

Understanding the implications of vulnerability within Consumer Duty



Consumer Duty Regulation reminders



Consumer Duty regulations go live in **July 2023**.



Vulnerability must be understood at both the **individual and firm levels**.

FCA Handbook Rules and Principle 12

The key addition to the FCA Handbook Rules is the new **Principle 12**

"A firm must act to deliver good outcomes for retail customers."

Within the Handbook managing consumer vulnerability is woven into every section. In short vulnerability must be considered in every aspect of engaging with consumers, and the types and severity of vulnerability need to be understood. We believe that incorporating vulnerability is the most difficult challenge of implementing Duty as vulnerability must be considered in all aspects, including fair value and target market appraisals. We have extracted the salient rules below to explain the practical implications. References are to the [FCA Handbook Rules](#).

Firms must assess, understand, **and make modifications to how they interact and communicate with consumers on the basis of their characteristics.**

2A.2.20 G Enabling and supporting retail customers to pursue their financial objectives includes acting to empower retail customers to make good choices in their interests, including by: ...

(4) taking account of retail customers' behavioural biases and the impact of characteristics of vulnerability in all aspects of customer interaction.

2A.7.4 G In relation to the needs and characteristics of retail customers, a firm should, among other things:...

(3) when dealing with a particular retail customer pay appropriate regard to the needs and characteristics of that retail customer, such as characteristics of vulnerability;

Firms must **not take advantage of such characteristics that may cause them harm.**

2A.2.3 G Examples of where a firm is not acting in good faith would include:...

(c) taking advantage of a retail customer or their circumstances, for example any characteristics of vulnerability, in a manner which is likely to cause detriment;

2A.2.10 Avoiding causing foreseeable harm to retail customers includes:...

(2) ensuring that no aspect of its business involves unfairly exploiting behavioural biases displayed or characteristics of vulnerability held by retail customers;

While vulnerability regulations were focused on being reactive to identifying consumer vulnerability Duty requires firms to be **proactive in identifying characteristics of vulnerability** and hence there is **a need to attempt to assess all customers**

2A.7.4 G In relation to the needs and characteristics of retail customers, a firm should, among other things:

(4) assist frontline staff to understand how to actively identify information that could indicate vulnerability and, where relevant, seek information from retail customers with characteristics of vulnerability that will allow staff to respond to their needs;

Firms **must deliver support** to all customers with a characteristics of vulnerability.

- 2A.6.2 R A firm must design and deliver support to retail customers such that it:
- (1) meets the needs of retail customers, including those with characteristics of vulnerability;**

Firms **must tailor their communications** to all customers with a characteristics of vulnerability.

- 2A.5.8 R In **supporting the understanding of retail customers**, the firm must tailor communications provided to retail customers, taking into account:

- (1) the characteristics of retail customers, including any characteristics of vulnerability;**

- 2A2A.5.9 R When a firm is interacting directly with a retail customer on a one-to-one basis, such as in branch, during a telephone conversation or other interactive dialogue, the firm must, where appropriate:

- (1) tailor the communication to meet the information needs of that retail customer, taking into account whether they have characteristics of vulnerability.**

Firms are required to **assess and modify their communications** if they find cohorts of customers have common misunderstandings.

- 2A.5.13 G (1) A firm should adapt its communications in accordance with PRIN 2A.5.10R(2)(b)(i) to support retail customer understanding if it identifies that:

- (a) there are areas of common misunderstanding among retail customers; or

- (b) retail customers are not experiencing good outcomes, including **particular groups of retail customers such as those with characteristics of vulnerability.**

Firms will need to **collate individual data in a consistent and robust process** in order to **identify** "common misunderstandings" and "groups of retail customers"

Firms are required to **understand the proportions and details of customers with characteristics of vulnerability, for reporting to management** on the above at least on an annual basis.

- 2A.8.4 R At least annually, the governing body of a firm must:

- (1) review and approve the firm's report on the **outcomes being received** by retail customers;

- (2) confirm whether it is satisfied that the **firm is complying with its obligations** under Principle 12 and PRIN 2A; and

- (3) assess whether the firm's **future business strategy** is consistent with its **obligations under Principle 12 and PRIN 2A.**

- 2A.9.3 G The frequency of monitoring, and the nature of the information a firm must collect to effectively monitor the outcomes received by retail customers **depends on the type of firm and its role in the distribution chain, the nature of the product, and the target market.**

Firms are required to **set up systems and process** to enable customers with characteristics of vulnerability to disclose their needs.

- 2A.7.4 G In relation to the needs and characteristics of retail customers, a firm should, among other things:

- (5) set up systems and processes in a way that supports and enables retail customers with characteristics of vulnerability to disclose their needs.**

All firms are required to **interact between each other** to ensure that **vulnerable customer are not being discriminated against and treated unfairly**. This means that all parties must have **a method to describe the scope, severity and propensity of consumers with characteristics of vulnerability**.

2A.3.16 R A **distributor** must ensure that the product distribution arrangements **contain effective measures and procedures to obtain sufficient, adequate and reliable information from the manufacturer about the product to:...**

(3) consider the needs, characteristics and objectives of any retail customers in the target market with characteristics of vulnerability;

2A.9.4 G (1) The monitoring obligation applies proportionately to a firm's role in the distribution chain. **Where a firm does not have direct contact with retail customers it should monitor the outcomes of the service it provides**, having regard to any information it has about the outcomes experienced by retail customers at the end of the distribution chain.

(2) A firm that does not have direct contact with retail customers **should act reasonably to obtain information about the outcomes experienced by retail customers of the products the firm has distributed**.

Manufacturers need to include **any impact on vulnerable customer cohorts when undertaking fair value assessments**.

2A.4.8 R A manufacturer's assessment of whether or not a product provides fair value must include (but is not limited to) consideration of the following:...

(4) any **characteristics of vulnerability that retail customers in the target market display and the impact these characteristics have on the likelihood that retail customers may not receive fair value from its products**.

2A.4.11 G In considering the value assessment and how it applies when manufacturers have different groups of retail customer in their target market for a product, they should have regard in particular to the following:

(1) whether any retail customers who have characteristics of vulnerability may be less likely to receive fair value; and

(2) whether **the product provides fair value** for each of the different groups of retail customer in **the target market**, including in circumstances where the pricing structure of the product involves different prices being charged to different groups of retail customers.

At MorganAsh we believe

The most **cost-effective** way for firms to **incorporate vulnerability into implementing Consumer Duty** is to:



Assess and record vulnerability consistently.



Collate individual data for individual and firm level reporting.



Use IT systems for scale and efficiency