for their actions and decisions
- not seek to exploit customers' behavioural biases, lack of knowledge or characteristics of vulnerability
- support their customers in realising the benefits of the products and services they buy and acting in their interests without unreasonable barriers
- consistently consider the needs of their customers, and how they behave, at every stage of the product/service lifecycle
- continuously learn from their growing focus and awareness of real customer outcomes
- embed a culture of acting to deliver good outcomes in each of their business functions and related policies, from high-level strategic planning to individual customer interactions
- monitor and regularly review the outcomes that their customers are experiencing in practice and take action to address any risks to good customer outcomes, and
- ensure that their management and executive body takes full responsibility for the outcomes their customers are experiencing, in line with their accountability under the Senior Managers and Certification Regime (SM&CR)

This guidance

- 1.6** This guidance is issued under section 139A of the Financial Services and Markets Act 2000. It sets out our view of what firms should do to comply with their obligations under the new Consumer Duty as set out in Principle 12 and PRIN 2A.
- 1.7** This guidance does not replace or substitute other applicable rules, guidance or law and does not require firms to act in a way that is incompatible with any legal or regulatory requirements.

Definitions

- 1.8** In this guidance we use the term 'consumer' and 'customer' interchangeably to mean retail customers who are within the scope of the Consumer Duty and this guidance. The Consumer Duty applies to potential as well as actual customers of firms.
- 1.9** 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.
- 1.10** Throughout this guidance we use:
- **must:** where an action is required by a Principle or rule
 - **should:** where we think a firm ought to consider a course of action (not specified in a Principle or rule) to comply with a Principle or rule, but this does not necessarily mean they should follow a detailed or prescribed course of action
 - **may:** where an action is only one of several ways of complying with a Principle or rule

How the Consumer Duty fits with other regulatory requirements in the Handbook

- 1.11** As always, firms will need to consider what they are required to do not only under the Principles but under other applicable rules. These will now include the new Consumer Principle, Principle 12, as well as the cross-cutting rules and 4 outcome rules, as set out in (PRIN 2A).
- 1.12** Firms must also consider rules in relevant sectoral conduct of business Sourcebooks.
- 1.13** Where firms already meet existing equivalent rules in relation to, for example product governance or fair value, these will meet the new requirements under the outcomes. We discuss the interaction with existing rules in more detail in later chapters.

Interaction with Handbook and non-Handbook material under Principles 6 and 7

- 1.14** Principles 6 and 7 do not apply where Principle 12 applies.
- 1.15** The Handbook contains rules and guidance made under Principles 6 and 7. There is also non-Handbook material that refers to, or mirrors the language of, Principles 6 and 7 (eg 'in order to treat customers fairly a firm must').
- 1.16** Guidance in the Handbook (PRIN 2A.7.8G in the draft Instrument) explains that:
- Principle 12 imposes a higher and more exacting standard of conduct than Principles 6 and 7.
 - Principle 12 also has a broader application than Principles 6 and 7 in relation to a firm's retail market business with a greater focus on consumer protection outcomes for retail customers, irrespective of whether they stand in a client relationship with the firm.
 - While existing guidance on Principles 6 and 7 will remain relevant to firms in considering their obligations under the Consumer Duty, firms should take account of the inherent limits of such guidance as they do not cover our expectations under the Consumer Duty in full.
 - Failure to act in accordance with existing guidance on Principles 6 and 7 which would have amounted to a breach of those Principles, is likely to breach Principle 12.
 - Where a firm is acting in accordance with guidance on Principles 6 and 7, this should not be relied upon alone in considering how to comply with Principle 12. Firms will also need to consider all their obligations not only under the Principles but under any other applicable other FCA rules.
- 1.17** While existing Handbook and non-Handbook guidance and material on Principles 6 and 7 therefore continue to apply for the purposes of and may go some way to demonstrating compliance with, the Consumer Duty, this will not provide certainty in respect of our expectations under the Consumer Duty in full. Firms will therefore need to consider what further action is needed to meet new obligations under the Consumer Duty.

Interaction with our guidance on consumers in vulnerable circumstances

- 1.18** The Consumer Duty raises the standard of care afforded to all consumers. Our guidance on the fair treatment of consumers in vulnerable circumstances (FG 21/1) sets out what firms should do to ensure that customers in vulnerable circumstances experience outcomes as good as those for other consumers.
- 1.19** Where the Consumer Duty rules specifically reference customers in vulnerable circumstances, they do so in a way that is consistent with and informed by our guidance on the fair treatment of consumers in vulnerable circumstances.
- 1.20** Consumers in vulnerable circumstances may have additional needs or be at greater risk of harm if things go wrong. For this reason, the Consumer Duty makes explicit reference to firms paying attention to the needs of customers with characteristics of vulnerability.
- 1.21** We expect consumers with characteristics of vulnerability to benefit from the overall improvements in outcomes delivered as a result of the new Consumer Duty. There can be many reasons why a firm's conduct or business model results in different outcomes for distinct groups of customers. However, 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. This is especially the case where firms deal with customers with characteristics of vulnerability or who share protected characteristics under the Equality Act 2010 or equivalent legislation.
- 1.22** Please refer to our guidance for firms on the fair treatment of consumers in vulnerable circumstances for further information on our expectations.

2 Scope of the Consumer Duty

Overview

- 2.1** The Consumer Duty applies to the regulated activities and ancillary activities of all authorised firms in respect of both products and services for their prospective and actual retail customers.
- 2.2** This chapter sets out guidance on the definition of retail customer. It also sets out guidance on the application of the Consumer Duty to:
- the distribution chain
 - wholesale markets, and
 - existing products and services

Retail customer scope

- 2.3** The Consumer Duty applies to products and services offered to 'retail customers'. The definition of retail customer aligns with the scope of our Handbook in each sector. For example:
- For consumer credit, the Consumer Duty applies to all regulated credit-related activities.
 - For deposit-taking activities, the Consumer Duty applies to consumers, micro-enterprises and charities with a turnover of less than £1m (in line with the banking customer test).
 - For insurance, the scope follows the position in the Insurance Conduct of Business Sourcebook (ICOBS). The Consumer Duty does not apply to reinsurance or contracts of large risk sold to commercial customers.
 - For investments, the Consumer Duty applies to business conducted with retail clients, as defined in the Conduct of Business Sourcebook (COBS).
 - For mortgages, the Consumer Duty follows the position in the Mortgage Conduct Business Sourcebook (MCOB). The Consumer Duty therefore applies to all regulated mortgage contracts within the perimeter, but not, for example, unregulated buy-to-let contracts or commercial lending. Where the owner of a mortgage book is unregulated and the regulated party is an administrator, the Consumer Duty would apply in an appropriate and proportionate manner to their function.
 - For payment services, in line with the Payment Services Regulations 2017 (PSR 2017), the Consumer Duty applies to business conducted with consumers, micro-enterprises and charities.
- 2.4** Where we already regulate and apply protections to the provision of financial services to SMEs, the Consumer Duty applies to firms dealing with them, in line with the approach in existing Sourcebooks.

- 2.5** The Consumer Duty applies to prospective customers. In general, firms only deal with consumers with whom they have a contract but, in some situations, firms will not always be dealing with someone who is already an actual customer. These might include:
- when approving or communicating a financial promotion
 - when answering a question from a prospective customer
- 2.6** The Consumer Duty applies across all of a firm's activities – from high-level strategic planning to individual customer interactions.
- 2.7** Sometimes the Consumer Duty means that firms should think about their customers collectively. For example, when a firm is designing a product, considering price and value or developing its communications or customer service approach, it should consider the needs of its customer base and target market.
- 2.8** At other times, the Consumer Duty will have an impact on the way firms deal with individual customers. For example, when communicating with an individual customer, rather than communicating with multiple customers, firms should consider if that customer will be able to understand the information based on what they know or could reasonably be expected to know about that customer.
- 2.9** The Consumer Duty does not apply to retail customers who elect to be treated as professional clients under COBS. It does however apply to the process a firm uses to determine a client's status. A firm that encouraged a customer to seek a classification simply to avoid providing consumer protection would be likely to breach the Consumer Duty. If a firm is aware that a customer has been incorrectly classified by another firm earlier in the distribution chain, including an unauthorised firm, they should reclassify the customer and provide the correct level of consumer protection.
- 2.10** Principles 6 and 7 continue to apply (where they did previously) to firms in respect of customers or transactions out of scope of the Consumer Duty, including:
- customers outside the scope of sectoral rules, as set out in paragraph 2.3
 - SMEs outside the scope of the Consumer Duty (to the extent that they are covered by Principles 6 and 7)

How the Consumer Duty applies across the distribution chain

- 2.11** The Consumer Duty applies across the distribution chain, from product and service origination through to distribution and post-sale activities, to all firms that could have an impact on retail customer outcomes, whether or not they have a direct relationship with the customer.
- 2.12** The Consumer Duty applies proportionately. We would generally expect firms with a direct relationship with the customer to have greatest responsibility under the Consumer Duty.
- 2.13** A firm that is remote from the consumer, with no direct customer relationship, and whose role has only limited impact on consumer outcomes, will have more limited obligations. For example, a credit reference agency (CRA) that supplies credit

references to a lender has no direct contractual relationship with the customer. While the information a CRA provides about the lender's customer could contribute to the lender's lending decision, the CRA is not responsible for these decisions. We would however expect them to consider their responsibilities to ensure that the assessment of the individual's credit risk is accurate and takes account of new information in a timely way.

2.14 Conversely, a firm that has a material impact on potential consumer outcomes might have more significant obligations. If a firm's actions, or failure to act, carries a direct risk of consumer harm, the Consumer Duty would be relevant to more of their actions. For example:

- An authorised firm contracted by another to provide customer support services for a product, would need to pay particular attention to the cross-cutting and consumer support outcome rules. Here, the firm outsourcing activities subject to the Consumer Duty is also still responsible for compliance and must oversee outcomes for consumers.
- If a financial adviser firm works with a fund manager to design a fund range for sale to their customers, and has a decision-making role on elements such as the target market or investment strategy, they would be regarded as a co-manufacturer under the products and services outcome and the price and value outcome.

2.15 In general, firms are responsible only for their own activities and do not need to oversee the actions of other firms in the distribution chain. However, in some situations, firms need to consider actions by other firms. For example:

- Where firms outsource activities to third parties, they remain responsible for compliance. They should also consider the impact the decision to outsource activities could have on consumer outcomes. For example, a firm should consider if outsourcing customer servicing could have a negative impact for customers.
- Under the products and services outcome, discussed further in Chapter 4, and the price and value outcome, discussed in Chapter 5, firms must have regard to the wider distribution chain when developing a distribution strategy for products and services. For instance, a manufacturer should consider how they expect a product to be sold and regularly monitor the product and its distribution over time.

Example – investment products

Several different firms are involved in the manufacture and distribution of an investment product. These often include a fund manager, a platform provider, and a financial adviser.

All of the firms must act to deliver good outcomes to customers and comply with the cross-cutting rules. Each of the firms has a role to help avoid foreseeable harm and ensure that the final product and associated support will help the customer realise their financial objectives. Each firm must act in good faith in its design and operation of the relevant products and services and in any interactions with the customer.

Depending on their role, some or all of the 4 outcomes will also be relevant.

- **The fund manager:** The firm must develop a fund to meet the needs and characteristics of a target market of customers. It should develop an appropriate distribution strategy and set charges to provide fair value to customers. The firm should also communicate in a way customers can understand and should ensure it offers appropriate customer support standards. It should also review the fund regularly to assess whether it meets the needs of the target market, offers fair value and has been distributed appropriately.
- **The platform provider:** As a manufacturer, the firm must develop the platform, including decisions over the range of investments it provides, to meet the needs and characteristics of a target market. It should also set charges to ensure that its service provides fair value. As a distributor of the fund, the platform provider should obtain sufficient information to understand the value assessment and whether any remuneration it receives would result in the product no longer providing fair value. It should design an appropriate distribution strategy, provide appropriate customer service standards and regularly monitor how the platform is used in practice.
- **The financial adviser:** The firm should consider how it meets the Consumer Duty in the design and delivery of its initial and ongoing advisory services (where relevant). This includes, for example, considering the needs of their target market, and ensuring the communications it gives the customer meet the communications outcome rules and its charges for the service meet the price and value outcome rules.
The firm will need to consider both the target market for the design of its service and the individual customers it advises. In this example, the fund manager and platform provider are more likely to have a focus on the target market rather than on individual customers under the Consumer Duty. In addition, the adviser can often also have the clearest oversight of the customer's overall position and an overview of the total proposition. It should consider the overall outcomes being delivered for the customer. This should include whether the overall cost to the customer, including all product and distribution charges in the distribution chain, provides fair value. The firm should also consider if the customer is given an appropriate level of information about the overall proposition, in a timely and understandable format, to enable the customer to make effective decisions.

Application to the wholesale market

2.16 Only firms directly engaged in a retail product or service are subject to the Consumer Duty. It applies to firms that can influence material aspects of:

- 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 clients, or
- direct contact with retail clients on behalf of another firm, such as firms involved in debt collection or mortgage administration

2.17 This could include firms in the wholesale market, even if they do not have a direct relationship with the retail customer.

- 2.18** For example, an investment bank that designs a structured product for sale to retail customers would be subject to the Consumer Duty but investment banks providing wholesale instruments as component parts of a product created by a third-party firm would not.
- 2.19** Primary market activities involving offers of non-complex financial instruments directly from the issuer to the customer and non-retail financial instruments are not subject to the Consumer Duty.

How this applies to products and services sold before the Consumer Duty comes into force

- 2.20** The Consumer Duty does not have a retrospective effect and does not apply to past actions by firms. Actions taken before the Consumer Duty comes into force are subject to the rules that applied at the time.
- 2.21** However, the Consumer Duty does apply, on a forward-looking basis, to existing products or services, whether or not they are still being sold to new customers.

Existing products or services that are still being sold or renewed

- 2.22** Firms need to comply with the Consumer Duty in full for any products or services sold or renewed after the Consumer Duty comes into effect.
- 2.23** Firms need to review the product or service before the end of the implementation period under all aspects of the Consumer Duty, including the products and services outcome and the price and value outcome. This might mean a firm needs to update the contractual terms and conditions of a product or service before it can be sold to new customers.

Contracts held by existing customers

- 2.24** Following the implementation period, firms need to comply with the Consumer Duty on a forward-looking basis for customers with existing contracts.
- 2.25** We recognise that the products and services outcome and the price and value outcome cannot be so easily applied on a forward-looking basis to existing contracts, particularly where they are in products or services which are closed and no longer being sold or renewed. These rules are linked to the original design and contractual terms of products and services, so assessment of existing contracts may give rise to implications where this indicates firms should consider changes to a contract. Making such changes may have the effect of altering a firm's expectations under the contract to, for example, remuneration. A relevant factor in considering what a firm's expectations are under a contract will be whether the contract is for a fixed term or whether the contract is an ongoing contract that is terminable by either party.
- 2.26** Firms do not need to comply with rules that are not relevant for products or services that are no longer being sold or renewed. For example, there is no need for manufacturers to identify a target market or develop a distribution strategy for products that have already been sold.

- 2.27** For closed products and services, firms should identify whether there are aspects of the design of the product or service which mean they are not meeting the cross-cutting rules. For example, they should consider if any aspect of the product or service could lead to harm or frustrate customers pursuing their financial objectives. Where they identify that aspects of the design could cause the product or service to breach the cross-cutting rules, they should take appropriate action to mitigate harm.
- 2.28** Where a firm is taking action to comply with the Consumer Duty in respect of any product or service with existing contracts, we would not expect firms to give up any contractual rights they had a firm expectation of being able to enjoy, although they would be free to do so. Firms would instead need to consider alternate ways to prevent harm for existing customers. Appropriate actions would depend on the context. Firms might be able to make changes to the contract that do not alter their vested rights to remuneration. Depending on the case, these could include, for example, greater flexibility on how customers can engage with the product or assisting a customer to switch to a new product or service that does not have the same issues. Firms could also consider enhanced customer support to help customers avoid the risk materialising.

