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Create Solutions

V.05

**What's coming down the track**

**"The FCA's new Consumer Duty"**

Presentation for the Insurance Institute of Manchester

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Agenda

-  Why FCA CP21/13 has been issued
-  An overview of the FCA's proposals
-  What your firm needs to start considering
-  Some key questions about the new Consumer Duty
-  Questions and answers

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## Consumer Duty – a snapshot

- Higher expectations: standard of care
  - ✓ New Principle
  - ✓ Cross-cutting rules
  - ✓ Four customer outcomes
- 'Paradigm shift' in expectations of firms in **retail markets**
- Senior management accountability
- Outcomes testing

**Consumer Principle**

**Overarching Cross-cutting Rules**  
 Firms must take all reasonable steps to:  
 • avoid causing foreseeable harm  
 • enable customers to pursue their financial objectives  
 Firms must act in good faith toward customers

**Four Outcomes** for the key elements of the firm-consumer relationship:  
 1. Communications  
 2. Products and Services  
 3. Customer Service  
 4. Price and Value

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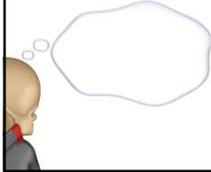
## Over to you...

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 TRAINING & COMPLIANCE

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## Some questions for you

1. I HAVE READ THE FCA'S PUBLICATION: CP21/13: A NEW CONSUMER DUTY
2. I AGREE WITH THE FCA'S INTENTION TO INTRODUCE A NEW CONSUMER DUTY
3. A NEW CONSUMER DUTY WILL DRIVE UP INDUSTRY STANDARDS & IMPROVE CONSUMER PROTECTION



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## Application

- Applies to 'regulated activities' across wide range of sectors
- Products and services sold to '**retail clients**'
- All clients and SMEs
- Applies to firms involved in the 'manufacture or supply of products and services' to retail clients
- Will not apply retrospectively to past business



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## FCA timeline

- Comments and responses to Annex 1 questions
- Consultation period ends 31<sup>st</sup> July 2021
- Further consultation on proposed rule changes by end of 2021
- New rules to be made by end of July 2022
- Private right of action

**Annex 1**  
Questions to this paper

1. How should the FCA's approach to consumer duty be implemented?

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**Annex 2**  
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**Annex 3**  
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## Regulatory context

- Approach to Consumers, July 2018
- A duty of care and potential alternative approaches, DP18/05, July 2018
- Feedback Statement, FS19/02, April 2019
- Financial Services Act 2021
- FCA Consumer Duty sets a higher standard of care than existing Principles
- Duty not branded as a 'duty of care'





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## Why a new Consumer Duty?



- **Many good practices observed**
- **Many firms already deliver right outcomes**
  - Good products and services at fair prices
  - High standards of customer service
  - Clear communications
- **But, many practices still result in consumer harm**



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## Why a new Consumer Duty?

### Consumer harm resulting from:

- Misleading information, hindering consumer ability to assess a product/service
- Products and services not fit for purpose for target market
- Products and services not delivering reasonable benefits relative to price paid
- Practices that exploit consumers e.g. information asymmetries or vulnerabilities
- Poor customer service hindering consumers in managing their affairs



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## Why a new Consumer Duty?



### Firm practices resulting in customer hindrance:

- Overdraft costs – only 20% of people able to choose cheapest deal
- Fair value concerns - premiums paid on insurance products do not reflect likelihood of a claim
- Poor customer service – complaints



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## Why a new Consumer Duty?

### • Sludge practices

*'an excessive friction that hinders consumers from making decisions in their interests, by taking advantage of their behavioural biases'*

- For example:
  - ✓ Not signposting the cancellation process on a website, making it harder for customers to switch products
  - ✓ Online world – website design or mobile apps
  - ✓ Likely to be a growing issue



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## Why a new Consumer Duty?

- Clearer, higher expectations**
  - Harm avoidance
  - Getting it right in the first place
  - Focus on outcomes experienced
  - Putting consumers at the heart of your business
- Consumer benefits**
  - Confidence
  - Clear and understandable information
  - High standards of customer service
  - Not be hindered from acting in own interests

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## What the Duty would not do

- The Duty would not:**
  - Remove consumers' responsibility for decision making
  - Mean all consumers obtain the same terms or outcome
  - Impose a duty protecting consumers from all potential harms
  - Remove the need for specific rules or guidance
  - Specify exactly how firms should act
  - Permit FCA to judge practices with the benefit of hindsight

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## FCA package of measures

Designed to set clearer and higher expectations, for firms' *standards of care* towards consumers

The Duty is a package of measures:

- A Consumer Principle
- Cross-cutting rules
- Four Outcomes

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## Consumer Principle

- Reflects overall standards of behaviour
- Higher standard than PRIN 6: Customers' interests
- Firms to improve their delivery of good consumer outcomes
- **Two proposed options:**
  1. A firm must act to deliver good outcomes for retail clients
  2. A firm must act in the best interests of retail clients



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## Over to you...

