

The Consumer Duty

Four years in the making, the key elements of the [Consumer Duty](#) are a new over-arching principle, three cross-cutting rules, and four outcomes:

Consumer Duty Structure



Final rules are expected mid-2022, with implementation due by 30 April 2023. The principle makes a determined shift to outcomes-based regulation, and anticipates that leaders proactively determine whether products and services really meet the needs of customers. Expectations are set high, and firms are expected to “sell products or services at a fair price that reflects their benefits”.

Whilst the treating customers fairly principle may be fully and effectively embedded in AFM members, there will still be a lot of work needed in the firm, and with any distributors or other counterparties. In any event, FCA argues markets don’t currently always work well for consumers and that firms do not sufficiently prioritise good consumer outcomes. It estimates industry implementation costs could be up to £2.4 billion.

Amongst some of the action FCA consider firms may need to take in coming months are:

- To review product governance processes, and amend as necessary
- To explore design, communications, and customer services, at each step of the product lifecycle, and to enhance testing of products and services
- To reassess fair value, and to consider what consequences this has for product pricing and profitability
- To explore the implications for relationships with suppliers and intermediaries
- To address obstacles to cancelling or transferring a product
- To enhance management information, in order to track and measure customer outcomes, and to measure fair value
- To ensure effective document and evidence to support decisions.

How consumer protection in insurance has evolved over time

(January 2022)

The following bullet points give a (non-exhaustive) list of where regulation and legislation has given particular focus to policyholder protection over time. The notes are intended to support AFM members in recognising both the evolution of standards, and the need to constantly appraise how actions today might be assessed in the future.

- Insurance **contracts** have always been used to set out what a policyholder should expect from their insurance provider, and the nature and content of contracts has evolved over time via a combination of legislation, regulation and case law. In the case of a mutual insurer, the contract may, and will often, overlap with the rules or constitution of the insurer.
- **Policyholders' Reasonable Expectations** were first established in insurance law in 1973, in relation to with-profits life insurance. A fair summary of PRE, from the relevant Minister in 1995, was given as:

"The Department considers that policyholders' reasonable expectations in respect of attribution of surplus are influenced by a range of factors, notably:

- *the fair treatment of policyholders vis a vis shareholders;*
 - *any statements by the company as to its bonus philosophy and the entitlement of policyholders to a share in profit, for example, in its articles of association or in company literature;*
 - *the history and past practice of the company;*
 - *general practice within the life insurance industry."*
- Oversight of the financial services industry prior to 2001 was undertaken by a range of different bodies, including the Department of Trade, the Friendly Societies Commission, the **Securities and Investment Board** and the General Insurance Standards Council.
 - The notion of **Treating Customers Fairly** first appeared in rules made under FSMA 2000. At around the same time, a series of court cases brought significant developments in PRE (e.g. Equitable Life, 1999, and Axa, 2000), which indicated that the actuarial interpretation of PRE had diverged over time. TCF was built into FSA/ FCA rules in *principle for business 6*.
 - The insurance industry response to TCF and new regulatory focus, was to develop the **Raising Standards** self-regulatory scheme, to define best practice and to demonstrate the commitment of the sector to high standards and external assessment.

- Where FSMA secured the creation of the **Financial Services Authority**, which gained its powers on 1 December 2001, it also led to the creation of the Financial Ombudsman Service and Financial Services Compensation Scheme. Together with the enforcement powers gained by FSA, the new regulatory bodies collectively brought a sea change in consumer protection.
- Alongside TCF, the **Sandler Review** in 2001 sought to introduce a range of stakeholder products, with defined terms and charges, to simplify product design and increase transparency. Much of the original concepts remain in regulatory rules today. The Retail Distribution Review, in 2006, similarly sought to provide greater clarity around costs and fees. Also, in 2007, the COBS and ICOBS sourcebooks were introduced (to replace COB and iCOB rulebooks).
- In 2004, FSA introduced the **Principles and Practices for Financial Management** (PPFM) for with-profits products, and two years later required the production of a shorter Consumer-Friendly PPFM.
- **Conduct Regulation** evolved from TCF, with a closer focus on both behaviours and outcomes. The creation of the FCA, in 2013, brought a sharper focus on conduct, though the concept arguably came out of an EU study of the 2008/9 financial crisis. Conduct regulation encompasses consumer regulation, corporate governance, fit and proper standards and product governance.
- FCA first developed a focus on **vulnerable customers** in 2015, initially to develop a common understanding of vulnerability, before going on to test the levels of vulnerable customers in the UK, via research, and to introduce an 'Approach to Consumers' to set out a vision for well-functioning markets in 2018. Consultations in 2019 and 2020 lead to finalised guidance on vulnerability in February 2021.
- As part of its review of the GI market, FCA introduced **GI value measures** reporting in 2021, to tackle poor product value and harm to consumers through ineffective competition.
- FCA's **Consumer Duty** initiative follows on from the previous consumer protection regulation, and aims to set 'higher expectations for the standard of care that firms provide to consumers'. In addition to past themes on behaviours and outcomes, the Consumer Duty adds an explicit focus on culture. The new rules apply from July 2022, and aim to deliver a more consistent standard of consumer protection.
- FCA published an overview of its 2021 consumer protection work; [see here](#).