Application outside the UK

- 2.29** Only firms conducting regulated activities in the UK are within our regulatory remit and, so, subject to the Consumer Duty.
- 2.30** Where the distribution chain involves firms in Gibraltar selling products or services to UK retail customers, the Consumer Duty still applies. It applies to those firms whether they have an establishment in the UK or operate on a cross-border basis.
- 2.31** In the future, a new permanent legislative framework – the Gibraltar Authorisation Regime (GAR) – will be established. This will enable UK market access for specified Gibraltar-based financial services firms if they intend to carry on approved activities in the UK. It is expected that Gibraltar's regulation of firms under the GAR would be aligned with the UK approach. Once the rules are aligned, we will review the position and propose to rely on the Gibraltar Financial Services Commission (GFSC) regulation of firms in Gibraltar under those rules.
- 2.32** The Consumer Duty also applies to firms in the temporary permissions regime following the UK's withdrawal from the EU. The UK left the EU on 31 January 2020 and the temporary permissions regime allows EEA firms to continue operating in the UK within the scope of their permissions for a limited period, while seeking full UK authorisation, if necessary. The Consumer Duty applies to these firms, whether they are doing regulated business from an establishment in the UK or on a cross-border services basis. The application of the Consumer Duty to firms in the temporary permissions regime will include firms in supervised run-off under the financial services existing contracts regime.
- 2.33** We recognise that risks remain for UK retail customers if the distribution chain involves other parties outside the UK that are not subject to equivalent requirements. To help manage this risk, UK distributors of non-UK products and services must take all reasonable steps to understand the product or service and the target market it would serve in order to ensure it will be distributed appropriately.

- 2.34** For firms dealing with non-UK customers, the Consumer Duty applies in the same way as existing sectoral Sourcebooks.

How this applies to unregulated activities

- 2.35** In general, the Consumer Duty only applies within the FCA's regulatory perimeter, so will not apply to unregulated business. It does not, for example, apply to credit products outside our remit, such as unregulated business lending.
- 2.36** However, the Consumer Duty applies to authorised firms conducting ancillary activities. These are unregulated activities in connection with, or for the purposes of, regulated activities, including, where relevant, regulated activities carried on by a different firm in the distribution chain.

3 The Consumer Principle

Overview

- 3.1** The Consumer Principle, Principle 12, requires firms to 'act to deliver good outcomes for retail customers'.
- 3.2** It sets a higher standard than:
- Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly, and
 - Principle 7 – 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.
- 3.3** Principle 12 reflects 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.
- 3.4** It 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?'.
- 3.5** Firms should consistently challenge themselves to ensure their actions are compatible with consumers' interests and objectives.
- 3.6** In this Chapter, we provide some over-arching guidance on Principle 12 and how it should be interpreted, and its relationship with the cross-cutting rules.

What this means for firms

- 3.7** Principle 12 focuses on consumer outcomes, and requires firms to:
- pro-actively seek to deliver good outcomes for consumers generally and put consumers' interests at the heart of their activities
 - focus on the outcomes consumers get, and act in a way that reflects how consumers actually behave and transact in the real world, better enabling them to access and assess information, and to act to pursue their financial objectives
 - ensure they have sufficient understanding of customer behaviour and how products and services function to be able to demonstrate that the outcomes that would reasonably be expected are being achieved by those customers
 - where they identify that good outcomes are not being achieved, act to address this by putting in place processes to tackle the factors that are leading to poor outcomes, and
 - consistently challenge themselves to ensure their actions are compatible with consumers' interests and financial objectives

- 3.8** Firms must embed a focus on acting to deliver good outcomes in each of their business functions. This ranges from high-level strategic planning to individual customer interactions, as well as products and services development, sales and servicing, distribution, and support.
- 3.9** Our key expectations of conduct under the Consumer Principle are explained further through the cross-cutting rules. The cross-cutting rules set out how firms should act to deliver good outcomes for consumers.
- 3.10** The Consumer Principle does not mean that individual consumers will always get good outcomes, or always be protected from poor outcomes. It also does not 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.

Reasonable application of the Consumer Duty

- 3.11** As set out in paragraph 1.4, the Consumer Duty requires only what it is reasonable to expect of firms. The obligations on firms will be interpreted in accordance with the standard that could reasonably be expected of a prudent firm carrying on the same activity in relation to the same product, with the necessary understanding of the needs and characteristics of customers that are based on the average customer. However, where a firm has (or should have) other knowledge about its customer or customers (including information about characteristics of vulnerability), the firm must take these into account. PRIN 2A.7.2R sets out how firms should determine what is an average customer.
- 3.12** We expect firms to focus on the customer outcomes that may result from their actions, considering what a firm knows, or could reasonably be expected to have known, at the relevant time.
- 3.13** What is reasonable will depend on a range of factors reflecting a firm's role in the distribution chain and its ability to determine or influence the outcomes consumers receive. These factors include:
- 3.14** **The nature of the product or service being offered.** What the firm needs to do will depend on the nature of the product or service being offered or provided, including:
- The risk of harm to consumers: For example, if a product is higher risk firms should take additional care to ensure it meets customers' needs and is targeted appropriately. There will be types of products that are higher risk and types of services that may only be appropriate for certain types of consumer or certain consumer needs.
 - Complexity of the product or service: Consumers may find it more difficult to assess the features, suitability or value of more complex products or services. For example, this could include products with less foreseeable outcomes, such as investments with non-standard charging structures or other features that may not be easy for consumers to understand. Firms offering more complex products and

services should take extra care to promote, and monitor, consumer understanding. For example:

- Firms selling products which are only likely to be appropriate for a narrow target market should take steps to design the customer journey to make this clear and equip consumers for whom the product is not designed to understand this.
 - Firms could introduce 'positive friction' to a sales process for a complex and high-risk product. For instance, they could slow down how quickly transactions are made, perhaps by providing additional information. By requiring customers using an online service to watch a video on the risks, before they can make a transaction, firms could help customers make a properly informed and reasoned decision. While the consumer support outcome aims to reduce unnecessary and harmful barriers ('sludge') that unreasonably restricts a customer from acting in their interests, we recognise that friction can also have a positive function where it is in consumers' interests.
- Costs, fees and charges involved with the product or service.
 - The relative utility to the customer of the product or service as a whole and of specific features, options, or services within the product, if subject to separate fees or charges.

3.15 The characteristics of consumers in the relevant target market. These characteristics include:

- Their resources, degree of financial capability or sophistication and known or reasonably foreseeable characteristics of vulnerability. For example, the size and type of SME client will be relevant when the firm is assessing the level of service owed to them under the Consumer Duty. Where a firm becomes aware or could reasonably be expected to have become aware of a particular customer's needs or characteristics (including any characteristics of vulnerability), the firm should take those needs or characteristics into account.
- Their reasonable expectations in relation to the product and service and the firm. What the firm needs to do to comply with the Consumer Duty will vary depending on what an average consumer would expect. This would depend on the nature and the purported quality of the product or service, the firm's previous conduct or interaction with consumer. For example, a service marketed as 'no-frills' would create different expectations from a 'top-end' service. So, a financial adviser providing holistic financial advice and wealth management on an ongoing basis has more wide-ranging relationship with customers, including assessment of their financial position and ongoing recommendations as circumstances change, than a firm providing a simple current account which has no non-essential add-ons.

3.16 The firm's role in relation to the product and service. This includes:

- The firm's relationship with the customer: As previously mentioned, the Consumer Duty does not require a firm to assume a fiduciary duty or require an advisory service where it does not already exist.
- Whether the firm has provided or will provide advice to the consumer: What steps a firm needs to take may vary where advice is being provided to the customer.
- The firm's role in the distribution chain (including its degree of control or influence over outcomes for customers in relation to the product or service): As explained in the previous chapter, firms throughout the distribution chain have obligations under the Consumer Duty. What is reasonable will depend on each firm's role in the distribution chain, and its ability to influence customer outcomes. Where firms

are outsourcing activities to unauthorised third parties, they should consider the impact this has on consumer outcomes.

- The stage in the firm's relationship with the customer: There will be times when customers are particularly exposed to harm, for example when they fall into arrears or are considering long-term investment decisions. The actions a firm needs to take to be acting reasonably in such circumstances may be greater than when a consumer is making decisions which carry a lesser risk of adverse outcomes.

Consumer and firm responsibility

- 3.17** The Consumer Duty does not remove consumers' responsibility for their choices and decisions. However, consumers can only be expected to take responsibility for their actions when they are 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.
- 3.18** Under the Consumer Duty, firms are responsible for enabling and empowering consumers to take responsibility for their actions and decisions.
- 3.19** Some consumers' low levels of financial capability, financial resilience or confidence in managing their money and finances, coupled with behavioural biases, means regulators cannot set a universal requirement of the degree of responsibility a consumer can be expected to take. Firms must understand and take account of behavioural biases and the impact characteristics of vulnerability can have on consumer needs and decisions.

4 The cross-cutting rules

Overview

- 4.1** As we set out in the previous chapter, the Consumer Duty includes 3 cross-cutting rules which set out how firms should act to deliver good outcomes for retail customers.
- 4.2** They require firms to:
- act in good faith towards retail customers
 - avoid foreseeable harm to retail customers, and
 - enable and support retail customers to pursue their financial objectives

Relationship between the cross-cutting rules, and with the Consumer Principle

- 4.3** The purpose of these rules and the related non-handbook guidance is to articulate the standards of conduct that we expect under Principle 12.
- 4.4** The cross-cutting rules therefore set out how firms should act to deliver good outcomes for consumers.
- 4.5** The cross-cutting rules work together as a package, and poor conduct will often breach more than 1 of the cross-cutting rules.
- Acting in good faith is a key part of creating an environment in which customers can make decisions in their own interest and realise their financial objectives. It is also a key part of acting to avoid foreseeable harm. For example, if a firm continues to sell a product it knows to be causing harm, it is also likely to be acting in bad faith.
 - A firm that does not act to avoid foreseeable harm is also not likely to be acting to enable and support customers to pursue their financial objectives. For example, where a firm fails to explain the risks of a product to consumers, it is unlikely to be acting to avoid foreseeable harm or enabling and supporting customers to pursue their financial objectives.

Relationship between the cross-cutting rules and the 4 outcomes

- 4.6** The cross-cutting rules also inform and are supported by the 4 outcomes which set out more detailed rules in key areas of the customer relationship. For example:
- Firms acting in good faith in their interactions and communications with customers is an essential element of complying with the outcome rules on consumer understanding and consumer support.

- Firms should act to avoid foreseeable harm in the way that they design and price products and services and make this a key objective of how they comply with the relevant outcome rules.
- Providing effective communications and consumer support are an essential way in which firms act to enable and support consumers to pursue their financial objectives, by creating the right environment for consumers to act.

4.7 The cross-cutting rules also help firms interpret the 4 outcomes. For example, one way for a firm to know a product does not offer fair value, would be if it were to lead to foreseeable harm.

4.8 The cross-cutting rules also help define the overarching standards of conduct firms should follow in areas not explicitly dealt with through the 4 outcomes, so compliance with the 4 outcomes would not be exhaustive of what the Principle or cross-cutting rules require.

Acting in good faith

4.9 Firms must act in good faith towards consumers. This is a standard of conduct characterised by honesty, fair and open dealing, and consistency with the reasonable expectations of consumers.

4.10 Firms and consumers both have a role to play if consumers are to achieve good outcomes. However, when consumers deal with financial services firms, there is generally an imbalance in bargaining position, knowledge and expertise. Therefore, consumers can only reasonably be expected to take responsibility for their choices and decisions if firms act openly and with honesty.

4.11 As set out in paragraph 4.5 acting in good faith is a key part of creating an environment in which customers can pursue their financial objectives. It is also a key part of acting to avoid foreseeable harm. It supports the other cross-cutting rules by focusing on the intent behind the actions of the firm.

4.12 A firm would not be acting in good faith where it fails to take account of customers' legitimate interests, for example in the way it designs a product or presents information. Seeking to exploit consumers' lack of knowledge and understanding would also be a clear sign a firm is not acting in good faith. This would include seeking to exploit consumers' behavioural biases, such as tendencies to be influenced by the way things are presented, overvaluing immediate impacts and undervaluing future ones or attaching less weight to effects that are further off, such as termination or renewal fees.

4.13 Firms must act in good faith at all stages of the customer journey and during the whole lifecycle of a product. This will include a firm's behaviour focused on groups of customers (for example at product manufacture or distribution stage) and when it is interacting with individual customers (for example through its consumer support).

4.14 At **product or service design stage**, firms can act in good faith by designing products or services to support the objectives and needs of the customer in the target market and offer **fair value** (see Chapters 5 and 6). Examples of not acting in good faith in this area would include:

- Designing features to exploit the behavioural biases of consumers in order to create a demand for a product.
- Using algorithms, including machine learning or artificial intelligence, within products or services in ways that could lead to consumer harm. This might apply where algorithms embed or amplify bias and lead to outcomes that are systematically worse for some groups of customers, unless differences in outcome can be justified objectively.
- Adding variations to products to make them more difficult to compare with other products from competitors.
- Designing products and services that do not offer fair value, or in which pricing and charges are not presented in a way that makes it easy for the consumer to understand the total cost.

4.15 Firms can act in good faith in their **communications** to and interactions with their customers (see Chapter 7) by presenting things in an even-handed way that properly presents the benefits and risks. For example, a firm would not be acting in good faith if it:

- promotes products or services in a way that misleads consumers about the benefits or risks, for instance by disguising the risks or burying key terms in documents they know customers are unlikely to read
- inappropriately manipulates consumers' biases to create a demand for a product or take advantage of consumers, particularly when in difficult or stressful situations, or
- presents customers with incomplete, distorted or skewed information

4.16 Through their **consumer support**, firms would also not be acting in good faith if they set up systems that they knew would frustrate a customer or prevent them enjoying the use of their product (see Chapter 8). An example of this would be designing websites or mobile phone applications to manipulate or subvert consumers' choices, through harmful leading questions or automatically including add-on products into an online basket.

What it does not require

4.17 Neither the requirement to act in good faith nor the Consumer Duty overall creates a fiduciary relationship (ie a requirement to act in the best interests of a customer) where it does not already otherwise exist between the firm and the customer.

Avoiding foreseeable harm

4.18 Firms must avoid causing foreseeable harm to customers. This means firms should take proactive and reactive steps to avoid causing harm to customers through their conduct, products or services where it is in a firm's control to do so.

4.19 Firms are only responsible for addressing harm when it is reasonably foreseeable at the time, considering what a firm knows, or could reasonably be expected to have known. This will depend in part on the information the firm collects as part of its business, and this in turn will depend on the scale, service offering and capabilities of the firm. However, we expect all firms to collect enough information to be able to act to avoid foreseeable harm.

4.20 Firms should proactively consider how consumers' behavioural biases, such as inertia, might lead their products or services to cause foreseeable harm.

4.21 Firms' obligation to avoid foreseeable harm applies throughout the customer journey and lifecycle of the product or service. The regular reviews we require of firms provide an opportunity to identify any new or emerging harms. Firms will also become aware of sources of harms (for example through management information (MI) or press reporting). Where a harm was not foreseeable at the outset but became apparent later, we would expect firms to take appropriate action to mitigate the risk of actual or foreseeable harm.

