

REGULATORY INTELLIGENCE

Employment law implications of the Consumer Duty

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Annabel Mackay and Kimberly Everitt, Baker McKenzie

The Financial Conduct Authority (FCA) has recently reiterated that the new [Consumer Duty](#) represents a significant shift in its expectations of affected firms. Good customer outcomes must be at the heart of firms' business strategy and objectives.

Leaders are expected to make this a "top priority" by embedding the Consumer Duty throughout the customer journey and making it a key part of their firm's purpose and culture. This requires checks and balances at every level of the firm and HR policies that are aligned with the Consumer Duty.

Firms will also need to monitor the effectiveness of the actions that they have taken on a regular basis, including through an annual board report. This leaves firms with a number of steps to take from an employment perspective prior to the implementation date of July 31, 2023 for new and existing products and services. Firms have a further year within which to comply with the Consumer Duty for closed book products.

Governance and accountability

The FCA has been focused on the role of leadership in effecting cultural change for some time, both in whistle-blowing and diversity and inclusion. The [finalised guidance](#) for the new Consumer Duty follows the same approach with leaders setting the "tone from the top" and ensuring that all levels of the organisation take responsibility for positive consumer outcomes.

It also requires firms to appoint a Consumer Duty champion to review and challenge how the Consumer Duty is being implemented.

- The Consumer Duty champion must be of sufficient seniority to provide independent oversight of the way in which the Consumer Duty is being implemented. The role of the Consumer Duty champion is similar to that of the whistleblowers' champion and should not be diluted among other board members. It will play a key part in monitoring the effectiveness of the regime and supporting other non-executives to challenge the status quo. In the FCA's January 2023 [review](#) of implementation to date, firms were criticised where a Consumer Duty champion lacked seniority or there had been a delay in making the appointment.
- For firms subject to the Senior Managers & Certification Regime (SMCR), the board or governing body must ensure that all senior managers are accountable under the SMCR for delivering good outcomes under the Consumer Duty. Statements of responsibility may require updating to reflect this. The Consumer Duty must be considered at all stages of the product lifecycle (design, distribution and delivery of products or services). It must also be kept under review if the target audience changes.
- The board will be expected to scrutinise the way in which the Consumer Duty is being discharged on an ongoing basis. The FCA review highlighted good practice where the Consumer Duty was a standing agenda at key governance forums and accompanied by independent reviews of significant work by the risk and audit functions. Deep-dive sessions with board members on planned deliverables were also commended.

Board report

In order to test the effectiveness of a firm's arrangements, the firm will be required to produce an annual board report that will be available to the FCA upon request (along with the management information that underpins the report). This board report will contain the results of monitoring whether the firm is delivering positive outcomes, evidence of poor outcomes, any areas where particular groups of customers experience worse outcomes, the impact and causes of such outcomes and any remedial actions.

Before this report is signed off, the board is expected to have put in place steps to address any shortcomings and adjusted future business strategy accordingly. This mirrors the FCA focus on continuous challenge in the SMCR context, with data being used to test the effectiveness of the firm's policies and business practices. In the FCA review, the FCA criticised firms where Consumer Duty proposals and strategies had been signed off without proper challenge or scrutiny.

Superficial engagement and over-confidence in existing systems must be avoided. The board report will be a valuable resource to identify issues with specific products and stages of the customer journey. In that respect, it will play a similar role to the annual report that firms produce on reportable concerns.

Individual conduct rule 6

For firms within SMCR, the FCA is introducing a new individual conduct rule whereby staff must act to deliver good outcomes for retail customers. The Guidance recognises that this will apply to the extent reasonable and proportionate to their roles. In order to ensure that staff can discharge this obligation, firms will need to provide training.



The training should cover how action or inaction can affect retail customers' interests or result in negative outcomes. The FCA also recommends that firms should analyse training records and take remedial action where staff knowledge and actions have created negative outcomes for customers. This may require performance management procedures and staff training policies to be updated.

Updates to policies and procedures

As everybody within the firm will have a part to play in complying with the Consumer Duty, there will be an impact in terms of how staff are managed and rewarded. This is important to create a "tone from within" that supports the Consumer Duty. Having received training, compliance with the Consumer Duty will need to form part of the performance review process.

In the FCA review, good practice included incorporating the Consumer Duty within staff performance scorecards. Action will also need to be taken under capability procedures where members of staff have failed to meet expectations in their interactions with retail customers.

Remuneration arrangements must reward compliance with the Consumer Duty and adjustments to variable compensation may be required where the Consumer Duty has been breached. It is conceivable that, where poor consumer outcomes have been identified in the Board report, the FCA may expect to see how that has been addressed in remuneration decision-making as part of any remedial actions.

Leaders should also promote an environment in which staff can raise concerns about compliance with the Consumer Duty without fear of reprisals. Staff should be encouraged to provide insights into the consumer experience, particularly in relation to vulnerable customers (those particularly susceptible to financial detriment) and customers within protected groups.

These steps will lead to a renewed focus on the culture of the firm and whether the leadership, employees, governance and purpose of the firm combine to deliver positive outcomes for consumers.

Next steps:

- Appoint a Consumer Duty champion with sufficient seniority and independence to challenge the board or equivalent governing body.
- Ensure that the leadership understand the Consumer Duty and that plans have been properly scrutinised and tested.
- Update statements of responsibility for senior managers to reflect their role in delivering good consumer outcomes.
- Consider setting up a steering committee to ensure consistency of approach across all business lines and to share best practice and monitor the effectiveness of measures taken to comply with the Consumer Duty.
- Deliver training to all levels of the organisation and raise awareness through internal communication campaigns.
- Refresh job descriptions and staff training materials to emphasise the Consumer Duty.
- Check that remuneration arrangements reward positive consumer outcomes. Build in the opportunity to make adjustments where the Consumer Duty has been breached.
- Encourage staff to raise concerns about compliance with the Consumer Duty and share their insights.
- Regularly scrutinise arrangements to meet the new Consumer Duty to ensure that they remain fit for purpose. Where deficiencies are identified, remedial action should be taken.
- Involve risk, compliance and audit functions in assessing the effectiveness of significant projects that are designed to promote the Consumer Duty.

*Annabel Mackay is of counsel, employment, and **Kimberly Everitt** is a senior knowledge lawyer, financial services regulatory at [Baker McKenzie](#)*

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