

# Implementing the Consumer Duty

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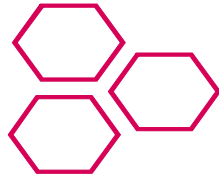
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We have a high calibre team, steeped in experience of providing regulatory and legal expertise across a number of jurisdictions, sectors & markets.



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Gap Analysis



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Solution Design



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Project Planning



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Outcomes  
Dashboard



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Regulatory  
Assurance

# Agenda

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1. Introduction

2. Overview of the Consumer Duty

3. Governance and planning

4. The cross-cutting rules

5. The four outcomes

6. Final thoughts

7. Questions

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# Introduction

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## Areas of focus for this session:

1. Overview of the Consumer Duty and what it is intended to achieve
2. Regulatory expectations and how you should approach the implementation and adoption of the Consumer Duty

# The Consumer Duty

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# Background and why now?

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The FCA identified that the level of harm to consumers was too high, and better protection was needed. The FCA gave the following examples that customers may:



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## Find it harder to make an informed or timely decision

- Evidence that 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



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## Receive unsatisfactory support from their provider

- Data from the FCA's Financial Lives survey apparently showed the most common problems raised by consumers across all retail sectors were poor customer service, delays, IT system failures or service disruptions



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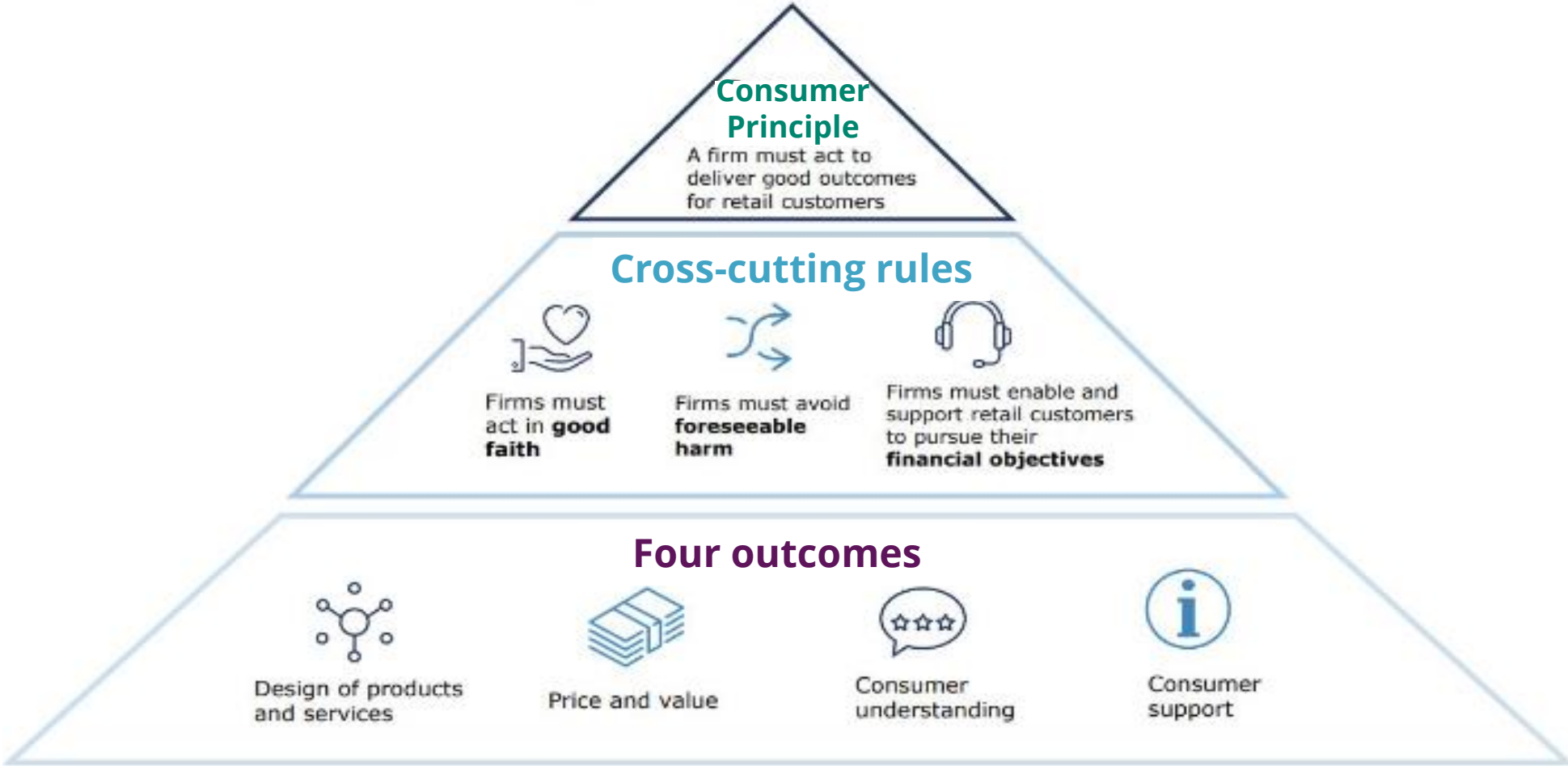
## Buy products and services that are inappropriate for their needs, of inadequate quality, or are too risky or otherwise harmful