How the firm's relationship with the customer affects the requirement

4.22 Where a firm has an ongoing relationship with a customer, the firm should help the consumer avoid the harm when it becomes foreseeable. For example, it could do this by updating its advice if the firm is a financial adviser, or by re-balancing a customer's portfolio if it is a discretionary fund manager.

4.23 However, if the firm is only involved with the provision of a product at a point in time and does not have an ongoing relationship with the customer, it is not required to resolve harm that was not foreseeable before providing the transaction.

When firms should consider the requirement

4.24 Firms should act to avoid causing foreseeable harm at all stages of the customer journey. They should do this when they are thinking about groups of customers (for example their target market or the audience for a financial promotion) or when they are interacting with individual customers (for example when communicating with or providing support to an individual customer).

4.25 At **product or service design** (see Chapters 5 and 6) firms should act to avoid harm by:

- ensuring that products and services are designed to meet the needs of consumers within their target market, that the products are being distributed to their target market and checking that they remain consistent with the needs, characteristics and objectives of the target market
- testing how products are likely to function
- considering whether their charges represent fair value to different groups of customers, and
- taking appropriate action, such as amending charges, where a value assessment identifies the price of the product or service does not provide fair value

4.26 In their **communications** with customers (see Chapter 7) firms should act to avoid harm by:

- communicating product or service terms clearly and highlighting key risks for consumers, for example, by prominently disclosing and adequately explaining significant risks
- considering consumers' information needs after the initial point of sale, and throughout the cycle of the product, and
- helping to ensure consumers get the necessary calls to action to avoid something that would negatively impact them

4.27 Through **consumer support** (see Chapter 8) firms should act to avoid harm by:

- considering information available on customer behaviour and feedback to identify whether customers, or groups of customers, are encountering unreasonable barriers or unreasonable additional costs as part of firms' customer service provision
- putting things right when mistakes occur, and
- being accessible when customers have questions

What it does not require

4.28 Neither this cross-cutting rule nor the Consumer Duty overall:

- Mean that consumers can or will be protected from all harm.
 - Sometimes harm will occur because of circumstances that were not reasonably foreseeable. For example, wider economic or market conditions could change the relative attractiveness or suitability of certain products for certain consumers, or cause firms to take actions (for example stopping redemptions from a specific fund) that cause harm.
 - Sometimes firms might only be able to identify the harm when it is too late for the firm to act. For example, a consumer's circumstances could change suddenly in a way that affected their insurance cover shortly before they needed to claim. Or the nature of the harm may be such that there was no way a firm could act to avoid it. Where a firm could reasonably be expected to act, they should do so.
 - Many financial products involve risk. These may be due to the nature of the product or service, or external factors. A consumer may suffer 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 with repayments. We do not expect firms to protect their customers from risks that they reasonably believed the customer understood and accepted. Whether such a belief is reasonable would depend (among other things) on the nature of the product offered by the firm, and the adequacy of the firm's product design, pricing, communications and customer services.
- Prevent an insistent customer from making decisions or acting in a way that the firm judges to be against their interests. Even where firms take all reasonable steps to meet the Consumer Duty, consumers may sometimes make poor decisions. Firms should aim to help their customers understand the consequences of their decisions but, if a customer insists on a course of action that the firm regards as harmful, they are not obliged to prevent it. However, the firm should take steps to ensure that customers understand the risks of their action.
- Require a firm to ration the use of or withdraw individual products, or interfere in the transactions of customers based on potential risk where they would not otherwise do so. For example, if a customer is looking to buy something using their debit card instead of credit card, the rules do not require their bank to intervene/add friction to the customer journey at point of sale to make the customer aware that their credit card may have additional protections which could be useful.
- Go beyond what is reasonably expected by consumers in the delivery of their service. For example, the Consumer Duty does not require a firm to dictate,

monitor or assess the use of borrowed funds before lending. The Consumer Duty is consistent with our responsible lending and affordability rules.

- Prevent a firm from withdrawing a product or service. However, a firm can cause foreseeable harm or frustrate the objectives of its customers in the way it does so. For example, if a firm withdrew a product or service abruptly or without considering the effect on the consumers who are impacted. Where a firm is planning to alter or withdraw a product or service, they should consider whether it could lead to foreseeable harm for their customers or a specific groups of customers (such as customers with characteristics of vulnerability) and take steps to mitigate the impact of the potential harm. This could mean not withdrawing the product or service too abruptly and ensuring that they communicate any changes in a timely, clear and sensitive manner. This should include setting out what it means for the consumer, communicating alternative solutions, and the consequences to any consumers of not acting.

Enable and support retail customers to pursue their financial objectives

- 4.29** Firms must act to enable and support customers to pursue their financial objectives. This rule is concerned with the financial objectives of the consumer in relation to the financial product or service and applies throughout the customer journey and life cycle of the product.
- 4.30** As with the entire Consumer Duty, this rule does not remove the responsibility that consumers have for their actions. But consumers can only take responsibility where they are enabled and supported to make informed decisions in their interests through firms creating the right environment. Firms must proactively and reactively focus on putting consumers in a better position to make decisions in line with their needs and financial objectives. This would include recognising and taking account of consumers' behavioural biases and the impact that characteristics of vulnerability can have on their needs.
- 4.31** As with acting to prevent harm, the actions a firm might need to take to enable and support customers to pursue their financial objectives would be determined by what is within a firm's control, based on their role and knowledge of the consumer:
- For the most part, where a firm is providing an execution-only or non-advised service, customers' financial objectives can be assumed by the firm to be the enjoyment and use of the product and service they have purchased. For example, a firm providing a cash ISA might assume their customers have an objective of keeping their savings safe and trying to maintain or improve their value over time.
 - By contrast, a firm providing advisory or discretionary services would understand more about the consumer's specific objectives and would need to act on that knowledge. For instance, an advice firm might know a consumer has the objective to retire by a particular age or to make sure a dependent is provided for.
- 4.32** Firms should act to enable and support consumers to pursue their financial objectives at all stage of the customer journey. They can also do this when a firm is thinking about both groups of customers or when they are interacting with individual customers.

4.33 Customers are more likely to make decisions in their interests and achieve their financial objectives when firms take steps to ensure that the products and services function as expected, are of fair value, firms' communications are clear and consumer support do not create unreasonable barriers.

4.34 At **product or service design** stage (see Chapters 5 and 6), firms can support consumers in pursuing their financial objectives by:

- designing products with clear and straight-forward features so they can be understood by consumers in the target market, and
- not charging unreasonable exit fees which discourage consumers from leaving products or services that are not right for them, or getting better deals

4.35 In its **communications** with customers (see Chapter 7) firms can support consumers in pursuing their financial objectives by:

- considering the characteristics of the consumers that their communications are aimed at and tailoring their communications accordingly so that they are likely to be understood
- helping consumers navigate the information the firm provides, making it easy for consumers to identify the key information and their available options, and
- having systems and processes in place to monitor the impact of communications on consumer understanding

4.36 Through **consumer support** (see Chapter 8) firms can support consumers in pursuing their financial objectives by:

- Designing and delivering consumer support in a way that does not create unreasonable barriers to consumers achieving the benefits of products and services or acting in their interests.
- Ensuring that their consumer support enables consumers to fully use the products and services they buy and supports them in acting in their own interests. This would include avoiding 'sludge' in the design of consumer journeys, which uses friction to prevent consumers from taking actions such as cancelling a product or amending terms.
- Not making it mandatory for customers to communicate via a certain channel.

What it does not require

4.37 Neither this cross-cutting rule, nor the Consumer Duty overall, require firms to go beyond what is reasonably expected by consumers in the delivery of their service. As set out above, a consumer's financial objective is normally defined by their purchase of a product and service. Even in advised sales, the fact that a firm would need to understand the consumer's underlying financial objective is a function of them purchasing the regulated activity of advice.

5 The products and services outcome

Overview

- 5.1** We have seen harm occur where products or services were poorly designed or were distributed widely to consumers for whom they were not designed. In addition, there is likely to be a link to the price and value outcome, as however they are priced, products and services that are poorly designed, or distributed to consumers for whom they were not designed, are unlikely to provide fair value.
- 5.2** Consumers can only pursue their financial objectives and avoid foreseeable harm when products and services are fit for purpose. Firms, acting in good faith, should design and distribute products and services to meet this aim.
- 5.3** The products and services outcome rules are therefore central to firms acting to deliver good outcomes. They set out a range of requirements, including the need for relevant firms to:
- ensure that the design of the product or service meets the needs, characteristics and objectives of consumers in the identified target market
 - ensure that the intended distribution strategy for the product or service is appropriate for the target market, and
 - carry out regular reviews to ensure that the product or service continues to meet the needs, characteristics and objectives of the target market

What this means for firms

Guidance for manufacturers

- 5.4** Firms are manufacturers if they create, develop, design, issue, operate or underwrite a product or service.
- 5.5** There may be multiple manufacturers for a single product or service. For example, an intermediary might design an investment fund and work with a fund manager to launch it. Both are considered co-manufacturers. Where firms collaborate in this way, they must have a written agreement outlining their respective roles and responsibilities to comply with the rules in this section.
- 5.6** A firm would be considered a co-manufacturer where they have a decision-making role in designing and developing a product or service. A decision-making role could include a firm that can determine the essential features and main elements of a product or service, including its target market.

Manufacturers must approve existing products or services, any significant adaptation to a product or service, or any new product or service they introduce

- 5.7** The rules apply to each product or service a firm markets or distributes. They apply to existing products or services, to new products or services a firm intends to launch, and to any significant changes a firm plans to make to products or services. See also our guidance regarding the application of the rules to existing products.
- 5.8** Whether a proposed change would be significant would depend on the potential impact it could have on customers. Firms should consider features added or removed from the product or service, changes to the target market and any other significant changes to the terms and conditions. For example:
- Updating a general insurance product to clarify the cover might not amount to a significant change. However, if the change narrows the scope of cover, this is likely to amount to a significant change requiring re-assessment under the approval process.
 - A firm broadening its investment platform service to offer a wider choice of investments of a similar type to those already included, might not be making a significant change to the service. However, if it makes available a new type of investment product that is more complex and carries additional risks that the target market might not understand, this is likely to amount to a significant change.
 - A change to a product or service might, on its own, not amount to a significant alteration. However, if there are several small changes, either at one time or sequentially, together they may amount to a significant change.
- 5.9** Firms should regularly review the approval process to ensure that it is still valid and up to date considering their experience manufacturing and reviewing products and services. They should amend the approval process where necessary.

A manufacturer must identify a target market of customers for whom a product or service is designed

- 5.10** Firms should identify a group or groups of retail customers sharing common characteristics whose characteristics, needs and objectives the product is or will be designed to meet. These customers are the end-users of the product or service, not other firms in the distribution chain. They are the target market of the product or service.
- 5.11** Firms should identify the target market at a sufficiently granular level, considering the characteristics, risk profile, complexity and nature of the product or service. For simple products or services intended for the mass market, this may be a straightforward exercise. For example:
- term life assurance paying out a sum assured on a policyholder's death within a fixed term, for a fixed premium
 - a payment service allowing free transactions for consumers
- 5.12** For more complex or niche products or services, firms would need to define target markets in more detail, taking account of any increased risk of consumer harm associated with these products/services and their potential mis-sale. For example, a structured product with capital at risk that offers high headline rates of return but with complicated features that make it difficult for investors to understand what returns are likely in practice may need a more defined target market.

- 5.13** To find the right level of granularity, firms might find it helpful to identify any group of customers for whose needs, characteristics and objectives the product or service is generally not compatible. For example:
- An investment fund might start with a target market described in terms of investment objective and investment risk. However, the target market should be refined and clarified if the product is generally incompatible with the needs, characteristics and objectives of people who cannot commit to hold the investment for more than five years or who cannot afford to bear potential investment losses.
 - General insurance products might be designed to meet the needs, characteristics and objectives of people looking to insure certain technological items. However, if these items are likely to be adequately covered by standard contents insurance, the target market should be refined to exclude people with existing cover.
 - The initial target market for a financial advice firm's services might be any consumer with a potential pension and investment need. However, the inclusion of fixed minimum fees in its adviser charging model mean the target market should be refined to exclude consumers with very small investment amounts.

A manufacturer must consider whether the target market for a product or service includes consumers in vulnerable circumstances

- 5.14** Where a product or service might meet the needs, characteristics and objectives of particular groups of consumers, firms should not exclude them simply because they are in vulnerable circumstances.
- 5.15** We expect firms to design products or services to take account of the needs, characteristics and objectives of all groups within the target market and to avoid potentially harmful impacts for them. They should consider the needs, characteristics and objectives of consumers in vulnerable circumstances at all stages of the design process, including idea generation, development, testing, launch and review, to ensure products and services meet their needs.
- 5.16** Our guidance for firms on the fair treatment of customers in vulnerable circumstances provides further detail on our expectations. Examples of actions firms can take in relation to identifying the needs of customers in vulnerable circumstances in the target market include:
- holding focus groups with customers in vulnerable circumstances or consumer representatives at the development stage to get a greater understanding of their needs and how products can meet them
 - exploring resources provided from, and consulting with, specialist organisations offering information on how the needs of customers in vulnerable circumstances can be met in the design stage
 - consulting with consumers or representative groups when seeking to alter or withdraw a product, or
 - employing third-sector organisations who can review products from the viewpoint of customers in vulnerable circumstances
- 5.17** Firms should be aware that particular groups of retail customers, for example who share different demographic characteristics such as age, race, socioeconomic background or characteristics of neurodiversity may have or be more likely to have characteristics of vulnerability. Where distinct groups of customers within the target market sharing protected characteristics, as defined in the Equality Act 2010,

experience different outcomes from other customers from a firm's products or services, we expect firms to investigate the causes of this.

- 5.18** Firms should satisfy themselves that differential outcomes for different groups of customers are compatible with the firm fully meeting the standards required by the Consumer Duty and the Equality Act for all its customers.

Example poor practice

In a Thematic Review into the pricing of household insurance, we considered whether firms were discriminating based on protected characteristics under the Equality Act 2010.

We were concerned about the potential use of data based on race/ethnicity in firms' pricing models to produce different offered prices. We found no evidence to date of this type of direct discrimination. However, we did find that firms were using datasets (including datasets purchased from third parties) within their pricing models which may contain factors that could implicitly or potentially explicitly relate to race or ethnicity.

Firms were asked how they gained assurance that the data they used in pricing did not discriminate against certain customers based on any of the protected characteristics. Many firms could not provide this assurance without first contacting the third-party provider. Further, some firms responded that they relied on the third-party provider to comply with the law and undertook no specific due diligence of their own to ensure that the data were appropriate to use.

Overall, we found that where firms used external data within their pricing models, they had not always undertaken appropriate due diligence to ensure that the data did not include factors that might have the potential to discriminate based on protected characteristics. This meant that in several cases firms had to undertake further work to answer our questions. We had expected firms' due diligence would have explicitly addressed those questions before using the dataset in their pricing model.

Were we to see this repeated in the future, we would be concerned that it breached the rules under the products and services outcome. It might also show firms are not acting to avoid foreseeable harm. If so, this would not be consistent with acting to secure good outcomes for retail customers.

A manufacturer must ensure its products or services, including existing products and services, are designed to meet the target market's needs, characteristics and objectives

- 5.19** Firms must ensure each product or service is designed:

- to meet the identified needs, characteristics and objectives of consumers in the identified target market
- so that it does not adversely affect customers, and
- to prevent or mitigate customer harm

- 5.20** As part of this assessment, firms should consider the impact on customers in vulnerable circumstances.

