

Key Changes Since CP 21/36

We have tabled below some of the key questions that PS 22/9 has now sought to clarify or address following CP21/36:

Issue/outcome/ cross cutting rule	High-level reminder of the CP21/36 position (our previous more detailed notes can be viewed here and here)		What changes (if any) has PS22/9 introduced?
Time frame	The deadline for compliance was set for 30 April 2023.		<ul style="list-style-type: none"> The implementation timeframe has been extended by 3 months for all in scope new and existing products and services that are open to sale or renewal. The FCA has also extended the timeframe for compliance in respect of closed products and services to 31 July 2024 giving firms an extra year to review their back book.
New Principle 12	This new Consumer Principle, introduced in the FCA's initial consultation (CP21/13) sets out the FCA's overarching standard of conduct seeking to ensure that firms " act to deliver good outcomes for retail customers ", which, where applicable, disapplied / sought to replace Principles 6 and 7. The FCA confirmed in its draft rules that Principle 12 did not change the nature of a firms' relationship with any retail customers – i.e. requiring a firm to provide advice where otherwise it would not have done so		<ul style="list-style-type: none"> The wording of Principle 12 remains unchanged with the FCA confirming that the requirements to deliver "good outcomes" is explained in the cross-cutting and outcome rules. The concept of "reasonableness" has also been retained (i.e. the Duty would only require what can be reasonably expected of a prudent firm carrying on the same activity in relation to the same product or service). The FCA has reiterated that this is an objective standard of conduct which will be impacted by factors such as the nature of the product or service being offered or provided and the characteristics of the retail customers(s). The FCA has reconfirmed that where Principle 12 applies Principles 6 and 7 do not.
Four Outcomes	Products and Services	The FCA's intention here was for all products and services for retail customers to be "fit for purpose" with different requirements being introduced depending on a firms role in the distribution chain. This opened up new product governance requirements wider than what is currently in play for firms subject to existing product governance requirements (for example in PROD 3 and PROD 4).	<ul style="list-style-type: none"> New provisions have made it clear that firms are not subject to both PROD and the new rules in PRIN 2A.3. Those that follow PROD 3 as guidance (i.e. asset managers) may elect to follow PROD rather than the new rules. The FCA has reiterated that firms that comply with PROD are compliant with this outcome, but we are aware that many firms are reviewing their implementation of PROD and looking at enhancements. Of course, for products not already directly covered by PROD, an uplift is likely required. In general, a firm is not responsible for the activities of other entities in the distribution chain, but more guidance has been given as to the type of information distributors should be reporting up to manufacturers (e.g. customer feedback) and the types of questions manufacturers should be asking distributors (e.g. Are there any issues identified by the distributor in relation to the target market assessment?). In the finalised guidance, the FCA has also made clear (see paragraph 2.22) that firms must notify the FCA where they become aware that another firm in the distribution chain may not be complying with the Consumer Duty (for example, where distributors in a distribution chain are not sharing information with manufacturers to support manufacturers' reviews of products or services).

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		<ul style="list-style-type: none"> The finalised guidance also sets out new “key questions for firms” that the FCA may ask in relation to this outcome (e.g. how is the firm monitoring that distribution strategies are being followed and that products and services are being correctly distributed to the target market?) and a list of materials that a firm may use to show it has complied with PROD (e.g. records of the target market assessment).
	<p>Price and value</p> <p>The FCA’s intention here was for “all customers to receive fair value” which extends further than purely price considerations with the specific focus being on the relationship between the price the consumer pays to the overall benefits they can reasonably expect to obtain from a product.</p>	<ul style="list-style-type: none"> In distribution chains, distributors are only responsible for the prices they control and are not required to duplicate manufacturers’ value assessments – this has been made clearer in the rules. For asset managers that meet the value assessment there will be nothing further required. There is nothing obvious in the final rules for UK based manufacturers of overseas products to bring them out of scope of the price and value outcome for those products and we expect the industry to continue to push for clarity on this point. Additional factors have been added to the value assessment, such as accrued costs and/or benefits and whether there are any products that have been priced significantly lower for a similar or better benefit than the product in question. Where the product or service does not have any financial or non-financial cost to the consumer (e.g. debt advice funded through other sources) firms do not need to do a value assessment. Manufacturers providing free products or services should still consider if their customers are paying in non-monetary terms, and whether those costs are reasonable in relation to the product’s benefits (e.g. customers may pay for their current accounts in the form of foregone interest, associated fees and charges or through the use of their data). The finalised guidance also sets out the types of data firms could use to monitor fair value (e.g. customer complaints and root causes analysis) and “key questions for firms” that the FCA could ask (e.g. can the firm demonstrate that its products and services are fair value for different groups of consumers, including those in vulnerable circumstances or with protected characteristics?). It is reiterated that differential pricing and cross-subsidising is permitted.
	<p>Consumer support</p> <p>The FCA’s intention here was to ensure that customers receive the levels of support that meet their needs throughout their relationship with the firm. The FCA’s expectations here included:</p> <ul style="list-style-type: none"> not creating “unreasonable barriers” – i.e. barriers which frustrate the customer’s use of the 	<ul style="list-style-type: none"> As contemplated in its consultation, the FCA has also added a requirement to include “appropriate friction” points or additional steps in a customer journey (PRIN 2A.6.2R(1)(b)). Firms should consider whether they need to build positive friction points into their processes to mitigate the risk of harm and give customers sufficient opportunity to understand and assess their options. Firms need to consider friction points carefully as inappropriate friction points (or “sludge”) can amount to an unreasonable barrier. The FCA has made clear that the consumer support outcome rules do not apply where a firm is dealing with another firm which is acting on behalf of a customer but it is important to deal with that