- For example investments leading to losses for retail investors who did not understand the risks

FCA's solution to this is the **Consumer Duty**.

# The FCA's Consumer Duty

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# A. Consumer Principle

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The new Consumer Principle is:

**"A firm must act to deliver good outcomes for retail customers"**. This is the high level expected standard of behaviour.

The Consumer Principle will be:

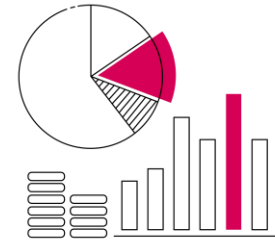
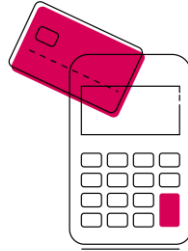
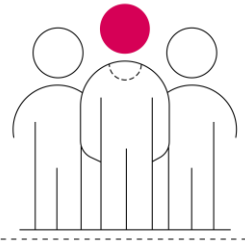
A new Principle 12, with Principles 6 and 7 disapplied if the Consumer Duty applies. FCA considers Prin 12 sets a higher standard than Prin 6 and 7.

**Note: Individual Conduct Rule 6 will also be introduced.**



# B. Cross-cutting rules

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The three cross cutting rules are:

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



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They are designed to set out how firms should act to deliver good outcomes for consumers



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There will be overlap in application of the rules:

- E.g. unclear communications could lead to foreseeable harm..
- this will mean the firm is failing to enable retail customers to pursue their financial objectives

