



MorganAsh

Consumer Duty - the shift to self-policing

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The FCA has moved its Consumer Duty principle to be a self-policed model, with firms needing to gather evidence to demonstrate good behaviour.

Implementing FCA regulation changes

The FCA's Consumer Duty outlines firms' new responsibilities and the shift to self-policing. The FCA has effectively moved the responsibility for identifying poor behaviour in respect of how consumers are handled from itself, the regulator, to the industry. The onus is now on firms to monitor outcomes for their customers and to both identify and correct any behaviours that lead to poor outcomes. Firms must not only police themselves, but they must also report to the FCA if they find there are others in their distribution chain who are not implementing Consumer Duty correctly.



****4.1 The Consumer Principle, Principle 12, requires that firms 'act to deliver good outcomes for retail customers'.***

In addition, firms must also identify poor practice within their distribution chain, and work with their partners to change this. If this is not effective, then firms must report this to the FCA – in other words, they must 'whistle blow' on their non-compliant distribution partners. This effectively moves the sector to a self-policing model.

2.22 ...Firms must notify the FCA where they become aware that another firm in the distribution chain may not be complying with the Duty.

Arguably, this overcomes one of the FCA's previous challenges – its resources to police the industry. The industry must now self-police itself and the Financial Ombudsman Service is the jury.

When monitoring themselves, firms must collect the evidence needed to demonstrate to both their boards and the regulator that their behaviour results in good outcomes for their customers – and try and reduce bad outcomes for consumers. While many may say that 'this is what the industry already does', the big difference with Consumer Duty is the need for firms to evidence that this is taking place. Just saying so isn't enough.

11.1 A key part of the Duty is that firms assess, test, understand and are able to evidence the outcomes their customers are receiving. Without this, it will be impossible for firms to know that their products and services are working as they and their customers would have expected and in a way that is consistent with the Duty.

Doing nothing isn't an option. Each party in a distribution chain must understand the vulnerability and potential harms of their customers and this must be monitored through the lifetime of the product.



Collecting and evidencing consumer data

It requires a large amount of work to collate the data needed, to evidence they need to comply with the regulations to both management and the board. In a distributed market, intermediaries and manufacturers can cooperate in sharing such data, and equally provide evidence to other parties that they are complying with Consumer Duty. This is likely to require extensive data, and digital solutions will be needed to share this data securely – and in accordance with GDPR.

This is something of a challenge. Firms can do this within their own systems by adding the required 'characteristics' functionality. However, sharing this data across the distribution chain is a non-trivial matter as firms use different systems (with different levels of interoperability) and some parts of the supply chain may even use systems that don't offer live integration. For many, this scenario will be something of a nightmare.

Doing nothing isn't an option. Each party in a distribution chain must understand the vulnerability and potential harms of their customers and this must be monitored through the lifetime of the product. Each party can undertake their own assessments and keep their own data, but this is likely to result in duplication for the consumer. An alternative is to share (with consent) the customer's vulnerability data across the value chain.

At MorganAsh, we've always foreseen the need to share this data – well before the FCA shifted its focus to make this inevitable. This is why our Consumer Duty management tool, MARS (The MorganAsh Resilience System) is designed to work in this way, once a firm is ready to do so.

If you'd like a chat about this, or other topics related to meeting the FCA's Consumer Duty requirements, please get in touch.

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Consumer Duty: managing vulnerability and resilience