

Consumer Duty

Outcome 1: Products and services

How should firms approach this outcome?

Assess: You will need to review current governance arrangements for products and services. Are they sufficient to enable you to deliver fair outcomes?

Change: Product terms, and arrangements for the manufacture and distribution of products, may need to be changed.

Adapt: Your products will have to be designed with regard to your target market.

Review: You will need to test your products routinely. This may mean that your processes need to be redesigned.

What do the rules mean in practice when assessing product governance?

Act in good faith: Ensure that customer terms are fair and that arrangements do not take advantage of customers (including vulnerable customers).

Avoid causing foreseeable harm: Identify all risks that could arise for the relevant target market and ensure that the product governance terms mitigate against those risks. Consider, in particular, the position of vulnerable customers.

Enable and support retail customers to pursue their financial objectives: Identify the target market with sufficient granularity and ensure that the products are designed to meet the requirements of that target market.

What you should be thinking about when planning your implementation plan

Manufacturer v. distributor: The definition of manufacturer will include firms who can “determine or materially influence” the manufacture of a product or service. Firms involved in e.g. white labelling may find that they are now subject to manufacturer obligations for their product governance.

“Services” as a product: The new rules define the concept of a “product” to include services. Firms that provide services may now need to comply with the obligations for manufacturers (which most firms will not currently be doing).

Target market: A manufacturer must specify the target market for the product at a sufficiently granular level, taking into account the characteristics, risk profile, complexity and nature of the product. The new rules appear to apply this at a greater level of granularity than has applied previously. Firms are also required to identify “all” relevant risks to the target market. Firms that currently apply rules regarding appropriateness or simplified advice may find that they have additional obligations under the new rules.

Testing: Manufacturers must test their products appropriately, including scenario analyses where relevant. Although many firms routinely do testing, it is not currently a requirement – but it will be, under the Consumer Duty.

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What you should be thinking about when planning your implementation plan (cont.)

Review of existing products: Firms must review their products on an ongoing basis, even after the contract has been entered into with the customer. This, in effect, means that the Consumer Duty standards will apply to existing products and services with retrospective effect. Many firms will need to undertake a substantial review of their existing products.

Understand the scope: Manufacturers may need to consider the position of retail customers who are affected by a product but with whom they have no direct relationship. This may be a new exercise for some firms.

Firms already complying with PROD: The “products and services” rules under the Consumer Duty does not apply to firms that are already subject to certain chapters of the FCA’s PROD Sourcebook. Over time, however, firms may find it difficult in practice to maintain the line that the Consumer Duty does not apply to them – and might consider applying the Consumer Duty obligations in situations where they are not obliged to.

This is part of a series of guides designed to help your organisation better understand the requirements of the FCA’s new Consumer Duty.

Hogan Lovells can help you at every stage of your Consumer Duty journey. We can implement the full toolkit and manage your project through to completion, or we can get involved in specific elements of your workstreams. Please contact one of the team members below to find out how we can advise you.

The Consumer Duty hub on the Hogan Lovells Engage Premium website brings together recent developments, insights, webinars and videos from our team on a range on Consumer Duty-related topics. Visit <https://engagepremium.hoganlovells.com/resources/consumer-duty> to find out more.

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