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		<p>product or service, such as unreasonable additional costs; and</p> <ul style="list-style-type: none"> ensuring customers can use products as reasonably anticipated. 	<p>representative firm in a way that allows it to comply with its obligations to the retail customer (see PRIN 2A.6.5R(2) and 2A.6.6R).</p>
	Consumer understanding	<p>The FCA’s intention here was to ensure that firms’ communications “support and enable customers to make informed decisions about financial products and services” with a focus on (non-exhaustive):</p> <ul style="list-style-type: none"> the “average retail customer” being able to understand a firms’ communication; the needs and capabilities of the recipient of information with particular care being taken where vulnerable customers are being communicated with; and firms monitoring, testing and adapting their communications to ensure good outcomes for retail customers. 	<ul style="list-style-type: none"> The position here remains broadly the same with the FCA reiterating, amongst other things, that the Consumer Duty does not alter the advice/guidance boundary – where firms are not authorised to give advice, the expectation here is that customers should be equipped with enough information to make “effective decisions” in a way that does not amount to advice. However the concept of “average” customer has been amended in the rules and replaced throughout with “retail customers in the target market” which is a helpful change as it created uncertainty about diverse needs in a customer group. The FCA has also reiterated that firms are not expected to tailor all communications to meet the individual needs of each customer, but has again re-emphasised the importance of taking into account characteristics of vulnerability. An example being, for a simple-mass market product firms should take into account the fact that research has shown one in seven adults have low levels of literacy. On testing, the FCA has amended PRIN 2A.5.8R(1)(a) to make clear that testing is to be undertaken “where appropriate”. Firms will also need to review their terms and conditions in order to ensure that they are easily understood by their clients and undertaking further testing on their clients ensuring they have data to demonstrate the results and outcomes.
Scope	General		<ul style="list-style-type: none"> You’ll remember that The FCA proposed to align the scope to existing modules of the FCA’s Handbook. Broadly speaking, the scope of the Duty will follow the respective application positions (and any specific exclusions) in modules such as ICOBS, MCOB, BCOBS etc. This proposal has been implemented without change.
	Customers		<ul style="list-style-type: none"> The retail customer definition has been amended to include beneficiaries of trust-based pension schemes, where an FCA authorised firm provides services to a trustee. The Consumer Duty will still (as before) generally apply to dealings with high-net worth customers as will the processes firms apply to determine a client’s status as a professional client.

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	<p>In-scope activities</p>	<ul style="list-style-type: none"> Where a service provided to an SME is already protected by the rules in an FCA sourcebook (e.g. in relation to an insurance product), the Duty will also apply in relation to that service - our private bank clients will therefore be required to consider the rules carefully. The application to existing and closed products and services remains in line with the FCA's proposals. The FCA has made some changes to the scope of retail market business to exclude primarily wholesale instruments. This includes removing the term "non-complex financial instrument" and reducing the threshold for non-retail financial instruments to £50,000. The FCA has reiterated that payments and e-money firms are in scope and has added references to the UK Payment Services Regulations and Electronic Money Regulations throughout.
<p>Board Senior Management and Governance</p>	<p>Under the Consumer Duty, the firm's board or equivalent management body, will be responsible for assessing the firms report on the Consumer Duty compliance (at least annually), consider whether the firm is delivering good outcomes for its customers which are consistent with the Consumer Duty and "sign-off" such assessment.</p>	<ul style="list-style-type: none"> The requirement for the firm's board or equivalent management body to produce a report (at least annually) on whether the firm is delivering good outcomes for its customers which are consistent with the Consumer Duty remains. There is a new requirement for the governing body to have agreed the Consumer Duty implementation plans and be able to evidence they have scrutinised and challenged the plans to ensure they are deliverable and robust by end of October 2022. Firms should expect the FCA to ask for implementation plans, boards papers and minutes and to be challenged on their contents. The FCA expects firms to have a Consumer Duty champion at board or equivalent management body level, a NED where possible. There is a new requirement at PRIN 2A.8.1R to ensure that: <ul style="list-style-type: none"> the Consumer Duty is embedded in a firm's strategies, governance, leadership and people policies, including incentives at all levels; and retail customer outcomes are a central focus for firms' risk and internal audit functions.
<p>Monitoring</p>	<p>The FCA set out its monitoring expectations as follows:</p> <ul style="list-style-type: none"> firms are expected to regularly review and monitor the outcomes their customers are experiencing; this extended to products and services regularly being reviewed and monitored to ensure they are delivering on the expected Consumer Duty outcomes; and firms are expected to be able to identify where they are responsible for poor outcomes or harm understanding the root cause for both. 	<ul style="list-style-type: none"> The FCA clarifies that the monitoring obligation applies proportionately to a firm's role in the distribution chain, including to firms' that do not have direct contact with the end retail customer (PRIN 2A.9.4G). There are some subtle changes that will require careful analysis: for example, the requirement to monitor for groups of customers experiencing "worse" product outcomes than another group is changed in one place to "different" outcomes (PRIN 2a.9.10R(2)). There is additional guidance on the particular groups of customers to be considered: for example, customers with protected characteristics and characteristics of vulnerability but also longstanding