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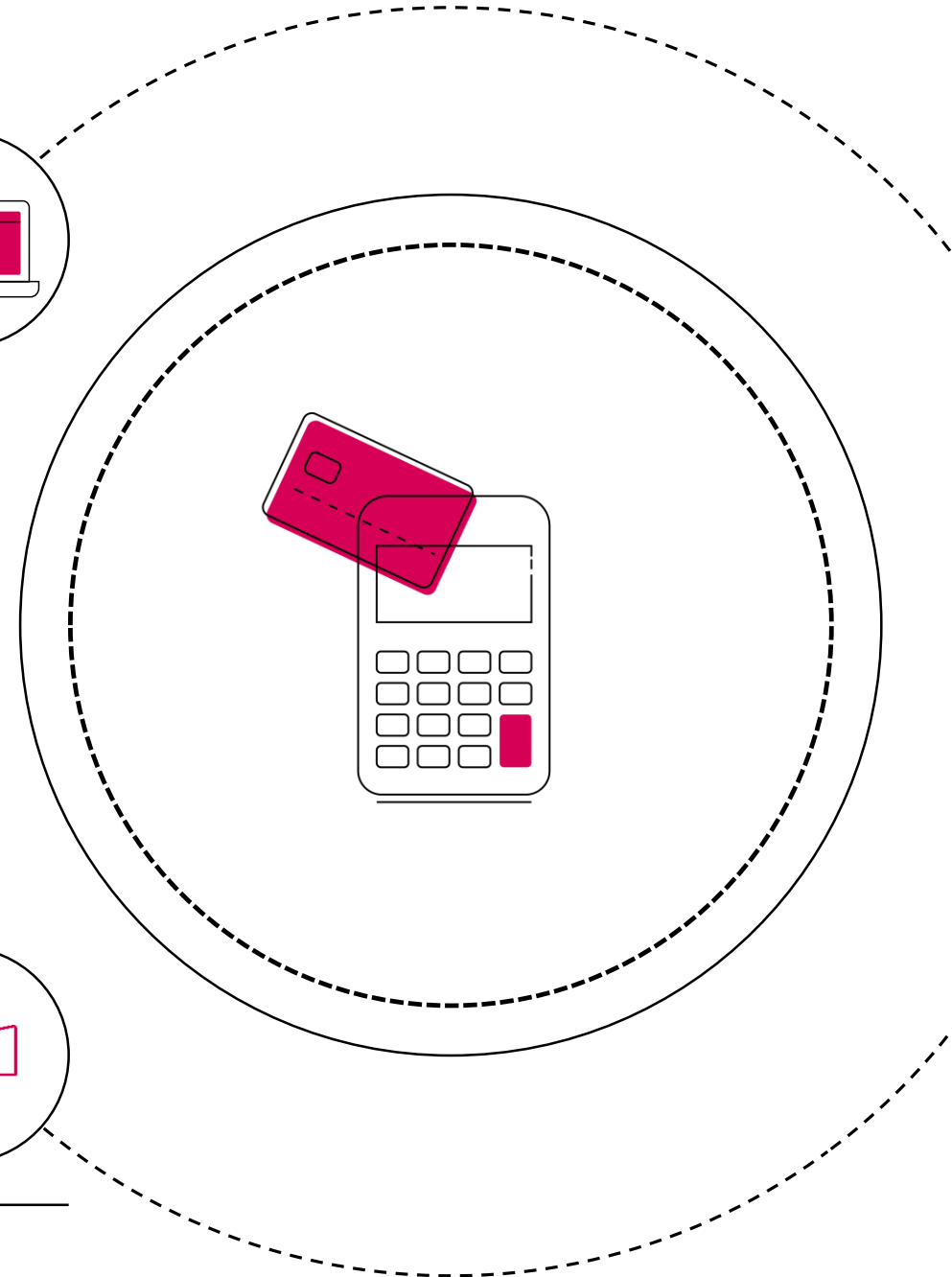
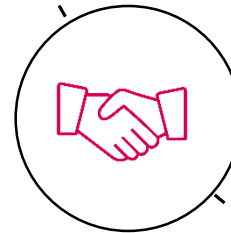
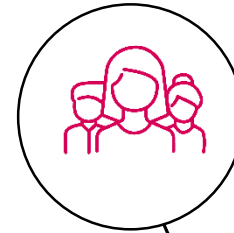
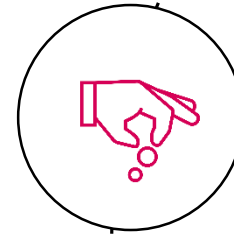
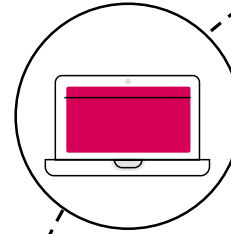
The cross-cutting rules represent the **expected standards of conduct** for firms

# C. The four outcomes

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The expected outcomes to be demonstrated by Firms are in respect of:

- 1. Products and Services**
- 2. Price and Value**
- 3. Consumer Understanding**
- 4. Consumer Support**



# Governance and Planning

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# The starting point and the key milestones

## Consumer Duty

Key dates:

1

27 July 2022

Final rules and guidance published.

2

31 October 2022

Firms' Boards / management body should have agreed their implementation plans:

- able to evidence scrutiny & challenge
- plans should be deliverable and robust.

3

30 April 2023

Manufacturers should have completed all the reviews necessary to meet the outcomes for existing open products and services

- communicate with distributors to meet their obligations
- identify where changes need to be made.

4

31 July 2023

Implementation deadline for new existing products or services that are open to sale or renewal.

5

31 July 2024

Implementation deadline for closed products or services.

# Planning – General expectations

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## The approach

- FCA expect that most firms will be part way towards complying with the FCA's requirements, if they are subject to Product Governance requirements, or Fair Value assessments
- Expectation is that firms use the first 12 months to demonstrate progress toward the requirements and the ultimate deadline that applies to their firm
- Once live, firms will be expected to react quickly to breaches of the Consumer Duty and to check that they are not prevalent across other aspects of products and services

## The context

- FCA recognises all firms are different and expects each firm to take an approach relevant and proportionate their firm and their activities
- FCA recognises that firms will also have different capabilities and resources; firms must apply these as appropriate to meet Consumer Duty requirements
- Upon implementation, firms should ultimately be able to demonstrate that they are doing everything necessary to prevent harm to consumers and achieve the requirements of the consumer duty as it applies to them

# Planning: Meeting milestone 1

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## Milestone 1 – The Implementation Plan: 31 October 2022