Example poor practice

We have seen examples of some products that were designed, either intentionally or through insufficient consideration of consumer outcomes, with aspects that exploit behavioural biases. For example, we have seen complex 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.

Product design that disguises risks is unlikely to meet our rules for firms to design products and services to meet the needs, characteristics and objectives of the target market. It is also likely to be inconsistent with firm acting in good faith and enabling and supporting customers to pursue their financial objectives.

Example poor practice

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

- online services where it is not clear whether consumers are purchasing products on an advised or non-advised basis
- unreasonable exit fees which discourage consumers from leaving products or services that are no longer right for them, or accessing better deals
- practices or contract terms that discourage exit, for example requiring customers to go into a branch to close a product or cancel using registered post services

Practices such as these are likely to breach our product and services outcome rules. They are also likely to be inconsistent with the cross-cutting rules, particularly enabling and supporting customers to pursue their financial objectives.

- 5.21** Firms should undertake appropriate testing of their products or services. They should assess whether the product or service will meet the identified needs, characteristics and objectives of the target market, including customers in the target market who are in vulnerable circumstances.
- 5.22** Firms should consider the appropriate level of testing, and must test products and services in a qualitative manner. For example, they could consider likely changes to consumer needs in the future and whether the product or service would continue to meet those needs.
- 5.23** Where relevant, depending on the type and nature of the product or service and the risk of harm, firms should also conduct quantitative testing. This could, for example, include testing how investments would perform in different market conditions.
- 5.24** As well as considering what has happened in the past, to guard against recurrence of previous problems, firms should consider what might happen in the future. We would not expect firms simply to consider what returns might be delivered based on past performance alone.
- 5.25** Firms should consider how the product is likely to function over its proposed term, so they can properly assess all potential risks to customers.

Example poor practice

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, characteristics and objectives, 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, characteristics and objectives

We would expect firms to do more to match product design with the needs, characteristics and objectives of the target market. Firms should be able to determine and evidence this via stress-testing as part of the product approval process.

Manufacturing or distributing products or services that are unlikely to meet the objectives of customers in the target market would not be consistent with acting in good faith or enabling and supporting customers to pursue their financial objectives.

A manufacturer must develop a distribution strategy appropriate for the target market

- 5.26** When developing a distribution strategy for their products and services, firms should consider what distribution channels are appropriate for the target market. For example, a firm manufacturing a complex product might consider only allowing the product to be sold with advice or by distributors with specific knowledge, expertise and competence to understand the features of the product.
- 5.27** Unless they have oversight of a distributor (for example, if they are part of a vertically integrated firm or oversee sales by an ancillary insurance intermediary), manufacturers are not responsible for the activities of distributors.
- 5.28** Firms must make all appropriate information available to distributors to:
- understand the characteristics of the product or service
 - understand the identified target market
 - consider the needs, characteristics and objectives of any customers with characteristics of vulnerability
 - identify the intended distribution strategy, and
 - ensure the product or service will be distributed in accordance with the target market
- 5.29** Firms should comply with data protection and competition laws when sharing information. They must provide the distributors with adequate information to enable them to comply with their own requirements under the products and services outcome.

Example good practice

A product manufacturer designs a complex investment product. Its target market is sophisticated investors seeking capital growth and who are willing and able to take significant investment risk. The manufacturer identifies that the product could cause significant harm if bought by consumers outside of the target market who may not understand the risks or be able to afford the potential losses.

So, the manufacturer develops a distribution strategy in which 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.

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.

Guidance for distributors

Distributors must have distribution arrangements for each product or service they distribute

5.30 The distribution arrangements should:

- aim to prevent and mitigate consumer harm
- support management of conflicts of interest, and
- ensure the needs, characteristics and objectives of the target market are taken into account

Distributors must understand the products or services they distribute

5.31 Distributors must get appropriate information from manufacturers so they have the necessary understanding of the products or services they distribute. The information should allow them to:

- understand the characteristics of the product or service
- understand the identified target market
- consider the needs, characteristics and objectives of any customers with characteristics of vulnerability
- identify the intended distribution strategy, and
- ensure the product or service will be distributed in accordance with the needs, characteristics and objectives of the target market

5.32 Firms should not distribute a product or service if they do not understand it sufficiently.

5.33 In addition to understanding the manufacturer's target market and intended distribution strategy, distributors who distribute a financial instrument or structured deposit must develop their own target market for products or services. For all other types of product or service, firms should use the same target market as the manufacturer.

Firms distributing products or services that were not created by a firm subject to the rules for manufacturers should comply with the products and services outcome

- 5.34** A product or service may not have been approved in accordance with the obligations under the products and services outcome if it was developed by a firm outside the UK. In this case, distributors should comply with the obligations on distributors under the products and services outcome.
- 5.35** They should, for example, take steps to understand the product or service and the target market it would serve in order to ensure it will be distributed appropriately.

A distributor should identify or create a distribution strategy

- 5.36** Distributor firms should identify the intended distribution strategy for the product or service and ensure it will be distributed in accordance with the target market for products and services. Where the distributor distributes a financial instrument or structured deposit, it must determine the distribution strategy and ensure the strategy is appropriate for the target market.
- 5.37** When distributors set up or apply a specific distribution strategy for a product or service, they should obtain information from the manufacturer to identify the appropriate distribution strategy and ensure the product or service will be distributed appropriately for the target market.

Example poor practice

A firm distributed a packaged bank account that included a range of additional features, such as travel insurance. When distributing the product, the firm did not have sufficient controls to prevent the product from being marketed to consumers who would be unlikely to use the additional features. As well as being likely to be an inappropriate distribution strategy, this could mean the firm is not acting to avoid harm.

Monitoring

- 5.38** Chapter 9 sets out our overall expectations for firms to understand and be able to evidence the outcomes their customers are experiencing. In this section we highlight elements of monitoring that are specifically relevant to the products and services outcome.
- 5.39** Manufacturers should regularly review whether their:
- products and services meet the identified needs, characteristics and objectives of the target market, including any identified for customers with characteristics of vulnerability
 - distribution strategy remains appropriate for the target market, and
 - products or services have been distributed to customers in the target market
- 5.40** Distributors should regularly review whether:
- their distribution arrangements are appropriate and up to date, and
 - products and services have been distributed to customers in the target market

- 5.41** To support manufacturers' reviews, distributors should, upon request, provide relevant sales information, including, where appropriate, information on the regular reviews of their distribution arrangements. Firms should comply with data protection and competition laws when sharing information. They should consider if the information they provide is adequate to help the manufacturer in its reviews of a product or service.
- 5.42** Firms distributing products or services manufactured by firms to which the products and services outcome does not apply should take extra care when reviewing their distribution arrangements. They should consider whether the product or service remains appropriate for the needs, characteristics and objectives of the target market.
- 5.43** If firms identify issues in their review, they should take appropriate action to mitigate the situation and prevent further harm from occurring. Where appropriate, they should inform other firms in the distribution chain about their actions.
- 5.44** In terms of action they could take, firms could consider, for example, making changes to a product or service, amending the distribution strategy before making further sales, offering existing customers the option to leave the product or service without additional cost, or providing appropriate mitigation of any harm suffered.

Example good practice

A consumer credit firm designed a lending product with late payment fees. The target market includes consumers who are likely to be less financially resilient. In its review of the product, the firm identified that a sizeable proportion of its customers were not making payments on time and were paying substantial sums in late payment fees.

The firm concluded that the product is not meeting the needs, characteristics and objectives of its target market as the low financial resilience of its customers is resulting in a significant level of missed payment and the consequential levying of default fees resulting in escalating loan balances.

The firm took action to mitigate the situation and prevent further harm. As well as meeting rules under the products and services outcome, this shows the firm acting in good faith and acting to avoid foreseeable harm.

What this does not mean

- 5.45** The products and services outcome rules do not require firms to:
- Exclude particular groups, such as consumers who might be in vulnerable circumstances and whose needs or objectives a product might meet. We expect firms to design products or services to take account of the needs of all groups within the target market.
 - Ensure that products or services are suitable for individual consumers within the target market, except where this is relevant in the context. For example, firms need to consider suitability for individual customers when providing advice or discretionary services, or assess affordability when arranging a loan. Applicable rules regarding these activities continue to apply separately to the rules in the product and services outcome, which are general in nature.

- Mitigate harm that was not reasonably foreseeable. However, firms need to keep their products, services and distribution strategies under regular review: they should take appropriate actions if a risk of consumer harm becomes reasonably foreseeable.

Interaction with existing rules

- 5.46** PROD sets 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.
- 5.47** If a firm's product or service:
- is subject to the rules in PROD for financial instruments (PROD 3), insurance (PROD 4) and funeral plans (PROD 7), it must continue to comply with those rules
 - would have been subject to the rules in PROD for:
 - financial instruments (PROD 3) if it had been created or significantly adapted on or after 3 January 2018, or
 - insurance (PROD 4) if it had been created or significantly adapted on or after 1 October 2018 and it is not a legacy non-investment insurance product
 - the firm may elect to comply with those rules or to comply with the product service outcome
- 5.48** Where firms comply with these PROD requirements, including where they elect to do so (as set out above), this will tend to establish compliance with their obligations under the products and services outcome.
- 5.49** The Consumer Duty as a whole is broader and satisfying the existing rules in PROD is unlikely to mean a firm meets all aspects of the Consumer Duty.

Summary

Below we give examples of actions that are likely to be consistent or inconsistent with the products and services outcome.

Actions likely to be inconsistent with the Consumer Duty	Actions likely to be consistent with the Consumer Duty
A target market is defined so broadly that it captures groups of consumers for whose needs, characteristics and objectives the product or service is generally incompatible.	The target market is defined at a sufficiently granular level to help avoid sales to consumers for whose needs, characteristics and objectives the product or service is generally incompatible.
Products or services are marketed or distributed without considering whether they are designed to meet the needs, characteristics and objectives of customers in the target market.	A manufacturer considers if a product or service meets the needs, characteristics and objectives of customers in the target market and, where it does not, takes appropriate action to mitigate the situation and prevent any further harm.

Actions likely to be inconsistent with the Consumer Duty	Actions likely to be consistent with the Consumer Duty
A manufacturer does not test a new product or service before launch and, as a result, does not identify that the product does not meet the needs, characteristics and objectives of the target market.	A manufacturer tests its product or service before launch to assess how it is likely to function in different conditions and whether it could lead to foreseeable harm. Where it identifies potential issues, the firm adjusts the product or service to avoid them or mitigate their impact.
A distribution strategy is not appropriate and the product or service is distributed to groups of consumers for whose needs, characteristics and objectives the product or service is incompatible.	A product or service has an appropriate distribution strategy and is sold to customers in the target market for whose needs, characteristics and objectives the product or service was designed.
A firm does not review its products or services or distribution arrangements and does not identify a potential issue when it becomes reasonably foreseeable. The firm misses the chance to prevent the harm before it can materialise, and consumers suffer harm.	A firm identifies a potential issue during its regular review of a product/service or distribution arrangement and takes appropriate steps.
Firms do not consider the fairness of their product or service contract terms, resulting in unfair terms that are not enforceable.	Firms draft and regularly review their product or service contract terms to ensure compliance with the fairness requirements of the CRA.

6 The price and value outcome

Overview

- 6.1** Consumers experience harm where they don't get value for their money. A lack of fair value therefore causes harm and is unlikely to be consistent with customers realising their financial objectives. Firms cannot act in good faith if they are knowingly selling poor value products or services.
- 6.2** Fair value is about more than just price. The Consumer Duty aims to tackle factors that can result in products or services which are unfair or poor value, such as unsuitable features that can lead to foreseeable harm or frustrate the customer's use of the product or service, or poor communications and consumer support.
- 6.3** The specific focus of the price and value outcome rules is on the relationship between the price the consumer pays to the overall benefits of a product (the nature, quality and benefits the customer will experience considering all these factors). Value needs to be considered in the round and low prices do not always mean fair value. We expect firms to think about price when assessing fair value but not at the expense of other factors.
- 6.4** Our intention is not to set prices and our proposals do not have this effect. It also does not mean that firms are expected only to offer products and services at a low price. Products or services that cost more for customers may still provide value if that reflects their quality and benefits.
- 6.5** A product or service that doesn't meet the needs of the customer it is sold to, causes foreseeable harm or frustrates their objectives is unlikely to offer fair value whatever the price. A product or service that has negligible or no obvious benefit for consumers is unlikely to provide fair value regardless of the price charged.
- 6.6** A product or service that is designed to meet the needs of its target market and is transparently sold is more likely to offer fair value – both because of the benefits customers receive and because they have the information they need to know what they're buying or pick something else.
- 6.7** However, this doesn't mean that such a product necessarily offers fair value. Other factors such as the availability and price of other products on the market would be relevant. Where there is an absence of effective competition in a market, it is less likely that products will offer fair value. High pricing might indicate that some other element (transparency, simplicity of terms, ease of exit) isn't functioning properly.
- 6.8** We will therefore look at firms' compliance with other areas of the Consumer Duty in assessing whether their products and services provide fair value.
- 6.9** Firms should avoid designing products and services to include elements that exploit consumer lack of knowledge and behavioural biases to increase the price paid.

- 6.10** Differential pricing between new and existing customers in the form of clear, transparent up-front discounts for new customers is not prohibited by the Consumer Duty. More guidance on this is set out below under 'Different outcomes for different groups'.

Assessing value

- 6.11** In order to assess if a product or service provides value, firms should consider at least the following:
- the nature of the product or service, including the benefits that will be provided or may reasonably be expected and their qualities
 - any limitations that are part of the product or service (eg limitations on scope of cover for insurance products), and
 - the expected total price customers will pay, including all applicable fees and charges over the lifetime of the relationship between customer and firm
- 6.12** When firms perform value assessments, they may consider a range of factors. These are also factors that we may consider when we look at the firms' value assessments. They include:
- the costs firms incur to manufacture and/or distribute the product or service, including the cost of funding (eg for loans)
 - the benefits received by consumers and the utility of the product or service to them
 - the market rates and charges for comparable products or services
 - possible savings from economies of scale which could be shared with customers
 - possible returns from investment products or services, or
 - assumptions on credit or other risk the firm is exposed to
- 6.13** This is a different assessment to the one carried out in the context of competition law on excessive pricing as abuse of a dominant position, though some of the factors may overlap with factors referenced in competition law.
- 6.14** Firms have the discretion to decide on the factors they use in their value assessments, provided there remains a reasonable relationship between the total price of the product or service and the benefits the customer receives.
- 6.15** Where the product or service does not provide fair value to customers, firms should take appropriate action to mitigate and prevent harm, for example, by amending it to improve its value or withdrawing it from sale.
- 6.16** Firms should assess value at the design stage and before offering products or services to consumers. They should ensure that the prices represent fair value for a foreseeable period. The foreseeable period will depend on the nature of the product or service and, where a product or service renews, includes following renewal.
- 6.17** Firms must also monitor and assess the value of their products and services throughout their life, conducting regular reviews of their value assessment. Where a firm identifies that a product or service does not provide fair value, they should take

appropriate action to address the issue. This will allow consumers to be confident that the product or service will continue to provide fair value.

- 6.18** Depending on the nature of the product or service, firms could conduct customer research, testing or use internal data to assess whether a product or service provides fair value. They should not rely on individual consumers to consider whether the price provides fair value in relation to the benefits.
- 6.19** Where a product is sold as part of a package, firms should ensure that each component product, and the overall package, provides fair value.
- 6.20** We 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.
- 6.21** Where a firm identifies in its value assessment that the price of the product or service does not provide fair value, it needs to take appropriate action to mitigate and prevent harm to consumers.

What this means for firms

Benefits received by consumers

- 6.22** Firms should assess the benefits consumers can reasonably expect from a product or service against the price paid.