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		customers, customers from a particular geographical region or customers who buy a product through a particular distribution channel.
COCON uplift - SMCR & individual accountability	Interacting with the above governance piece, a new Individual Conduct Rule 6 in COCON was introduced, requiring conduct rules staff to act to deliver good outcomes for retail customers, together with guidance on the new rule.	<ul style="list-style-type: none"> • There is a new reporting guidance for SMFs (4.2.31G) including on reporting breaches of other firms under PRIN 2A and Principle 12. • The FCA has added much more detailed guidance in COCON, including: <ul style="list-style-type: none"> ◦ clarifying individual accountability responsibility where a firm does not have an end client relationship; and ◦ more detail around seniority, expertise and experience and commensurate expectations under COCON.
Vulnerable Customers	There was a requirement to take into account the needs and characteristics of vulnerable customers in the target market assessment, price and value outcome, and customer understanding outcome. There was an average retail customer concept which referred to vulnerable customers.	<ul style="list-style-type: none"> • The FCA has retained a concept of retail customers with “characteristics of vulnerability” in the cross cutting obligations and in the concept of foreseeable harm. Helpfully, there is no longer an inter-related average retail customer concept which had caused confusion about who the average customer would be in a target market group of customers with diverse needs and characteristics. • Firms will need to carefully consider the FCA’s guidance (published last year) on the fair treatment of vulnerable customers (FG21/1) and ensure they are collecting relevant MI and data at a sufficiently granular level to meet the Consumer Duty requirements here. In the Private Bank space, this could include capturing of relationship manager’s conversations with their high-net worth customers so that any drivers of vulnerability can be easily identified and collated.
Management Information (MI) and Data	<p>In line with the below monitoring and governance expectations set out by the FCA, the role of MI and data here featured heavily with the expectation being that firms will identify the sources of data (consistent (i.e. file reviews, complaints data etc.) to enable them to assess whether outcomes their customers are experiencing are consistent with the Consumer Duty expectations and to produce and regularly review MI in this space.</p> <p>Regular reporting obligations were not introduced.</p>	<ul style="list-style-type: none"> • The position here remains broadly the same. Regular reporting is not being introduced. • In terms of data and MI, the FCA has updated the finalised guidance to give firms further information on the types of data firms can use (i.e. for the price and values outcome using profitability data, surveys, customer complaints and root cause analysis) and has confirmed that it will measure the success of the Consumer Duty by monitoring key outcomes for consumers (e.g. through monitoring Financial Ombudsman Service final decisions on complaints about fees or charges or inappropriate product or service sales). • In addition the FCA will use data from a variety of sources including supervision and authorisation activities, firm MI and complaints data. They expect to develop further metrics as they implement. It is, therefore, clear that firms will need to ensure that they have their own clear underlying MI and data to demonstrate success.

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Cross-cutting Rules	Act in good faith	<ul style="list-style-type: none"> The wording of this cross-cutting rule remains unchanged. Firms to apply a standard of conduct characterised by “honesty, fair and open dealing and acting consistently with the reasonable expectations of retail customers”. The FCA has updated its finalised guidance to provide further clarity here using the example that “a firm is unlikely to be able to act in good faith if it uses staff incentives, performance management or remuneration structures which are likely to cause detriment to their customers”. Firms will need to consider this cross-cutting rule throughout all stages of the customer journey and during the whole lifecycle of a product or service (including design).
	Avoid foreseeable harm	<ul style="list-style-type: none"> “Average retail customer” has been replaced throughout with “retail customers in the target market” in the concept of foreseeable harm. The FCA has updated this cross-cutting rule to require firms to avoid causing foreseeable harm. The FCA has also updated its finalised guidance with examples of foreseeable harm such as: <ul style="list-style-type: none"> consumers being unable to cancel a product or service that isn't right for them anymore because the firm's processes are unclear or difficult to navigate; and products and services performing poorly where they have not been appropriately tested in a range of market scenarios to understand how consumers would be affected.
	Enable and support retail customers to pursue their financial objectives	<ul style="list-style-type: none"> The position here remains the same. The guidance has however been updated including an example where a firm declines to provide a customer with a product or service that it should still consider if it has enough information to support the customer pursue their financial objectives such as signposting them to a “Money-Helper” guide where i.e. credit has been declined.