- FCA do not expect all aspects of the plan to be fully developed and concluded, there will be numerous versions of the plan
- Not so much a ‘plan of a plan’; it needs to have substance. FCA does expect that each firm will have a “proper plan”
- This will include highlighting:
  - i. how the Consumer Duty applies to your firm and any aspects that do not apply
  - ii. key dependencies (RAIDs)
  - iii. identified gaps to be able to meet the cross-cutting rules and four outcomes
  - iv. developments requirements in systems, controls and processes as a result of identified gaps
  - v. any other resources or developments needed to be able to achieve and evidence the outcomes
  - vi. the sequence and steps to address any gaps, across any aspect of the business to meet, all aspects of the Consumer Duty

### **It may seem obvious..**

The initial gap analysis and planning may be limited to a smaller group of people, but when the extent of any gaps are known, create clear workstreams with relevant stakeholders to examine what good and poor outcomes may look like and determine the steps appropriate to your firm, to design the good outcomes required

# Planning: Meeting milestone 2

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## Milestone 2 – Communicating with the distribution chain: 30 April 2023

- The Consumer Duty applies across the distribution chain, from product and service origination through to distribution and post-sale activities
- The Consumer Duty applies to all firms that have a material influence over, or can determine retail customer outcomes
- Firms should consider what is reasonable where a counterparty may have limited involvement with the end consumer: periodic surveys to distributors may be useful
- Firms are not liable where there is no regulatory or contractual requirement with a participant in the distribution chain
- As an extension of the communication milestone, firms must have reviewed all products and services still on sale to consumers, for compliance with each aspect of the Consumer Duty
- **Map out customer journey and the distribution chain for each product and service, to identify counterparties and dependencies**



### Distribution example

Consider the end outcomes from the target market assessment and inform counterparties of their role, asking them to have mechanisms in place to advise you if they cannot perform their role within desired tolerances, or their ability to do so changes in the future



# Governance

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## Expectations for the Board and Governing Body

### **Consider Culture:**

- Consider the FCA's four drivers of culture and check alignment with the Consumer Duty across Purpose, Leadership, People and Governance

### **Oversee all milestones and deadlines:**

- Compliance with the Consumer Duty rests with the Board. They must sign-off the Implementation plan and ensure that milestones and deadlines are met

### **Review & approve outcomes annually:**

- Once the Implementation Plan is ratified, the Board should review and approve an assessment of the delivery of good customer outcomes (in line with the Consumer Duty at least annually

### **Question & challenge:**

- The Board should be able to answer and pose the 'Key questions for firms' in the FCA non-handbook guidance, to evaluate how the firm is approaching and meeting the Consumer Duty

### **Champion the Consumer Duty:**

- Firms must have a champion at Board level who sits alongside the Chair & CEO, to ensure that the Consumer Duty is being discussed (INED where possible)

### **Engage and Embrace the Consumer Duty:**

- Boards must be involved in each step of the Consumer Duty, but in a manner that is relevant to their function. The expectation is that the Board is actively embracing the Consumer Duty

# Polling question No. 1

Q: How far along is your firm with conducting a Consumer Duty gap analysis?

- a. Complete
- b. 25%
- c. 50%
- d. 75%
- e. Not started
- f. Unsure

Progress check:

Identifying what your firms is required to undertake to eventually meet the requirements of the Consumer Duty in full



# The cross-cutting rules

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# Cross-cutting rules



# What this means to you – Systems and controls

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Governance

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Products and Services

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Management  
Information

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Ongoing Monitoring

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# How should cross-cutting obligations be met?

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Good Practice	Poor Practice
<ul style="list-style-type: none"><li data-bbox="155 501 1161 668">• Firms should actively ensure they are measuring their services in order to adapt and change measures, so that consumers are best placed to meet their financial objectives</li><li data-bbox="155 748 1103 915">• Strong and robust monitoring practices so the firm can measure and ensure they are in a position to minimise customers suffering harm from their conduct, products or services</li></ul>	<ul style="list-style-type: none"><li data-bbox="1243 501 2339 622">• Inability to identify a clear target market or negative target market, allowing for products and services to potentially be sold to unsuitable customers</li><li data-bbox="1243 761 2395 882">• Poor support mechanisms, such as long wait times on phones, that mean customers are unable to get the necessary support they need, leading to compounding risk</li></ul>

