

FCA Speech – Consumer Duty: Not once and done

<https://www.fca.org.uk/news/speeches/consumer-duty-not-once-and-done>

On the 1st November, Nisha Arora, Director of Cross Cutting Policy and Strategy at the FCA, delivered a speech highlighting the FCA's commitment to improving the Consumer Duty (the Duty) Regime.

The FCA have observed positive changes in the market since the Duty was introduced on 31 July 2023. For example, some firms have provided increased transparency on their pricing structures and are providing more information on their products which allows consumers to make more informed financial decisions.

The FCA stressed that firms' implementation of the Duty is 'Not Once and Done', or a one-time obligation. Firms are expected to focus on constant learning and improvement, substantiating these efforts in their annual board reports. The regulator noted a need for firms to carefully assess consumer outcomes, in order to understand how different consumer groups are performing and what can be done to improve their experiences.

Firms with closed products and services must ensure that they are on track for meeting the 31 July 2024 implementation deadline for the closed product and service standards.

Newgate will reach out to clients in 2024 to check how the monitoring of management information against outcomes and information share process is progressing and to ensure preparations are being made for annual product and service reviews and the inaugural annual report to the Governing Body.

Crypto firms and marketing rules

<https://www.fca.org.uk/news/news-stories/guidance-crypto-firms-help-them-comply-marketing-rules>

On the 2nd November the FCA finalised FG23/3 non-handbook guidance on Cryptoasset Financial Promotions, which included guidance on social media promotions. This followed the

implementation of financial promotion rules for cryptoassets which were introduced on the 8th October.

The FCA non-handbook guidance, highlighted the relatively new emergence of crypto as an asset class, meaning that investments can be subject to risks which retail customers may not understand. The FCA reiterated its belief that cryptoassets are high risk investments and that consumers should understand they may lose all the money they invest.

The FCA's guidance includes the obligation for so called financial promotion influencers or "finfluencers" to disclose any relevant commercial relationships, for example if they have been paid or commissioned to promote a cryptoasset or cryptoasset service. The rules apply to any type of communication on all social media platforms.

The guidance further reminds firms, that marketing should be clear and not misleading and be consistent with their obligations under Consumer Duty rules. Firms should act in 'good faith' towards retail customers and avoid potential future harm.

Since the cryptoasset rules were introduced on the 8th October, the FCA has identified three common issues:

- Promotions making claims about the safety, security, or ease of using cryptoasset services without highlighting the risk involved.
- Unclear risk warnings due to small fonts, hard-to-read colouring or non-prominent positioning.
- Firms failing to provide customers with adequate information on the risks associated with products being promoted.

Newgate's GATEway system provides a means to document approval of financial promotions as well as record that the customer journey requirements have been met for high-risk investments. Please do contact your consultant if you wish to discuss this functionality further.

FCA reviews payment services firms and their Anti-Fraud systems

<https://www.fca.org.uk/news/news-stories/firms-strengthen-anti-fraud-systems-must-treat-victims-fraud-better>

In the first half of 2023, the FCA carried out a high-level evaluation of firms' approach to fraud risk management, including:

- Reviewing firms' fraud strategies and the critical elements of their operational

processes;

- Examining how firms ensure appropriate oversight of the risk framework for all types of fraud including how MI is reported and acted on; and
- Assessing customer experiences and fairness of customer outcomes by looking at how firms manage and respond to fraud complaints.

Examples were found of good practice and control frameworks, however, significant weaknesses were noted in key areas of firms' fraud risk management frameworks and customer treatment, such as:

- Insufficient focus on delivering good consumer outcomes in many firms;
- Management information ("MI") and actions often focused on commercial risk appetite, rather than customer impact and treatment;
- Poor complaint handling including delays in responding to complaints;
- Firms are not fully considering characteristics of customer vulnerability when making decisions about fraud claims and complaints.

Firms are expected to have effective governance arrangements, controls and MI to detect, manage and reduce fraud and losses, and treat customers fairly, including when they complain, and to deliver consistently good outcomes to customers in line with the Consumer Duty.

FCA published final report on IFPR implementation observations

<https://www.fca.org.uk/news/news-stories/fca-publishes-final-report-ifpr-implementation-observations>

On the 27th November, the FCA published a final report on their multi-firm review into firms' progress in implementing the internal capital adequacy and risk assessment (ICARA) process and reporting requirements under the Investment Firms Prudential Regime (IFPR).