### Your views on the Consumer Principle?

1. A FIRM MUST ACT TO DELIVER GOOD OUTCOMES FOR RETAIL CLIENTS
2. A FIRM MUST ACT IN THE BEST INTERESTS OF RETAIL CLIENTS



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## Cross-cutting Rules



- Amplify standards of conduct expected under the Consumer Principle
- **Three key behaviours:**
  1. Take all reasonable steps to avoid causing foreseeable harm to customers.
  2. Take all reasonable steps to enable customers to pursue their financial objectives.
  3. Act in good faith.



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## Four Outcomes

- Suite of rules and guidance
- Detailed expectations for firm conduct
- Four key elements of the customer journey:
  - ✓ **Communications** - equip consumers to make effective, timely and properly informed decisions about financial products and services
  - ✓ **Products and services** - are specifically designed to meet the needs of consumers and sold to those whose needs they meet
  - ✓ **Customer service** - meets the needs of consumers, enabling them to realise the benefits of products and services and act in their interests without undue hindrance
  - ✓ **The price of products and services** - represents fair value for consumers



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## Private right of action (PROA)

- PROA for breaches of Principles
- Potential merits and unintended consequences
- Making firms accountable for rule breaches
- No specific proposals at this stage – focus is on the Duty

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## Key Questions about the new Duty

### 1. Will the FCA's proposals change anything?

- Elevate status of existing FCA rules and guidance
- Consider Duty at every stage of processes and level of organisational structures
- Proactive approach to compliance
- Senior management actions taken
- Concept of 'reasonableness'

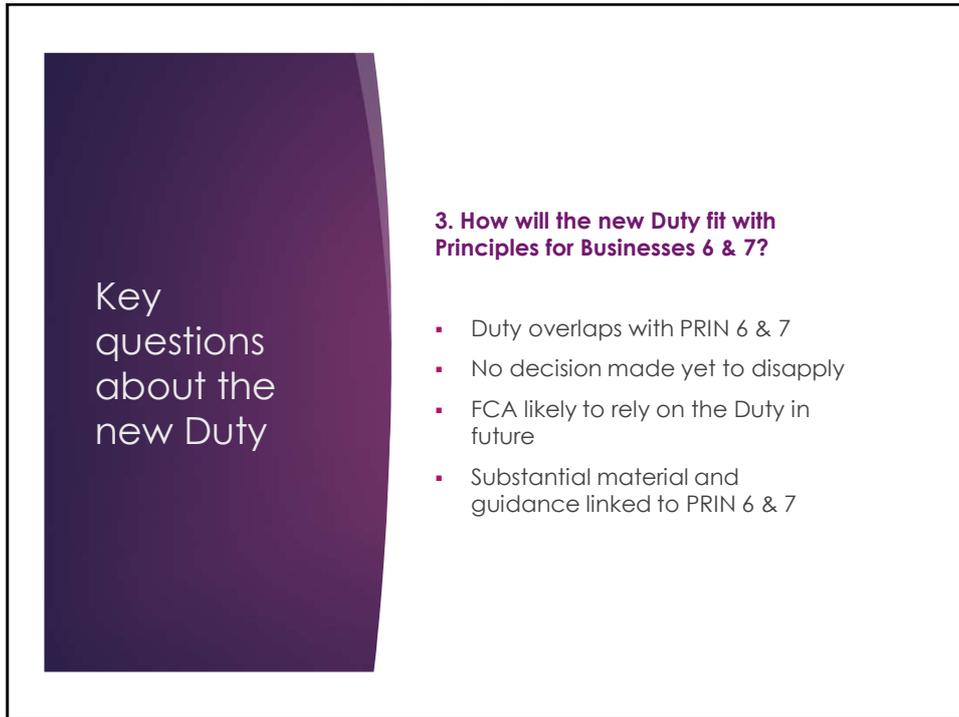
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## Key questions about the new Duty

### 2. What does the FCA expect firms to do?

- What more?
- Some but not all products and services will meet the higher standards
- Perform a robust evaluation against the new Duty
- Test any new products and services