# How should cross-cutting obligations be met?

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Good Practice	Poor Practice
<ul style="list-style-type: none"><li>• Be in a position to measure success or failure, through the use of MI, to recognise instances where factors such as vulnerability or behavioural biases could lead to poor outcomes</li><li>• Communications which are clear and without jargon, whilst clearly highlighting potential risks that customers should be aware of before use</li><li>• Suitable systems so customers are able to get the support they need when required and not be subject to poor “sludge” practices</li></ul>	<ul style="list-style-type: none"><li>• Poor use of MI that is either insufficient in collecting data or collects data that does not allow the Firm to measure customer outcomes</li><li>• Communications that are unclear and do not depict the level of service or associated risks the customers make be exposed to ensure customers can make the right decisions</li><li>• A lack of ongoing monitoring once products or services go ‘live’ and therefore, a Firm is unable to adapt and change to suit a customers needs, potentially leading to poorer outcomes</li></ul>

# The four outcomes

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# Polling question No. 2

Q: Which of the four outcomes are you most concerned about demonstrating?

- a. Products and Services
- b. Price and Value
- c. Consumer Understanding
- d. Consumer Support
- e. One or more
- f. All!

Progress check:

Demonstrating the  
required Consumer  
Duty Outcomes






# How to measure outcomes





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# What is expected under the four outcomes? (1)

	Good Practice	Poor Practice
	<ul style="list-style-type: none"><li>Firms have a clear distribution strategy in relation to the target market for each product &amp; service</li></ul>	<ul style="list-style-type: none"><li>Firms fail to implement monitoring of post-launch outcomes for new products or services, failing to identify emerging areas of concerns</li></ul>
	<ul style="list-style-type: none"><li>MI should be shared along the distribution chain and the costs of each aspect of the value chain kept under review as economic factors change</li></ul>	<ul style="list-style-type: none"><li>Relevant MI is not adequately shared across the distribution chain. This could lead to Distributors distributing products they don't understand or Manufacturers designing unsuitable products for the target market</li></ul>
	<ul style="list-style-type: none"><li>Firms should engage in ongoing monitoring to ensure fair value for money for customers</li></ul>	<ul style="list-style-type: none"><li>Firms fails to consider whether revenues are generated by behavioural biases like inertia, so customers are not receiving fair value</li></ul>

# What is expected under the four outcomes? (2)

	Good Practice	Poor Practice
	<ul style="list-style-type: none"> <li>Firms test, monitor and adapt communications to support good understanding and customer outcomes</li> </ul>	<ul style="list-style-type: none"> <li>Communications are either not tailored for the target market or are not relevant to the products and services provided</li> </ul>
	<ul style="list-style-type: none"> <li>Firms proactively and responsibly consider the customers needs on an ongoing basis and make changes as necessary to fulfil what customers should be able to expect from products &amp; services</li> </ul>	<ul style="list-style-type: none"> <li>Failure to measure outcomes could lead to products and services becoming unsuitable to the target market, causing undue harm</li> </ul>
	<ul style="list-style-type: none"> <li>Support should be offered in the most user-friendly manner with mechanisms to detect any shortcomings against expected outcomes</li> </ul>	<ul style="list-style-type: none"> <li>Firms have unreasonable barriers or friction that limit a customers opportunity to exercise their rights or opinions to a product or service</li> </ul>
	<ul style="list-style-type: none"> <li>MI and data used to monitor outcomes, as firms use for other business critical areas, such as Sales functions</li> </ul>	<ul style="list-style-type: none"> <li>Firms fail to apply MI to consider the diverse needs of their customers through out the lifecycle of products or services</li> </ul>

# Considering the four outcomes

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## Key considerations:



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How should Firm's approach monitoring of outcomes to meet four outcomes obligations?



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How will the Firm measure success/failure?



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Distribution chain – is the strategy appropriate for target market? Is MI shared? Is it relevant MI? How does this all tie in with the Firm's CD goals?



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FCA constantly emphasises about ensuring Firm's correctly capture their target markets to meet this?



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Costs – are they reasonable? Do they deliver fair value?



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Customer support – is it easy to access? is it suitable? Is it full of jargon?

# Final thoughts

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# Shared areas of concern

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## Frequently Asked Questions

### **Q: Are firm's required to submit their Implementation Plan and Board sign-off to the FCA?**

**A:** No. although Larger firms should expect to be asked for their plans and other should be prepared to submit upon request.

