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The Consumer Comes First: The FCA's Consumer Duty

The Financial Conduct Authority (FCA)'s **Consumer Duty** aims to establish higher and clearer standards for retail customers of financial services and has been hailed as the "cornerstone" of the FCA's three-year strategy to overhaul the financial services sector.

The duty came into force in July of 2023 and applies to all existing products and services that remain on sale or open for renewal. It will come fully into force from 31 July of this year, from which point, it will start to apply to all closed products and services.

In short, the duty requires firms to act in the best interests of their customers, provide products and services that meet their needs, and communicate information clearly and transparently. These guidelines are embodied by the new **Principle 12**: "A firm must act to deliver good outcomes for retail customers", which reflects the general regulatory shift in the sector towards an outcomes-based approach.

Principle 12 is underpinned by three 'Cross Cutting Rules' which state that firms must take all reasonable steps to:

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

These are supplemented by Four Outcomes:

1. Governance of products and services
2. Price and value
3. Consumer understanding
4. Consumer support

The Consumer Duty aims to tackle the general lack of trust in the industry. A survey undertaken by the FCA in 2020 revealed that only 10% of customers agreed that they had confidence in the UK financial services sector.

In practical terms, firms will have to be able to explain and justify their pricing decisions, make customers aware of the best rates available, make clear how customers may benefit from switching to a different product and make that switch easy for customers to achieve. Importantly, firms will now need to be able to demonstrate that they considered the individual circumstances of each customer, particularly vulnerable customers, each time they design or sell a product or service.

It is anticipated that most firms will need to carry out a significant overhaul of their operations in order to comply. In February of this year, the Financial Times reported that financial services giant St James's Place had remodelled their fee structure including the discontinuation of exit fees for most new investment bonds and pensions as well as breaking down fees into advice charges, fund charges and product charges. For those firms looking for assistance with the transition, it will be worth reviewing the FCA's amendments to their Senior Manager and Certification Regime rules and requirements.

A breach of the duty may lead to enforcement action by the FCA resulting in fines and reputational damage. There are concerns that the costs associated with the additional risk imposed by the regulation may lead to higher premiums for consumers or decrease in appetite for providing certain types of financial products.

In a broader context, industry stakeholders have criticised the new consumer protection regime as an over-regularisation of the sector which will hinder growth and slow down commercial activity. Indeed, on 13 March 2024, the Financial Ombudsman Service (FOS) increased the awards cap for any complaints about acts or omissions by firms occurring after 1 April 2019 and reported after 1 April 2024 to £430,000. That said, it's difficult to deny that the new rules will lead to a general improvement in financial practices and an increase of confidence in the sector – even if it is all stick and no carrot.

The FCA’s Anti-Greenwashing Rule: Finalised Guidance Published

Ahead of the new anti-greenwashing rule coming into force on 31 May 2024, the FCA published their finalised non-handbook guidance, FG24/3, on 23 April 2024, aiming to help firms comply with the new rules by demonstrating good and poor examples of anti-greenwashing practices.

The FCA already requires that financial promotions are “fair, clear and not misleading”. The new rule, ESG 4.3.1R, will go one step further and require that, "A firm must ensure that any reference to the sustainability characteristics of a product or service is: (a) consistent with the sustainability characteristics of the product or service; and (b) fair, clear and not misleading."

Under the new rule, any references to sustainability characteristics must be:

1. Correct and capable of being substantiated

Sustainability related claims must be capable of substantiation at the point in the at which they are made. Further, evidence must be, “robust, relevant, and credible” and publicly available.

2. Clear and presented in a way that can be understood

Sustainability related claims must use straightforward language and explain any technical terms unless their meaning is widely understood. Firms should avoid broad and general statements and be aware of the overall visual presentation of any references or claims; the FCA notes that particular colours and images can be misleading.

3. Complete in that they present the full life cycle of the product or service and do not hide important information

If the sustainability related claim only applies in certain conditions, those conditions should be clearly set out. Any limitations should be clearly expressed and it should present a balanced picture, including any negative sustainability related impacts.

4. Fair and meaningful when used as a comparison to other products or services

Sustainability related claims should make like for like comparisons and explain how the comparison is being made.

Firms should be advised that the rule applies to both promotional and client communications and that references to sustainability characteristics can be appear in statements, assertions, strategies, targets, policies, information and images related to a product or service.

Firms in breach of the anti-greenwashing rule will suffer reputational damage and likely satellite regulatory interest as well as enforcement action in cases of serious misconduct.

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