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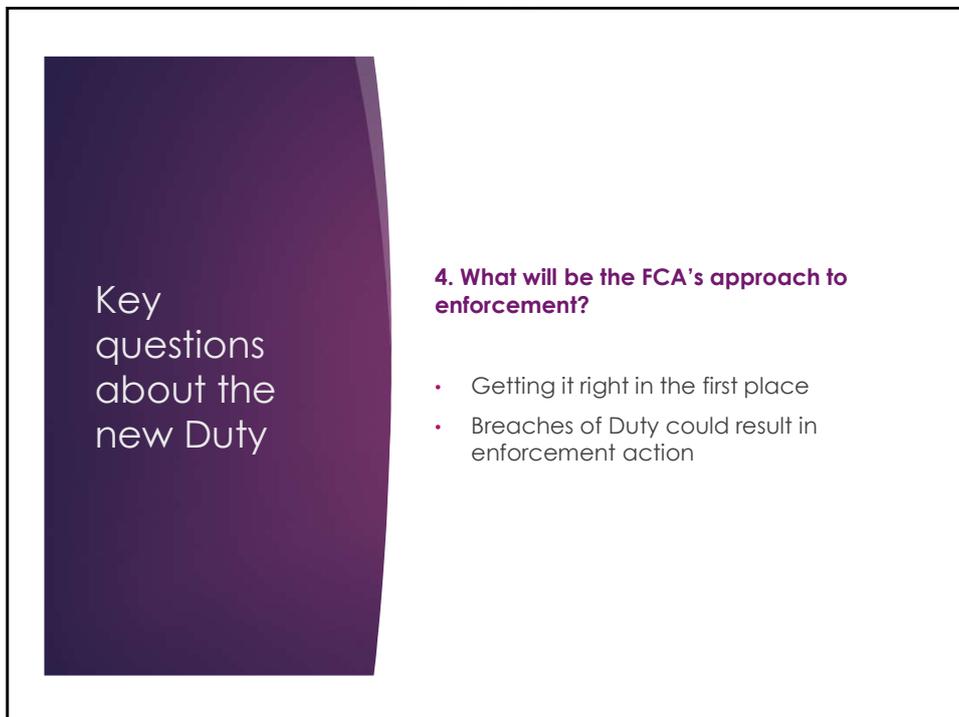


Key questions about the new Duty

**3. How will the new Duty fit with Principles for Businesses 6 & 7?**

- Duty overlaps with PRIN 6 & 7
- No decision made yet to disapply
- FCA likely to rely on the Duty in future
- Substantial material and guidance linked to PRIN 6 & 7

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Key questions about the new Duty

**4. What will be the FCA's approach to enforcement?**

- Getting it right in the first place
- Breaches of Duty could result in enforcement action

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## Key questions about the new Duty

### 5. How long do we have to prepare?

- Second consultation published by 31<sup>st</sup> December 2021
- Further consultation on proposed rule changes by end of 2021
- New rules made by 31<sup>st</sup> July 2022

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## Considerations

<p><b>Outcome 1: Communications equip consumers to make effective, timely and properly informed decisions about financial products and services.</b></p>	<p><b>Outcome 2: Products and services are specifically designed to meet the needs of consumers and sold to those whose needs they meet.</b></p>
<p><b>Action:</b></p> <ul style="list-style-type: none"> <li>i. Undertake a risk-based evaluation to pinpoint whether your communications are providing customers with the information they need, at relevant points in the customer journey.</li> <li>ii. Understand what testing of customer communications is currently taking place, and identify where any testing needs to be improved.</li> </ul>	<p><b>Action:</b></p> <ul style="list-style-type: none"> <li>i. Undertake a gap analysis against PROD and the RPPD to identify products and services that are not currently meeting FCA expectations.</li> </ul>
<p><b>Outcome 3: Customer service meets the needs of consumers, enabling them to realise the benefits of products and services and act in their interests without undue hindrance.</b></p>	<p><b>Outcome 4: The price of products and services represents fair value for consumers.</b></p>
<p><b>Action:</b></p> <ul style="list-style-type: none"> <li>i. Establish what data and information are available to help identify 'undue hindrance'.</li> <li>ii. Pinpoint and address any apparent 'sludge practices' or 'unnecessary friction' in the customer journey.</li> </ul>	<p><b>Action:</b></p> <ul style="list-style-type: none"> <li>i. Implement or revisit your frameworks to assess the value of products and services, taking into account the factors outlined in CP21/13.</li> </ul>



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