Guidance for manufacturers

- 6.23** Manufacturers should consider what benefits are offered as part of the price and value outcome, when designing products and services to meet the needs, characteristics and objectives of the target market. Different products and services will offer different benefits, which will have an impact on the assessment of value.
- 6.24** For instance, some consumers may rate quality in terms of the additional benefit they get a product. Consequently, they might be willing to pay more for a product that provides this compared to other products with fewer benefits. An example would be premium current accounts where consumers receive greater support, cash-back or add-on insurance products for a monthly fee. This may be considered fair value for the target market where there is a reasonable relationship between the benefits received and the price paid.
- 6.25** Characteristics such as the quality of the product or service, level of customer service, potential pay-out or return, suitability for consumers' needs, or other features that consumers find valuable, all determine the benefit in relation to which the price of the product should be assessed. For example:
- a simpler product with fewer features might offer fewer benefits than one with greater coverage
 - a firm offering enhanced customer support, such as a greater level of ongoing support to customers or higher quality customer interactions, will provide more benefit to customers

- greater availability and convenience of consumer access will also be a benefit to customers

Example

Enhanced home insurance that covers additional risks or provides enhanced customer service often costs more than a standard policy and this is likely to be reflected in the price.

Consumers do not all need to claim under the additional coverage, or make use of the additional customer services, for the product to provide fair value. However, firms should ensure that there is a reasonable relationship between the price charged and benefits and that there is a reasonable probability of a consumer claiming when the policy was designed and sold.

Firms may also wish to consider the data required under the general insurance value measures reporting rules in SUP 16.27. This provides useful high-level indicators of customer experience of a product. The data can help to indicate whether the product provides fair value.

Guidance for distributors

- 6.26** Distributors must obtain information from manufacturers on the value assessment for a product or service. They should understand the value the product or service is intended to provide and the impact that their distribution arrangements, including any remuneration for distribution, have on value.
- 6.27** As part of this, distributor firms should consider various factors including:
- the benefits a product or service is intended to provide
 - the quality of the services they provide, and
 - whether any remuneration they receive would result in the product/service ceasing to provide fair value

The price charged to consumers

Guidance for manufacturers

- 6.28** When considering the price charged, manufacturer firms should consider all the costs and charges a consumer may pay for the product or service over time. For example, firms should consider:
- The charges consumers pay at the start and end of a contract.
 - All fees and charges which consumers may incur over the life of the product or service. These may include contingent charges, like fees as a result of late payments/arrears. For example, for consumer credit products, like personal loans or credit cards, firms should consider all interest, fees and charges a consumer may incur, including late payment/arrears charges. This is especially important if the target market includes consumers with poor credit rating.
 - Where a product is intended to be provided as part of a package, with other products, firms need to consider the value of each component and the overall value of the package.
- 6.29** In some cases, the price a firm charges may be high because it reflects the underlying costs to the firm. This may be the case, for example, where consumers represent a higher credit or insurance underwriting risk. In such cases, the price charged to these

customers may be higher than for other customers representing a lower risk. However, firms should still be able to demonstrate that the consumer benefits were reasonable relative to the price. For example:

- Firms offering credit products for consumers with higher credit risk, eg high-cost short-term credit (payday) loans, may charge a higher annual percentage rate (APR) for the loan compared to those for consumers with a lower credit risk. The firm should still ensure the APR represents fair value.
- Insurance firms can 'risk price', using rating factors to predict the probability of a claim and the likely cost of that claim. Firms would still need to be able to demonstrate that the benefit to consumers is reasonable relative to the premium charged.

6.30 When designing charges and charging structures, firms need to consider how their target market is likely to use the product or service. As discussed below, in the section on different outcomes for different groups, firms should also consider the likely price different groups will pay through the full term of their using the product.

6.31 Firms also need to consider whether consumers will incur other costs which may not be financial. Non-financial costs may include:

- the time and effort it takes to access, assess and act to buy, amend, switch or cancel a product, or
- firms' use of consumer data where consumers knowingly or unknowingly 'pay' with their data, privacy or attention

6.32 Firms should not impose unreasonable non-financial costs. For example, unclear or misleading information could make it hard for a customer to assess their options. If a firm imposes unreasonable barriers to assessing or accessing the benefits of a product or service, it may be that many customers do not act to realise their financial objectives. In effect, this increases costs relative to the benefits of a product or service.

Guidance for distributors

6.33 As when assessing benefits, distributors must obtain relevant information from manufacturers to understand the value a product or service is intended to provide. This information must enable them to understand the impact of any remuneration they take on the value received by customers. Distributors must use this information to consider whether their charges for distributing the product or service represent fair value.

6.34 All firms in the distribution chain are responsible for the value of the prices that they control. However, the firm at the end of the distribution chain has responsibility to ensure consumers do not receive poor value. Fees charged by different firms along the distribution chain might together result in a higher overall fee that does not represent fair value for consumers.

Example

Where different firms are involved in the distribution chain for an investment product, they all have responsibility to consider fair value as part of avoiding foreseeable harm and helping support customers in pursuing their financial objectives.

- **The fund manager:** The firm must set fund charges to avoid poor value for customers. As a manufacturer, the firm is also responsible for ensuring that firms in the distribution chain have the necessary information to carry out their own assessment of value.
- **The platform provider:** The firm must set fair value charges for using the platform. In some cases, the platform provider will be the final firm in the distribution chain. As such, it should consider the overall proposition, including fund charges, to consider if it provides fair value.
- **The financial adviser:** The firm must consider if its advice charges provide fair value. In addition, it should consider the overall cost to the customer, including all product and distribution charges in the distribution chain.

Example

We published guidance to firms in the general insurance sector on our expectations for firms to manage the distribution chain. We conducted a multi-firm review to assess how firms responded to the guidance. One firm assessed its remuneration arrangements and decided that some were too flexible when allowing intermediaries to set their commission. This created the potential for poor value and consumer harm. The firm made appropriate changes to amend its remuneration arrangements – a good example of acting in good faith and to avoid foreseeable harm.

Different outcomes for different groups

- 6.35** We have conducted work looking at fair pricing in financial services. In line with this, we consider that firms charging different prices to different groups of consumers are not necessarily in breach of the Consumer Duty. The fair pricing work sets out a framework of factors we consider when assessing whether price discrimination is fair. Firms may also like to consider this when reviewing their approach to charging different prices to different groups of customers.
- 6.36** The price and value outcome rules do not require firms to charge all customers the same amount. However, where firms charge different prices to separate groups of consumers, they should consider whether the price charged for the product/ service provides fair value for an average customer in each pricing group, while having regard to whether any customers who have characteristics of vulnerability may be disadvantaged. It may not necessarily be a problem if some groups of consumers are being charged more than other groups. But the firm should consider whether the price charged in relation to the benefits received represents fair value for each group of consumers.
- 6.37** As we found in our market study of general insurance pricing practices, price walking some groups of consumers can lead to them making significant overpayments which do not provide fair value. This would not meet the requirements of the Consumer Duty.

6.38 Firms should also consider other outcomes under the Consumer Duty. For example, they should consider whether:

- consumers receive relevant information to understand the implications, and
- their customer service standards support customers making decisions, eg on whether to move to a new rate

Example

Most mortgages have an initial incentivised rate (either fixed or variable) that reverts to a variable rate after a period of time. The standard variable rate (SVR) is the most common reversion rate. When considering whether a mortgage offers fair value, firms should consider the overall price of a mortgage including any initial discounted rate, fees and charges and the reversion rate applicable at the end of a fixed rate period. This does not require firms to move away from designing products that revert to a variable rate (such as an SVR), and fair value can still be delivered by an approach in which introductory rates are cross-subsidised by the rates that borrowers later pay.

Example

Firms which offer consumer credit can offer different interest rates to different types of consumers. The rates may vary due to the credit risk of the consumer. But firms will need to assess whether the overall cost represents poor value to each different group of consumers.

6.39 Firms can also differentiate products or services, eg insurance firms can still have bronze, silver and gold cover products with different levels of benefits offered to the consumers. But firms will need to consider whether it is reasonable to have different types of product or service, especially if the benefits offered to the consumers do not vary significantly between them. Making available a wide range of products may add complexity and make it more difficult for consumers to compare products or services.

6.40 When firms have different products serving similar target markets, they should consider if customers with 1 product are more likely to incur fees and charges, or appear to be receiving outcomes that are not as good, as customers in equivalent products.

6.41 Firms should also consider whether factors such as complex pricing or unclear terms and conditions are making things unnecessarily complicated. These can prevent consumers from choosing effectively as they are not able to reasonably assess the information and act to pursue their financial interests.

6.42 Servicing fees can be charged as a percentage of the value of a product. For example, there might be a percentage charge in relation to the size of a loan, investment or savings. In this case, some consumers may pay substantially larger fees than others, even though the costs of providing the service and the benefits consumers receive may be similar. In such circumstances, firms should consider whether the relationship of the price consumers in different groups pay is reasonable relative to the benefits they receive.

- 6.43** Firms should also consider which consumer groups are affected. Consumers in some groups may be more at risk of harm. Consumers with vulnerable characteristics, for example, may be more susceptible to receiving poor value, and firms need to take extra care where consumers in target markets are likely to have vulnerable characteristics. They should be able to evidence to us that the price of the product or service represents fair value for different consumer groups, including those with vulnerable characteristics.
- 6.44** Firms should 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.

Monitoring

- 6.45** Chapter 9 sets out our overall expectations that firms monitor and review the outcomes that their customers are experiencing. In this section, we highlight elements of monitoring that are specifically relevant to price and value.
- 6.46** As well as assessing value at the design stage, firms must review value throughout the product's or service's life.
- 6.47** They should consider how regularly to perform ongoing value assessments based on relevant factors. These factors may include the nature and complexity of the product or service, any indicators of customer harm, the distribution strategy and any relevant external factors.
- 6.48** Firms should get all necessary information to enable them to understand and monitor consumer outcomes. Firms should consider their record keeping obligations in SYSC and in line with these, should consider what records they should maintain of their value assessments. We expect that firms are able to clearly demonstrate how any product or service provides fair value.
- 6.49** In carrying out the value assessments, firms should collect and analyse appropriate management information (MI).
- They should collect MI to monitor that the fair value assessments remain valid over a foreseeable period.
 - Firms should record factors considered in their value assessments and should be able to provide evidence if we request it.
 - Relevant MI could include data from consumer surveys and relevant complaints data.
- 6.50** Firms should take appropriate action where their review identifies that a product or service does not provide fair value. This may include amending the product or service benefits or price so that it provides fair value, withdrawing the product, or, where consumers have suffered harm, providing redress.

What this does not mean

6.51 The price and value outcome rules do not:

- Operate as a price cap. Firms continue to have flexibility in the way that they set prices. We are not seeking to control the prices or margins of products and services.
- Prevent firms with an innovative product that provides additional benefits to customers charging more for it. It is not our intention for the price and value outcome – or any aspect of the Consumer Duty – to hinder innovation. However, where there are savings from economies of scale which could be shared with customers, we would expect firms to take this into account in assessing fair value.
- Prevent firms from adopting any business models which may have different prices for different groups of consumers. However, firms should be able to justify the price offered to each group in terms of fair value, considering consumers with vulnerable characteristics or protected characteristics under the Equality Act 2010.
- Require firms to point consumers to a potentially better or cheaper product or service offered by another firm (unless there are Handbook requirements to do so, for example to signpost debt advice). However, firms may want to consider the market rates and charges for comparable products or services in their fair value assessments.

Interaction with existing rules

6.52 There are rules on 'fair value', and 'value assessments' elsewhere in the Handbook: PROD 4 for non-investment insurance products, PROD 7 for funeral plans and COLL 6 for asset management. These rules are specific to the sectors but have similar objectives. Where existing rules require manufacturer and distributor firms to assess whether the price of their products and services provides fair value and to review this regularly, they will comply with the price and value outcome. However, the Consumer Duty as a whole is broader than these requirements, so firms still need to consider if they meet all other aspects of the Consumer Duty.

6.53 We have not included COBS 19 as an equivalent rule to the price and value outcome rules because COBS 19 places the responsibility to assess 'value for money' on the pension Independent Governance Committees (IGCs) which are neither the manufacturers nor the distributors of the pension products. We expect IGCs to continue to comply with COBS 19 and the manufacturers and distributors of pension products to comply with the price and value requirements under the Consumer Duty.

6.54 Firms subject to price caps, such as the caps for high-cost short-term credit and for claims management activities on financial services claims, are still expected to consider if their charges represent fair value. The price caps represent the maximum that can be charged.

Summary

6.55 Below we give examples of actions that are likely to be consistent or inconsistent with the Consumer Duty.

Actions likely to be inconsistent with the Consumer Duty	Actions likely to be consistent with the Consumer Duty
A firm has pricing practices which give no consideration to whether the product or service offers reasonable benefits to consumers in relation to the total price paid by them.	A firm carries out a value assessment and documents how the prices of products or services provide fair value to consumer in the target market.
A firm alters products or services after launch without consideration of the impact this could have on customers, so a product or service that started out as fair value may no longer continue to meet the requirements.	A firm considers if changes to the products or services benefits have any significant impact on fair value to consumers in the target market and either withdraw or amend products or services if they are poor value.
A firm does not review regularly whether its products or services provide fair value and so does not identify a potential issue when it becomes reasonably foreseeable. The firm misses the chance to mitigate the harm before it can materialise, and consumers suffer harm.	A firm proactively assesses fair value and identifies a potential issue during its regular review of a product or service and takes appropriate steps. Consumers suffer no harm in practice.
A firm has many different products with different charges/fees/prices but with similar levels of benefits to consumers. Some of the charges are high in relation to the benefits provided, and some products do not offer fair value.	A firm considers the reasonableness of its product range and whether each product provides fair value to the consumers in the target market.
A firm has significantly lower prices for new customers than existing customers. The firm does not consider the impact on different groups of customers and longstanding customers receive poor value.	A firm has different charges for different groups of customers. Customers in all groups receive fair value with a reasonable relationship between the benefits they are likely to receive and the price they pay.

7 Consumer understanding

Overview

- 7.1** Consumers can only be expected to take responsibility where firms' communications enable them to understand their products and services, their features and risks, and the implications of any decisions they must make.
- 7.2** We want firms to support their customers by helping them make informed decisions about financial products and services.
- 7.3** We want consumers to be given the information they need, at the right time, and presented in a way they can understand. This is an integral part of firms creating an environment in which consumers can pursue their financial objectives.
- 7.4** Our consumer understanding outcome rules build on, and go further than, Principle 7 by requiring firms to:
- support their customers' understanding by ensuring that their communications meet the information needs of retail customers, are likely to be understood by the average customer intended to receive the communication, and equip them to make decisions that are effective, timely and properly informed
 - ensure they communicate information in a way which is clear, fair and not misleading
 - tailor communications taking into account the characteristics of the retail customers intended to receive the communication – including any characteristics of vulnerability, the complexity of products, the communication channel used, and the role of the firm
 - ensure information provided to retail customers is accurate, relevant, and provided on a timely basis
 - tailor communications to meet the information needs of individual customers and check the customer understands the information, where appropriate, when a firm is interacting directly with a customer on a one-to-one basis, and
 - test, monitor and adapt communications to support understanding and good outcomes for retail customers
- 7.5** These rules apply:
- to all firms involved in the production, approval or distribution of consumer communications, regardless of whether the firm has a direct relationship with a retail customer, and includes where a firm produces or approves financial promotions, sales-related communications and post-sale communications
 - at every stage of the product or service lifecycle, from marketing, to sale, and post-sale service, and
 - to all communications, whether verbal, visual or in writing, from a firm to a customer, including a potential customer, regardless of the channel used or intended to be used for the communication

- 7.6** One question firms can ask themselves is whether they are applying the same standards to ensure their communications are delivering good consumer outcomes as they are to generate sales and revenue. For example:
- Communications advising consumers on how to switch or complain should be at least as clear as those used to sell the product, with both being clear and understandable under this outcome.
 - Where firms conduct consumer testing of communications to determine an effective approach to maximise sales, they should use testing capabilities of equivalent standard to test other aspects of consumer understanding to ensure good customer outcomes.
- 7.7** We recognise that there are other legislative and regulatory requirements that set out what, when and how firms should communicate information to consumers. Firms should continue to follow these requirements, which are necessary to achieve specific outcomes, such as demonstrating suitability or enabling consumers to compare products across a market.
- 7.8** But, under the Consumer Duty, firms should take a step back and think more widely about how their communications promote understanding and help their customers avoid foreseeable harm and pursue their financial objectives – throughout the life of products and services.
- 7.9** We expect firms that approve financial promotions on behalf of others to meet the expectations of this outcome where they are relevant to their role. This means that these firms must act reasonably to ensure the communications they approve equip consumers to make effective, timely and properly informed decisions. We published a discussion paper on [Strengthening our Financial Promotion Rules](#), which includes a section on the role of firms approving financial promotions.