The report concludes findings of a review of the implementation of IFPR, for 3,500 MiFID investment firms. The review found that firms have generally engaged well with IFPR requirements, but there are areas where improvement is needed.

The review identified several areas where firms could improve their compliance process, such as:

- Liquid Asset Assessments;
- Early Warning Indicators, Triggers, and Interventions;
- Wind-down Plans;
- Operational Risk Capital Assessments.

The observations do not involve policy change, however the FCA expect firms to review their own practices to ensure they are meeting rules and requirements already in place. The final report also includes a comprehensive list of good and poor practices the FCA review found, and firms can cross-check these against their own.

Newgate's team will be happy to discuss the FCA feedback in more detail and any improvements that can be made in your existing process for the next ICARA assessment.

Sustainability disclosure and labelling regime confirmed by the FCA

<https://www.fca.org.uk/news/press-releases/sustainability-disclosure-and-labelling-regime-confirmed-fca>

On the 29th November confirmed new sustainability disclosure requirements (SDR) and a fund labelling regime for Asset managers is to take effect from 2024.

The requirements include a new anti-greenwashing rule for all authorised firms to make sure sustainability-related claims are fair, clear and not misleading. The FCA is also introducing product labels to help investors understand what their money is being used for, based on clear sustainability goals and criteria, as well as naming and marketing requirements so products cannot be described as having a positive impact on sustainability when they don't.

Read our full article [here](#).

Newgate is currently reviewing the paper in detail and will be in contact with impacted clients in the new year to discuss the scope and applicability of the regime and steps to ensure readiness.

FCA statement on communications in relation to PRIIPs and UCITS

<https://www.fca.org.uk/news/statements/statement-communications-relation-priips-and-ucits>

On the 30th November, the FCA published a statement in relation to the costs and charges disclosure requirements in PRIIPs Key Information Document (KID), the UCITS Key Investor Information Document (KIID) and MiFID II requirements.

The FCA noted that for some investment products, cost and charges disclosure requirements

may lead to unrepresentative cost information being published, particularly in the context of closed-ended funds. Closed-ended funds are pooled investments but are also bodies corporate and thus have some features of companies as well as of funds which affects their cost base. This can lead to some costs incurred by listed closed-ended funds being equivalent to costs incurred by commercial companies. The FCA noted that commercial companies are not subject to these costs and charges disclosure requirements.

As part of the Treasury's 'Smarter Regulatory Framework (SRF)' reform the FCA is assessing what cost information supports retail investors in their decision making and will consider the purpose and usefulness of aggregating a range of costs and charges into a single figure.

Until this longer term reform has been completed, the FCA has announced a short term measure to enable firms to provide additional context to costs disclosures. Where listed closed ended funds are concerned that the costs do not appropriately reflect the ongoing costs, they can provide additional factual information (in addition to the aggregated figure) such as the breakdown of costs to put the aggregate number in context. The aim of this is to provide greater flexibility for firms pending finalisation of longer term change.

FCA Consultation on implementing the Overseas Funds Regime (OFR)

<https://www.fca.org.uk/publication/consultation/cp23-26.pdf>

The FCA are proposing new rules and guidance to put the OFR into operation, so that overseas funds that are authorised and supervised in their home country can:

- Apply for FCA recognition under the OFR;
- know which of the FCA rules they'll need to comply with.

This consultation discusses how the FCA would recognise funds for offer in the UK, following an equivalence determination by the Treasury under the OFR.

Some interesting nuances to note are that:

- the FCA intends to apply the sustainability disclosure and labelling regime (see above) to impacted funds;
- funds will need to specify the availability of protections for consumers, including FOS and FSCS;
- promotions relating to OFR recognised schemes will need to be communicated or approved by a UK authorised firm, unless a financial promotion exemption applies.

We would recommend that UK firms marketing impacted funds, such as offshore UCITS targeted at retail investors, ensure that the local management company is aware of the consultation. Newgate will also be delighted to talk about the requirements in more detail until the consultation closes on 12 February 2024.

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Newgate has an unrivalled combination of experienced professionals, many of whom are ex-regulators.

Our customer focused approach seeks to provide appropriate, pragmatic and flexible solutions to our clients helping them to meet both the regulator's rules but also the spirit, principles and culture of the regulatory regime.

We look to build long-term relationships with our customers helping to encourage business growth, productivity and innovation. Our proactive approach is tailored to each customer's needs changing to meet those needs as the customer progresses and develops.

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