### **Q: Does this mean that the FCA sees that it has a role in setting and monitoring prices for financial and insurance products & services and how will they determine what is appropriate?**

**A:** The Consumer Duty is underpinned by the concept of reasonableness. Prices and the costs of product and services will therefore be subject to a reasonableness test and so the answer to the reasonableness of costs will be considered in relation to firms carrying out the same activity for the same product and service, and by reference to the understanding of the needs and characteristic of the customers in the relevant target markets (i.e. affordability and price tolerance in that market).

### **Q: Do I have to consider each customer contract and relationship for fair value?**

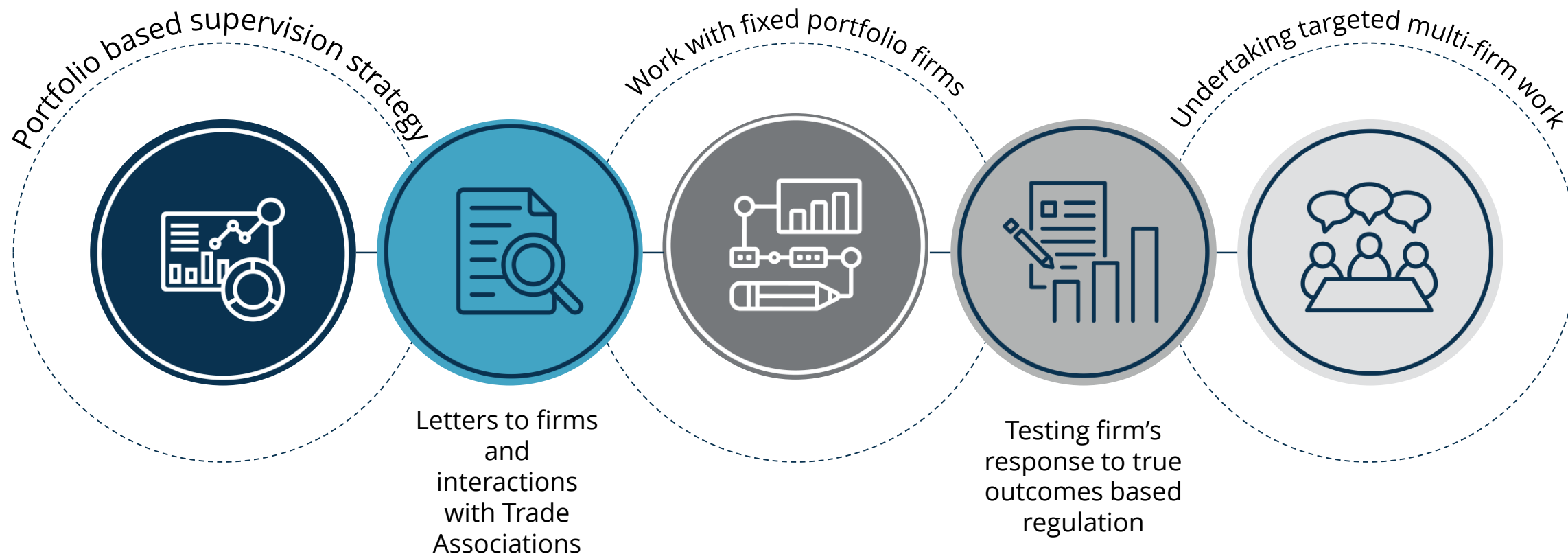
**A:** No – reviews are only needed at the level of the product or service itself. Firms will not be judged under the Consumer Duty with the application of hindsight. (Rules slightly silent on investment service), so a plan to harmonise, or align costs and charges within bands for products and services will likely suffice.

### **Q: What are firm's responsibilities, in terms of engaging with counterparties in the distribution chain, if they feel that there practices are outside of the Consumer Duty?**

**A:** If you feel that a participant in the distribution chain is not demonstrating aspects of the Consumer Duty, particularly when the reasonableness test is applied, then firms are encouraged to speak to their counterparts to get the right outcomes for consumers. If there is no engagement, or indeed, if your firm has a significant concern, then firms are encouraged to speak to the FCA, or if preferable, Whistleblow.

# FCA Supervision Strategy

There will be a number of strategies pursued:







# Next steps

## What you should take away:

- Engage fully; the Consumer Duty is the most fundamental piece of regulatory change in the last 10 years.
- Review the FCA Guidance FG22/5 Final Non-Handbook Guidance for Firms on the Consumer Duty – note Good and Poor outcome examples.
- Don't miss the relevant deadline and milestones. The FCA will take a better view of firms that have made an effort.
- Take a proportionate approach that works for your firm and if overwhelmed, ask for help.



# Your questions



# Key Consumer Duty Contacts

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