What this means for firms

- 7.10** This section explains how we expect firms to meet the expectations we have set out above.
- Equipping customers to make effective decisions**
- 7.11** Firms should 'put themselves in their customers' shoes' when considering whether their communications equip consumers with the right information, at the right time, to understand the product or service in question and make effective decisions.
- 7.12** Firms should act in good faith and avoid designing or delivering communications in a way in which exploits consumers' information asymmetries and behavioural biases. We have seen consumer harm arise where communications encourage consumers to make decisions without full possession of relevant information, for example on costs and exclusions in relation to a particular product or service.

Example poor practice

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.

This is unlikely to be acting in good faith towards consumers or giving them the right information to make properly informed decisions.

Example poor practice

We have also seen examples of online sales journeys where information is presented in a way that exploits consumers' behavioural biases and encourages consumers to take out, or make payment for products, using credit. For example, by giving much greater prominence to a credit option or making other options harder to find or access.

Firms must act in good faith and ensure that the options available to consumers are presented in a clear and fair way, and they must go further by ensuring that their choice architecture isn't designed to influence consumers to select a particular option that benefits the firm but may not deliver a good outcome for the consumer.

7.13 Communications should be understandable by the intended recipients and enable them to evaluate their options by assessing the benefits, risks and costs associated with those options, and how those options relate to their needs and financial objectives.

7.14 Firms should consider how the way in which information is presented, including any navigation required, can help to improve or inhibit understanding. Firms should ensure that key information is clear, visible and accessible – not hidden within a large volume of material, or hard to find on a website.

7.15 We expect firms to adopt good practices that generally enhance the clarity of communications. This will support consumers in making effective decisions by selecting products that help them pursue their financial objectives. For example, communications can be more effective when they are:

- **Layered:** This is where key information is provided upfront with cross-references or links to further detail and can be particularly effective online. The key information is likely to include any action required by the customer and any consequences of inaction. If the consumer needs to make a choice about a product and service, the key information is likely to include the key features, benefits, risks and costs of that product or service. This is important as research by the Financial Capability Lab has highlighted that consumers often rely more heavily on the first piece of information they encounter when making decisions.
- **Engaging:** Communications that are designed in an engaging way can encourage consumers to engage with them. This is particularly important where the communication is prompting the consumer to act. The key information should be easy to identify. For example, by means of headings and layout, bullet points, display and font attributes of text. Design devices such as tables, graphs, diagrams, graphics, audio-visually and interactive media can also improve the effectiveness of communications by making them more engaging. For example, research by the Behavioural Insights Team found that using a question-and-answer format to present key contractual terms improved consumer understanding by 36%. And

summarising key terms and illustrating them with explanatory icons – to reduce the amount of information given in one go – increased consumer understanding by 34%.

- **Relevant:** Firms should consider the appropriate level of detail for each communication. They should take into account what consumers need to know, the kind of decision to be made by their recipients where applicable, and where confusion could arise. For example, information on a simple, low-risk product intended for mass market consumers, such as 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. Firms should avoid unnecessary disclaimers. Key information can be overlooked if detail is provided that is unnecessary for a particular communication, and information overload can deter consumers from engaging with communications. Shorter communications are more likely to be read and understood.
- **Simple:** Effective communications will present information in a logical manner. Where possible, jargon or technical terms should be avoided. Where the use of jargon or technical terms is unavoidable, firms should explain the meaning of key terms in plain and intelligible language that consumers are likely to understand. Absolute costs and standardised terms can also help to keep communications simple and aid consumer understanding, helping them to compare different options available to them. Our [previous work on Smarter Consumer Communications](#) identified that consumers need simple and clear information and explanations.
- **Well timed:** Firms should communicate with consumers in a timely manner and at appropriate touch points throughout the product lifecycle, giving them an appropriate opportunity to take in the information and, where relevant, assess their options. This will help to put consumers in a position where they can make effective decisions on an informed basis.

7.16 Other legislative and regulatory provisions can be prescriptive about what, when and how firms should communicate information to consumers. Firms may also need to use specific language at times to achieve legal certainty, for example when setting out contractual obligations. This may mean that, in certain scenarios, firms have less flexibility to adopt some of the practices outlined above to aid consumer understanding. In these scenarios, a layered approach will be particularly important.

7.17 Lengthy and technical communications can confuse or overwhelm readers; firms should help consumers to navigate the information they provide, explaining relevant context and any jargon or technical terms in a simple way. Recent work, such as by [Plain Numbers](#), has demonstrated how seemingly small changes to communications can substantially increase comprehension among consumers. We expect firms to exercise judgement to ensure they bring the most important information to the attention of consumers in an accessible way.

Example good practice

A consumer applies to take out a financial product and the firm sends them certain prescribed documents to comply with legislative and regulatory requirements, along with detailed terms and conditions.

The firm identifies that the cumulative package of information is complex and could be difficult for the consumer to navigate.

The firm organises the information in a logical way and includes a cover sheet which clearly sets out the key information upfront and signposts to further detail in the package. The cover sheet highlights the action the consumer needs to take and the product's key features, benefits, risks and costs – the fundamental information the firm judges the consumer needs to make an effective decision.

Example good practice

In response to the Covid-19 pandemic, we issued guidance setting out our expectations that credit firms should offer consumers payment deferrals if they experience financial difficulties as a result of coronavirus.

Where payment deferrals were granted, firms were still required to send notice of sums in arrears under the Consumer Credit Act 1974 which included signposting to free debt advice and support. This might have had the potential to confuse some consumers.

We explained that, where statutory notices were required to be sent, firms should provide suitable explanations or context within these statutory notices if they considered that they might otherwise lead to confusion.

This contextual information helps consumers understand even in cases where complex or technical information needed to be communicated.

Tailoring communications

- 7.18** When designing a product or service, firms are required to define a target market. When communicating about the product, firms should consider the characteristics of the consumers within its target market and tailor communications to meet their information needs. For example, the target market for a complex investment product may have different information needs than the target market for a simple, mass market product.
- 7.19** Firms should consider the characteristics of the consumers that any communication is aimed at and tailor their communications accordingly so that they are likely to be understood.
- 7.20** When firms are developing communications that are not linked to a particular product or service, they should take into account what they know, or could reasonably be expected to know, about the sophistication, financial capabilities and vulnerability of the intended recipients of the communications and tailor them to meet their information needs as appropriate.
- 7.21** Firms should take particular care when communicating with consumers in vulnerable circumstances, taking account of their needs. They should follow our guidance for firms on the fair treatment of vulnerable customers.

- 7.22** When developing communications that will be sent to many consumers, such as mass marketing, firms are not expected to tailor all communications to meet the needs of each individual consumer, but, where relevant, they should consider the information needs of different groups of consumers.
- 7.23** In scenarios where a firm is interacting directly with a customer on a one-to-one basis, it should consider the information needs of that customer and whether it would be appropriate to tailor the information provided to support their understanding. For example, it may become apparent that the customer requires particular information, further explanation or they may have a characteristic of vulnerability which may mean it is appropriate to provide information in a different way.
- 7.24** In markets where the provision of advice is a regulated activity, the information provided should not amount to advice unless the firm has an advisory role. Instead, their communications should aim to equip consumers with relevant information in a way that does not amount to the provision of advice.

Example poor practice

Firms should design communications with consumers in mind rather than focussing solely on what is most commercially efficient.

We have seen cases where firms have sent a single and extremely long communication to all customers, covering a range of issues, with customers left to work out which bits of the communication are relevant to them.

Firms should consider if they can better segment or target communications to make them more relevant to the intended recipients, rather than adopting a 'one size fits all' approach.

This does not mean that firms must tailor all mass communications to meet the needs of each individual customer. But, where appropriate, they should consider the information needs of different groups of customers and communicate relevant information in a way that supports understanding. This will help consumers to make effective decisions and pursue their financial objectives.

Example poor practice

One consumer was unable to read large print and did not know braille. He informed his bank of this and asked to receive communications by email as he can turn emails into speech.

However, the bank continued to send the consumer communications on paper, and not by email.

This firm did not tailor its communications taking into account the known characteristics of the recipient, which it became aware of when interacting directly with the customer on a one-to-one basis.

The firm did not act reasonably to avoid causing harm to the consumer or enable them to pursue their financial objectives.

Example good practice

A firm is developing a communication to send to customers in arrears.

It identifies that the recipients of this communication may be in financial difficulty and therefore at increased risk of harm if the communication is overlooked or misunderstood.

The firm ensures the communication takes this into account by including a prominent message in plain English inviting customers to get in contact with the firm if they need help to understand the communication or would like to discuss their options or the support available.

Ensuring information is provided on a timely basis

- 7.25** Product and service features can change over time, for example, introductory rates come to an end or variations are made to agreements. Consumers' circumstances can also change over time. Both factors can result in products and services that no longer meet consumers' needs and objectives.
- 7.26** Firms should be mindful of this and communicate at appropriate points, including any relevant changes, to prompt consumers to consider if products and services continue to meet their needs and objectives. For example, they could send out prompts before the end of an introductory offer period – as is already the case under our rules in the mortgage market. But even where there are existing rules in place, firms should consider if there is more they can do to deliver good outcomes by enabling customers to make effective decisions and pursue their financial objectives.
- 7.27** This is particularly important for longer-term agreements where there is greater scope for circumstances to change.
- 7.28** In some cases, this may mean that firms need to communicate more often than they currently do. Conversely, firms should also consider the effect of communicating too frequently, and possibly diminishing the impact of important communications on which action is required. Firms should use the findings from their testing and monitoring of communications to inform their approach.
- 7.29** A firm should provide relevant information at an appropriate stage in the customer journey, giving the customer the opportunity to review the communication before deciding whether to act. This will help enable consumers to make effective decisions and pursue their financial objectives.
- 7.30** For example, the customer journey may be short, with little time between a customer selecting a product and completing the application to purchasing it. Firms should provide the consumer with the appropriate information on the product (eg costs and default terms) early in the consumer journey, in salient and easy to read ways (eg not emphasising the benefits of a product while hiding the costs in fine print), so the consumer has sufficient time to take account of this in their decision making.

Example good practice

In January 2019, we published the first tranche of our rules and guidance following our Retirement Outcomes Review.

This introduced additional trigger points for firms to send pension 'wake-up' packs. At age 50, consumers are sent a summary document that includes key information such as pot size and generic risk warnings. This is followed by a full 'wake-up' pack at age 55 and every subsequent five years, which sets out the different options available when accessing pension savings.

These changes are intended to give consumers timely, relevant and adequate information about their retirement options to enable them to make an informed decision.

This type of approach is consistent with the aims of this outcome. By providing relevant information at appropriate points during the product lifecycle, it gives consumers the opportunity to assess their options in good time – enabling them to make effective decisions and pursue their financial objectives.

The communication channel used

- 7.31** Communications should be effective regardless of the channel of communication used – whether face-to-face in branch, on the telephone or online, for example. Digital communications should be compatible with different mediums, for example computers, tablets or smartphones.
- 7.32** Firms should also ensure they meet our expectations regarding the provision of different channels of communication, as set out under the consumer support outcome. A firm must ensure that, regardless of the channel used for communication, the information provided enables consumers to assess whether the options available to them meet their needs and objectives and evaluate any relevant risks.
- 7.33** 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 smartphone. 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 such as buying a product or service, where the other channel is likely to facilitate a fuller consideration of important information.
- 7.34** Each communication should be considered individually and must comply with the relevant rules. This may be difficult when information is being communicated using certain media with space limits. As explained above, firms should consider using a layered approach, prioritising certain information and supplying additional information later or through other means. If this approach is followed, firms must still comply with the relevant rules and must ensure all relevant information is provided in an appropriate way before a customer makes a decision.

Example good practice

A bank identifies where its customers do not have sufficient funds in their accounts to make regular direct debit payments.

The bank sends its customers a short, effective communication through its mobile app or via text message to make customers aware, allowing them time to deposit the funds needed to make payments and avoid additional charges.

This firm acted in good faith in this scenario and used its communication channels effectively to tailor messages that helped consumers avoid foreseeable harm.

Testing communications to support understanding

7.35 Firms may consider their communications to be understandable, but that may only reflect the views of those involved in the design and sign-off of their communications – often legal, compliance and other financial services professionals.

7.36 Effective communications are those which can be understood by the consumers they are targeted at, not just those involved in their development. Therefore, in addition to making sure that communications meet the requirements of this outcome and support consumer understanding, firms should test communications where appropriate. The testing should check communications can be understood by consumers so they can make effective decisions and act in their interests.

7.37 We expect that, for many communications, for example where there is no meaningful risk of harm to consumers, no testing of consumer understanding is likely to be required. However, firms should ensure these communications meet the other expectations of this outcome – including that they equip retail customers to make decisions that are effective, timely and properly informed.

7.38 Where firms communicate with individual consumers, for example in the context of advised sales or provision of a tailored service, they should act reasonably and use opportunities presented during routine interactions to check consumers understand relevant information provided to them.

7.39 When considering if testing is required, firms should take into account factors such as:

- the purpose of the communication and, in particular, if it is designed to prompt or inform a decision, and the relative importance of that decision
- the context of the communication, such as whether it is a tailored individual communication or mass marketing that could impact many consumers, its timing and its frequency
- the reasonably foreseeable information needs or vulnerabilities of target consumers, including whether the recipients are likely to include significant numbers of individuals with low financial capability who may be less likely to understand the communication, and
- the scope for harm if the information being conveyed were misunderstood or overlooked by consumers

7.40 Where firms judge it is appropriate to carry out testing of communications, this testing could take different forms. For example, by contracting a specialist agency or consumer representative to complete an independent review; conducting experiments or A/B testing; carrying out consumer surveys to test understanding of the key content of communications; or running focus group sessions with consumers.

- 7.41** Firms' approach to testing will reflect their capabilities and resources, but we expect all firms to be able to demonstrate that they have a proportionate approach that provides them with confidence that consumers can understand their communications. This should enable firms to avoid causing foreseeable harm to consumers and help consumers to be confident they understand products and services and are able to choose those that meet their needs.
- 7.42** Unless explicitly required by other regulatory provisions, firms are not expected to verify that all individual consumers have in fact understood the information provided. Rather, firms are expected to take appropriate steps to satisfy themselves that their communications are likely to be understood by their intended recipients.
- 7.43** We appreciate that not all consumers will engage with, or fully understand, all aspects of communications about financial products and services, or always make decisions in their interests. But the benefit of testing significant communications with consumers is that it enables firms to learn from the findings and adapt communications to improve consumer comprehension and support good outcomes.
- 7.44** This type of testing may also help firms to identify where certain products or services could cause harm to consumers, allowing them to take steps to mitigate this risk – which could include modifying sales processes or simplifying products where testing demonstrates widespread consumer misunderstanding about them.

Example good practice

A bank is developing a communication marketing a new product to send to a cohort of its customers, some of whom are likely to be in vulnerable circumstances.

As part of the development process, it hires a specialist agency to test the communication and suggest changes to meet the communication needs of its customers.

It subsequently adapts the communication, increasing the size of certain key text, simplifying the content with infographics and using a colour scheme friendly to people with conditions such as dyslexia. It also prominently includes a contact number, inviting customers to call if they would like to discuss the communication or obtain it in a different format.

This mitigates the risk of harm that could arise if consumers do not understand the information provided, for example if they fail to act on it or take out a product that does not meet their needs. This approach supports consumers in making effective decisions.

Example good practice

A firm that sells products to consumers with a lower ability to withstand financial shocks, and which distributes its products via brokers, also contacts consumers directly to talk about their circumstances and understanding of the product.

Another firm, where the sale is on an execution-only basis, contacts the consumer to check that they wanted the product in question and to let them know advice is available.

These firms use proactive communication to test the understanding of customers in vulnerable circumstances. This helps to ensure consumer harm is avoided and that consumers are supported in making effective decisions.

Example good practice

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 act reasonably to avoid causing harm to consumers by reconsidering how understandable their initial product communications are and making appropriate changes to enable consumers to make effective decisions.

Monitoring

- 7.45** Chapter 9 sets out our overall expectations that firms can understand and evidence the outcomes that their customers are experiencing. In this section we highlight elements of monitoring that are specifically relevant to the consumer understanding outcome.
- 7.46** Firms should monitor whether their communications are supporting consumer understanding and helping their customers make effective, timely and properly informed decisions.
- 7.47** The testing of significant communications, as outlined above, will help with this. But we also expect firms to consider the impact they expect communications to have, monitor whether this is the case in practice, and carry out further investigation where this is not the case, to identify and remedy any issues to support good consumer outcomes.
- 7.48** For example, if there is a notably lower response rate than could reasonably be anticipated following a communication prompting consumers to take action, such as to switch product or claim redress, this may indicate that the communication has not supported consumers' understanding by providing them with the information they need to make an effective decision.
- 7.49** Firms should collect and make use of relevant MI to monitor the impact of communications and identify areas that warrant further investigation. For example, communication response rates, take-up rates of products where communications prompt consumers to switch or take them out, or complaints information – which might directly show that customers are unhappy with a firm's communications approach, or indirectly show that communications are not effective in supporting customers to make informed decisions, for example where there is a trend in relation to complaints about the mis-sale of a product.
- 7.50** Firms should also monitor events or any changes that might impact the content of communications and ensure they remain relevant and up to date with pertinent information that supports consumers in making effective decisions.
- 7.51** Where a distributor identifies, or becomes aware of, any issues with a communication produced by a manufacturer, it should act to avoid harm to consumers and inform the manufacturer promptly.

- 7.52** If, through testing or monitoring of communications, firms identify any common areas of misunderstanding or issues which mean that the communications are not delivering good outcomes, they should take appropriate action. For example, adapting communications to make them more easily comprehensible by the intended recipients. If a communication about a complex product is commonly misunderstood and cannot easily be adapted to support consumer understanding, a firm may consider other action such as adapting the sales process or simplifying the product.
- 7.53** We expect firms to exercise judgement and adopt a reasonable and proportionate approach to monitoring communications and taking action where issues are identified. Firms should have appropriate governance processes in place to oversee this process and consider keeping a record of any relevant actions taken.

What this does not mean

- 7.54** These outcome rules do not require firms to:
- Tailor all communications to meet the needs of each individual consumer.
 - Communicate via all, or a particular, channel of communication.
 - Test all communications. For many communications, for example where there is no significant risk of harm to the consumer, testing of consumer understanding is less likely to be required, although firms should still review communications to ensure they meet the other expectations of this outcome.
 - Verify that all individual consumers have in fact understood the information provided. Rather, firms should take appropriate steps to satisfy themselves that their communications are likely to be understood by their recipients. However, in certain contexts the communications outcome rules may require a reasonable degree of checking of individual understanding. For example, where the customer is receiving a personalised service or interacting on a one-to-one basis with a firm and being asked to make important or complex decisions.

Interaction with existing rules

- 7.55** 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 – and this may mean doing more than the existing rules require.

Summary

7.56 Below we give examples of actions that are likely to be consistent or inconsistent with the Consumer Duty.

Actions likely to be inconsistent with the Consumer Duty	Actions likely to be consistent with the Consumer Duty
Firms frame communications in a way in which exploits consumers' information asymmetries and behavioural biases.	Firms 'put themselves in their customers' shoes' and consider whether their communications equip consumers with the right information, at the right time, to assess products and services and make effective decisions.
Firms make no attempt to help consumers navigate the information they provide, making it difficult for consumers to identify the key information and the options available to them.	Firms adopt good practices that generally enhance the clarity of communications and, where possible, act to make communications more effective. For example, by layering information, making communications engaging, relevant, simple and timed well.
Firms design communication strategies based solely on what is most commercially efficient, rather than taking into account the information needs of their customers.	Firms aim to segment or target communications to make them more relevant to the intended recipients, rather than adopting a 'one size fits all' approach.
Firms do not consider the information needs of consumers after the initial point of sale.	Firms are proactive in thinking about how best to engage and communicate with consumers after the point of sale to support good outcomes.
Firms do not adopt a reasonable approach to the testing of communications, either by failing to identify significant communications where testing would be appropriate, or an approach that does not provide a reasonable basis to conclude that their communications are likely to be understood by recipients.	Firms adopt an effective approach to the testing of communications, which provides assurance that significant communications can be understood by the target recipients. They adopt a 'test and learn approach', adapting communications where appropriate with the aim of improving consumer understanding to support good outcomes.
Firms do not consider the clarity of their contract terms, resulting in unfair terms that are not enforceable or contracts that contain out of date material.	Firms draft and regularly review their contract terms to ensure compliance with the transparency requirements of the Consumer Rights Act 2015.

8 Consumer Support

Overview

- 8.1** Consumers can only pursue their financial objectives where the firm supports them in using the products and services they've bought. A product or service that a customer cannot properly use and enjoy is unlikely to offer fair value.
- 8.2** We expect firms to provide support that meets their customers' needs. The support firms provide should enable consumers to realise the benefits of the products and services they buy, pursue their financial objectives and ensure that they can act in their own interests.
- 8.3** Our consumer support outcome rules go further than existing rules by setting overarching requirements in relation to the support firms provide their customers. They should be read in conjunction with other rules that cover specific elements of the servicing of customers, such as our [Dispute resolution: Complaints \(DISP\)](#) rules. They require firms to:
- consider the support their customers need and make sure their customer service meets those needs
 - support their customers in a way that takes their needs into account, such as by not designing processes with unreasonable barriers that prevent consumers realising the benefits of the product or service, or acting in their interests, including by imposing unreasonable additional monetary and non-monetary costs on consumers
 - monitor the quality of the support they are offering, looking for evidence that may indicate areas where they fall short of the outcome, and act promptly to address these, and
 - ensure they do not disadvantage particular groups of customers, including those with characteristics of vulnerability
- 8.4** These requirements set an appropriate minimum level of acceptable consumer support that all firms must provide, regardless of their size, resources or business model, so that consumers are able to utilise the products and services they purchase and act in their interests without facing unreasonable barriers. Firms are free to compete by going further.
- 8.5** Consumers will not always act in their interests or take advantage of all the benefits that may be available from a product or service. Under our consumer understanding outcome firms should support consumers by communicating with them at relevant points when there is an opportunity for them to act in their interests or pursue their financial objectives (eg by switching product). Under this outcome firms should enable consumers to do so.

- 8.6** One question firms can ask themselves is whether they are applying the same consumer support standards to deliver good consumer outcomes as they are to generate sales and revenue. For example:
- Firms should make it at least as easy to switch product, leave their service or make a change, as it is to buy the product or service in the first place.
 - The quality of any post-sale support envisaged in the customer relationship should be as good as the pre-sale support.
- 8.7** Where a person is authorised by a customer or by law to assist in the conduct of the customer's affairs, the firm should provide the same level of support to that person that they would have provided to the customer.

What this means for firms

- 8.8** This section explains our expectations of firms.

Providing an appropriate standard of support

- 8.9** The support that firms provide should enable consumers to fully utilise the products and services they purchase and act in their interests. Firms should ensure their customers are adequately supported throughout the lifecycle of a product or service after the point of sale – in particular, if they want to make an enquiry, claim, complaint or switch provider.
- 8.10** This means that firms should ensure their support processes avoid causing foreseeable harm to consumers. They should check these processes do not have systemic issues that lead consumers to encounter unreasonable barriers, including unreasonable additional costs, when they want to take action. For example, this can occur due to:
- consistently poor or excessively slow service
 - it being mandatory to communicate via a certain channel
 - under-resourced consumer helplines, for example where firms disproportionately focus on pre-sales, over after-sales, support
 - phone systems, menus or webchats that are difficult to navigate
 - badly designed websites that make it difficult for consumers to find key information online, and
 - uncertainty around how or where to access support, or poor hand-off processes, where third parties are involved in its provision

Unreasonable barriers

- 8.11** Firms should provide an appropriate level of support that ensures consumers do not face unreasonable barriers when exercising any rights or options in relation to the product. This means that firms' consumer support should enable consumers to get what they paid for, for example by making a claim under an insurance policy, or withdrawing funds from a savings account, without unreasonable barriers.

- 8.12** There can be commercial incentives for firms to create friction points (often called 'sludge') 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. This is not consistent with the Consumer Duty.
- 8.13** While prompts or incentives to retain a customer are acceptable, they should not unreasonably impact the ease with which a customer could switch or exit from a product should they choose to do so. Firms should carefully consider the effect of these practices on customers' ability to switch.
- 8.14** We recognise that additional steps in consumer journeys might sometimes be in consumers' interests and therefore would not amount to unreasonable barriers, for example steps designed to make sure customers are aware of the consequences of cancelling a contract. However, firms must be able to justify and evidence the consumer benefits of such additional steps or friction and they should not unreasonably elongate or complicate customer journeys for their own benefit.
- 8.15** Firms should consider the steps they take to support customers wanting to buy their product or service and should make it at least as easy to switch product, leave their service or make a change, as it is to buy in the first place. This expectation relates to the steps a customer is required to take to switch, exit or make a change. We acknowledge that there may be consequences for consumers when taking this action and product agreements may include contractual provisions relating to early termination – these should be clearly drawn to consumers' attention, as appropriate, in line with our expectations under the consumer understanding outcome.
- 8.16** So, what amounts to 'unreasonable barriers' will depend on the circumstances, and we will consider all relevant factors to assess whether firms have fallen short of our expectations.

Example poor practice

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 unreasonably restrictive, rigid or arbitrary administrative requirements on customers that create barriers to them making a claim.

This firm would be unlikely to be regarded as acting in good faith or enabling its customers to realise the expected benefit of the insurance product they have bought including making a claim without unreasonable barriers.

Example poor practice

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 represent an unreasonable barrier under the consumer support outcome. This prevents consumers from pursuing their financial objectives.

Where a product is taken out online, a visit to a branch should not normally be required to close the product. In general, this should be possible via the same process or means (ie online). Firms may also provide other options to close the product, for example by phone – provided it does not involve a process designed to deter consumers from acting, such as described above.

Example good practice

A firm sells a high-risk investment product online on an execution-only basis.

As part of the sales process, it requires consumers to watch an educational video on investment risks, the benefits of diversification and regulatory protections, before purchasing the product.

While some consumers may consider this to be an unnecessary step, it has been designed for the purpose of supporting consumers in making informed decisions and to reduce the risk of harm that could arise if consumers purchase the product and it is not suitable for them.

Therefore, this is unlikely to amount to an unreasonable barrier under the consumer support outcome as the firm has acted to avoid causing harm to consumers, enabling them to pursue their financial objectives.

Example poor practice

During our work to assess the implementation of the Coronavirus Tailored Support Guidance we identified that some firms used digital tools when providing financial help. However, we found evidence of some 'sludge' practices which can add friction to the customer journey and, in some cases, may prevent customers from pursuing their financial objectives.

These practices included:

- Customers using third party digital tools having to register and log on to more than one system or platform to complete the automated forbearance journey
- Customers having to click on multiple boxes to reveal additional text to help inform their decision-making and customers using third party digital tools having to wait a day or more before receiving confirmation of their payment plan or if they need to provide further clarity.

Unreasonable additional costs

8.17

The support firms provide should not lead to the product costing more than the consumer expected up-front. Firms should avoid causing harm to consumers by making sure that their consumer support does not impose unreasonable additional costs, including unreasonable charges, time, distress, inconvenience or provision of personal data.

- 8.18** Firms should also ensure they meet the expectations of the Consumer Duty in relation to the design of products and services and avoid charging unreasonable exit fees which discourage consumers from leaving products or services that are not right for them or getting better deals.
- 8.19** Some delay, inconvenience or cost might not be unreasonable depending on the circumstances. We do not intend to set rigid standards of how long a customer should wait to talk to an agent, how long a call should last, or how long an issue should take to be resolved (except where prescribed in other rules, such as our DISP complaint handling rules which require firms to respond to a complaint within eight weeks).
- 8.20** There may be cases where delays in consumers getting support would not be regarded as unreasonable. For example, 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. There may also be occasions when firms' systems are down for routine maintenance, or an upgrade, and some services may be impacted or unavailable for a period.
- 8.21** However, we note that, under our SYSC rules, firms must have systems and controls in place to effectively manage their businesses, and firms should also ensure they comply with our final rules and guidance for firms to strengthen operational resilience in the financial services sector as set out in PS21/3. So, firms should have reasonable processes in place to deal with strain on their operations when issues arise.
- 8.22** When issues or other scenarios impact the delivery of consumer support, firms should ensure that consumers are kept informed of events, in line with the consumer understanding outcome.
- 8.23** Further, 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.
- 8.24** We expect firms to ensure that consumers are not exposed to unreasonable additional costs as a result of how their products are serviced and we expect them to use proportionate resources to meet expected demand.

Example poor practice

A retail banking customer telephones their bank in good time to transfer money from a savings account into a current account, to avoid going overdrawn.

The customer waits on hold for a long time, without good reason, and is unable to get through to an agent to make the transfer, despite trying to do so throughout that day. They were also unable to transfer the money online due to an issue with the firm's online banking service.

This results in the customer going overdrawn and incurring charges.

Example good practice

An unforeseeable event causes a surge in demand for a firm's consumer support.

The firm has reasonable processes in place to manage unexpected surges in demand and diverts resource to deal with this, prioritising the most urgent and significant requests.

This means that some customers will experience a delay. The firm posts a prominent notice on its website and social media to inform consumers of the situation, as well as a message when customers first contact its helpline. It sets out a process for consumers to escalate urgent issues.

In this example the firm has acted reasonably to avoid causing harm to consumers and acted in a way that is consistent with the consumer support standards we are seeking.

Ensuring support meets the needs of customers, including those with characteristics of vulnerability

- 8.25** Firms should ensure that the support they provide meets the needs of their customer base and target market. This should include delivering support through appropriate channels that enable firms to respond flexibly to their customers' needs and secure good outcomes. Firms should carefully consider the support needs of their customers
- 8.26** For example, if a current account product is targeted at the mass retail market, this will include customers with different communication needs, including consumers with characteristics of vulnerability, and firms should make sure they have an approach that can support those needs. This is likely to include consideration of whether a digital or telephone-only channel is appropriate based on the needs of the firm's customer base or target market, or if it is necessary to provide alternative ways or channels to communicate.
- 8.27** Our [guidance on the fair treatment of vulnerable consumers](#) provides further information on how firms should deliver support to meet the needs of consumers in vulnerable circumstances. This sets out that firms should deliver support that responds flexibly to needs and, where possible, firms should offer multiple channels of communication so consumers have a choice.
- 8.28** Firms that operate via a single channel should consider how they might recognise and respond to the needs of their consumers if they were to develop characteristics of vulnerability. For example, this could include providing a call back service for consumers who might struggle with phone menus or the option to notify the firm of a change in circumstance via an app or live web chats. This may also include a face-to-face option for consumers who may be digitally excluded or have lost access to telephone services.

Example good practice

A consumer with mental health issues had recently moved their bank account but lost control of their finances and incurred bank charges.

They were able to communicate easily and effectively with their bank through online web chat.

The bank's web chat advisor talked things through with the consumer, making them feel genuinely understood and supported, and made sure they received appropriate forbearance.

This firm's consumer support is designed to meet the needs of customers, including those with characteristics of vulnerability. It has acted reasonably to avoid causing harm to the consumer and enable them to pursue their financial objectives.

Example good practice

One bank offers access to British Sign Language interpreters in-branch, via an app on branch tablets, and on its website, enabling consumers to deal with their affairs from the comfort of their own home.

This service increases accessibility and effectively meets the communication needs of certain consumer groups.

This firm has acted reasonably to avoid causing harm to consumers and enable them to pursue their financial objectives.

Monitoring

- 8.29** Chapter 9 sets out our overall expectations that firms can understand and evidence the outcomes that their customers are experiencing. In this section, we highlight elements of monitoring that are specifically relevant to the consumer support outcome.
- 8.30** Firms should regularly monitor whether they are providing an appropriate level of support to retail customers to identify and mitigate the risk of harm to consumers and ensure they meet the standard set out under this outcome.
- 8.31** This means that firms must ensure the support they provide enables consumers to realise the benefits of products or services and act in their interests without unreasonable barriers, including unreasonable additional costs. This guidance explains when and how these issues may arise but, as explained above, we do not intend to set rigid standards in this area and firms should consider what these terms mean in the context of their business and design systems and processes to monitor this.
- 8.32** We expect firms to be able to demonstrate that they have thought about how to design and deliver consumer support that meets the expectations under this outcome and monitor that they continue to do so. For example, firms may have processes and MI to check that existing customers receive a level of support consistent with this outcome and are not overlooked in favour of supporting prospective customers.

- 8.33** Firms should consider information available on customer behaviour and feedback to identify whether customers, or particular groups of customers, are encountering unreasonable barriers, including unreasonable additional costs, as part of firms' consumer support provision.
- 8.34** Metrics that can help firms monitor outcomes in this area, include root-cause analysis of complaints, client persistency or retention information, abandoned call or claim rates, unusually low volumes of claims or successful claims, consumer listening exercises or satisfaction surveys.
- 8.35** Firms should also use the evidence they have about their customers' use of products or services and interactions with the firm to identify areas where their processes may create unreasonable barriers to consumers, and act to reduce this.
- 8.36** Where a firm's consumer support is provided by an outsourced third party, either in whole or in part, we expect the firm to have systems and processes in place to monitor that the support meets the standard set out under this outcome. For example, the firm might collect relevant MI or conduct outcome testing activity to provide assurance that an appropriate level of consumer support is being delivered.
- 8.37** Where firms identify that their consumer support, or elements of the support they provide, do not meet the expectations under this outcome, we expect them to take appropriate action to remedy this. If this relates to consumer support provided by an outsourced third-party, they may choose to make alternative consumer support arrangements.
- 8.38** If, for example, a firm identifies that a systemic or recurring issue in the delivery of its consumer support prevented customers from utilising a product or service as anticipated, it should act in good faith and consider whether remedial action would be appropriate. This might include providing redress commensurate with the benefit that was difficult to utilise or proactively contacting customers to explain the issue and the steps they can take to fully utilise the product or service.
- 8.39** We recognise that, on occasion, individual consumers will have a poor consumer support experience. Where this occurs, we expect firms to act in good faith and deal with this promptly and fairly, providing redress where appropriate, to deliver a good outcome for that consumer.

Example good practice

A firm carries out analysis of the causes of complaints it receives.

It identifies that many customers have made complaints about the difficulties they encountered when attempting to switch provider.

Lots of these complaints noted that the firm's phone system directed them to a particular department to take this action, at which point they were required to wait on hold for a significant amount of time, with no indication of when their call might be dealt with or the option of a call back.

Customers were often cut-off without being able to speak to an advisor, requiring them to call back and make multiple attempts to take action.

The firm subsequently investigates and makes changes to its phone system to improve the process. This mitigates the risk of harm to consumers and better supports them acting in their interests to pursue their financial objectives.

What this does not mean

8.40 These outcome rules do not require:

- Firms to provide support to consumers via multiple different channels. Firms should however provide support that meets the needs of their customer base and target market. Where possible, firms should offer multiple channels of communication, so consumers, in particular those in vulnerable circumstances, have a choice.
- Firms to provide support 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 or service as it is to enter it.
- Firms to guarantee that their consumer support processes will never experience issues or delay. Firms should have reasonable processes in place to deal with strain on their operations when issues arise. Where individual consumers do not get the support they need, we expect firms to deal with this promptly and fairly, providing redress where appropriate, to deliver a good outcome for that consumer.
- Firms to streamline customer journeys to such an extent that they remove steps that provide consumer benefits. However, firms must be able to justify and evidence the consumer benefits of additional steps or friction and they should not unreasonably elongate or complicate customer journeys for their own benefit.

Interaction with existing rules

8.41 The Consumer Duty is compatible with, but does not replace, existing FCA Handbook rules that set specific requirements for the servicing of customers (eg providing information, complaints handling). This outcome sets overarching expectations in the area of consumer support and firms may need to go beyond existing rules covering specific aspects of the servicing of customers in order to deliver good outcomes for customers.

Summary

8.42 Below we give examples of actions that are likely to be consistent or inconsistent with the Consumer Duty.

Actions likely to be inconsistent with the Consumer Duty	Actions likely to be consistent with the Consumer Duty
Firms disproportionately focus on supporting customers up to the point of sale, with little focus or support for consumers after purchase.	Firms have processes that support consumers throughout the product and service lifecycle: pre-sale, during sale and after-sale.
Firms add unreasonable additional steps to their consumer support processes that deter their customers from acting in their interests.	Firms design and deliver the support they provide in a way that enables consumers to realise the benefits of the products and services they buy and act in their interests.
Firms have ineffective consumer support processes and communication strategies to deal with unexpected surges in demand.	Firms have effective consumer support processes and communication strategies to deal with unexpected surges in demand for support.

Actions likely to be inconsistent with the Consumer Duty	Actions likely to be consistent with the Consumer Duty
Firms have a rigid approach to the provision of consumer support that doesn't effectively take into account the needs of their customer base, target market or customers in vulnerable circumstances.	Firms design and deliver the support they provide to meet the needs of their customers. They adopt a flexible approach when dealing with customers in vulnerable circumstances and offer more than one channel of communication, so customers have a choice.
Firms have an ineffective approach to monitoring that fails to identify systemic issues with their consumer support processes.	Firms regularly monitor their consumer support processes to make sure there are no systemic issues that create unreasonable barriers or costs for consumers.

9 Monitoring and Governance

Overview

- 9.1** A key part of the Consumer Duty is that firms assess, test, understand and are able to evidence the outcomes their customers are receiving. Without this, it will be impossible for firms to know that their products and services are performing as they and the customers would have expected and in a way that is consistent with the Consumer Duty.
- 9.2** Firms have to be able to identify poor outcomes and take appropriate action to rectify the causes of poor outcomes and continuously learn from their growing focus and awareness of the outcomes that their customers experience in practice.
- 9.3** Firms can expect at every stage of the regulatory lifecycle to be asked to demonstrate how their business models, the actions they have taken, and their culture are focussed on good consumer outcomes.
- 9.4** Our rules therefore require firms to:
- monitor and regularly review the outcomes their customers are experiencing to ensure that the products and services that they provide are delivering outcomes consistent with the Consumer Duty
 - identify where customers or groups of customers are not getting good outcomes and understand why
 - have processes in place to adapt and change products/ services or policies/ practices to address any risks or issues identified and stop it occurring again in the future
- 9.5** A firm's governing body should review and approve the firm's assessment of whether it is delivering good outcomes for its customers which are consistent with the Consumer Duty and agree any action required, at least annually.

What this means for firms

- 9.6** Firms will need to identify relevant sources of data to enable them to assess whether the outcomes that their customers are experiencing are consistent with their obligations under the Consumer Duty.
- 9.7** Through the monitoring of consumer outcomes, we would expect firms to:
- identify and manage any risks to good outcomes for consumers
 - spot where consumers are getting poor outcomes, and understand the root cause
 - have processes in place to adapt and change products/ services or policies/ practices to address any risks or issues as appropriate

- be able to demonstrate how they have identified and addressed issues leading to poor outcomes

9.8 The action that firms take when they identify problems will vary depending on a range of factors, but potential interventions could include discontinuing a product/service, adapting product design/fees/charges, operation or distribution channels, or, where customers have suffered harm, providing redress.

9.9 If asked, we would expect firms to be able to explain how they reached a decision on the most appropriate intervention, demonstrate how it has delivered good outcomes and, if not, what they have done further to address the issue

9.10 The Consumer Duty is intended to improve outcomes for all consumers, and we would expect firm monitoring to identify where distinct groups of consumers get worse outcomes than other groups. Where firms identify an area where they are not delivering good outcomes for their customers or a distinct group of customers, we would expect the firms to have processes in place to investigate the cause(s) and address any problems.

9.11 This is particularly important where customers with characteristics of vulnerability and 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.

Governance

9.12 A firm's board, or equivalent governing body, should review and approve an assessment of whether the firm is delivering good outcomes for its customers which are consistent with the Consumer Duty, at least annually.

9.13 This assessment should include:

- the results of the monitoring that the firm has undertaken to assess whether their products and services are delivering expected outcomes in line with the Consumer Duty
- new and emerging risks to good outcomes for consumers
- any evidence of poor outcomes and an evaluation of the impact and the root cause
- actions taken to address any risks or issues, and
- how the firm's future business strategy is consistent with acting to deliver good outcomes under the Consumer Duty

9.14 Before signing off the assessment, the Board or Governing body should agree the action required to address any issues which are impacting on the firm's ability to deliver good outcomes and agree whether any changes to the firm's future business strategy are required.

9.15 This assessment will be part of the evidence we use to assess a firm's compliance with the Consumer Duty and will expect to be provided with it on request.

What firms should monitor

- 9.16** Firms will need to collect information to monitor the outcomes that their customers are receiving. Firms will need to be able to provide evidence of monitoring and any resulting action, on request.
- 9.17** Firms will need to use their judgment to identify relevant sources of data to give them the insights they need to assess whether they are delivering good outcomes for consumers.
- 9.18** Firms will need to produce and regularly review management information (MI) on consumer outcomes. This MI should be appropriate to the nature, scale and complexity of their business, considering the size of the firm, the products and services they offer, and the consumer base they serve.
- 9.19** There is no regular reporting requirement, but firms will need to develop a strategy to gather the relevant information and data to inform their assessment of whether they are delivering good outcomes for consumers and to meet their governance obligations.
- 9.20** The type of information, and how frequently it is collected, will depend on the type of firm, their products/services and target market. There will be no prescribed format for the way in which firms evidence their monitoring of consumer outcomes, but we expect firms to maintain records so that they can be provided to us on request.
- 9.21** Firms should also maintain records of the issues that they identify, and the action that they take to address those issues. Firms need to be able to explain how they reached a decision on the right intervention, and to demonstrate how that intervention has delivered better consumer outcomes (and, if not, what they have done further to address the issue).
- 9.22** We expect firms to comply with existing FCA rules for record-keeping. For example, our existing record-keeping requirements set an expectation that firms have records that are sufficient to enable us to monitor the firm's compliance with the requirements under the regulatory system.

The types of data/information firms could use

- 9.23** The type of information firms use will vary depending on their size, client base, and the types of products or services they offer. Firms should tailor the information to these factors, ensuring that they have sufficient information to be able to identify whether they are delivering good consumer outcomes.
- 9.24** Types of information firms may want to collect include:
- **Business persistence:** analysis of customer retention records – eg claims and cancellation rates and details of why customers leave. This may flag where poor treatment is contributing to high customer turnover.
 - **Distribution of legacy products/pricing and fees and charges:** review of whether these consumers are more likely to incur particular fees and charges or appear to be receiving outcomes that are not as good as other customers.

- **Behavioural insights:** consumer interactions and drop off rates; use of different communications channels including digital; consumer testing of user interfaces and design on websites and apps, and the results of such testing eg whether consumers changed their behaviour as a result of such design. This would include consumer testing of any gamification elements in the user interface and design on apps. This may flag where firms need to improve policies, processes and systems (eg where there are barriers to consumer engagement or understanding).
- **Training and competence records:** analysis of records of staff training, including remedial actions where staff knowledge or actions were found to be below expectations.
- **File reviews:** reviewing customer files and monitoring calls to check for errors and assess if customers received good outcomes (this is particularly useful for sales processes).
- **Customer feedback:** using formal and informal feedback from customers to identify trends and areas for improvement (eg complaints and comments made to the firm but also comments and complaints on social media).
- **Numbers of complaints:** trends in numbers of complaints involving poor consumer outcomes through the consumer-firm relationship
- **Complaints root cause analysis:** investigating complaints fully to understand the cause of customer complaints, not just dealing with the symptoms. Complaints data (in tandem with ensuring it is easy for consumers to make complaints, and that complaints can be made through multiple channels).
- **Outcome reviews:** the 4 outcomes include requirements for firms to review standards over time. The results of these reviews, together with any action taken would be relevant for consideration of whether the outcomes are being followed.
- **Compliance reports:** review compliance reports to check if standards are being met in terms of good outcomes for consumers.
- **Testing customer experiences** through processes such as mystery shopping, auditing, focus groups and deep dives.
- **Allowing staff to feedback honestly** when they think products or services or the processes used to deliver them could be improved.
- **Reviewing whether processes and policies are effective** in delivering good outcomes for consumers.

9.25 When considering which information to collect, firms should also consider how that information will enable them to assess whether consumers with characteristics of vulnerability, or those with protected characteristics, are receiving different outcomes to others.

Senior Managers and Certification Regime

9.26 We expect the focus on acting to deliver good outcomes to be at the heart of firms' strategy and business objectives. It should be embedded in the same way, and receive the same level of ongoing attention as, financial performance or risk.

9.27 This will be supported by the interaction between the Consumer Duty and the Senior Managers and Certification Regime (SM&CR). The SM&CR establishes clear senior management responsibility for complying with the requirements and standards of the regulatory system and applies to the Consumer Duty as it does to other Principles and rules.

- 9.28** The Consumer Duty does not require a single senior manager to be responsible for compliance with all aspects of the Consumer Duty. The Consumer Duty imposes expectations across the design, distribution and delivery lifecycle, and each senior manager must take responsibility for the role they can play in delivering compliance with it.
- 9.29** All senior managers are responsible for ensuring that the business of the firm complies with the requirements of the Consumer Duty on an ongoing basis.

