Linklaters

The FCA's proposed financial services duty of care

A delicate balance





An overarching "Consumer Principle". There are two potential alternative formulations and views are invited from respondents on their preferred option:

- > "A firm must act to deliver good outcomes for retail clients".
- > "A firm must act in the best interest of retail clients".



Cross-cutting rules requiring three key behaviours from firms:

- > Take all reasonable steps to avoid causing foreseeable harm to customers.
- > Take all reasonable steps to enable customers to pursue their financial objectives.
- > Act in good faith.



- > Communications equip consumers to make effective, timely and properly informed decisions about financial products and services.
- > Products and services are specifically designed to meet the needs of customers, and sold to those whose needs they meet.
- > Customer service meets the needs of consumers, enabling them to realise the benefits of products and services and act in their interests without undue hindrance.
- > The price of products and services represents fair value for consumers.

Decision Paper

To encourage a "paradigm shift" within firms from ensuring narrow compliance with the rules to thinking proactively about their intent. **(19)** Aims and framework To set clearer Providing a and higher standards clear statement of for the culture of firms expectations going beyond and expected conduct, by existing Principles and rules, encouraging firms to place as a framework for the ongoing customer outcomes development of retail markets at the heart of their with certainty as to what business. "good" looks like.

Applicability

introduction of new

Consumer Duty.



The proposals relate to products and services sold to retail clients, i.e. all clients other than professional clients and eligible counterparties. This will include, for example, retail banks, challengers, insurance companies, e-money institutions and registered account information service providers.

The duty is stated to include SMEs to the extent that the FCA regulates the provision of financial services to SMEs. There is tension here as many services accessed by SMEs are unregulated, e.g. lending.

The duty would also include firms without a relationship with the end customer, where they are involved in the manufacture or supply of products and can influence material aspects of the design, target market or performance of a product/service that will be used by consumers.

How would the duty link with existing FCA Principles?



Duty expected

There is a clear overlap with existing Principles 6 and 7, though the FCA expects the Consumer Principle to import a higher standard.

It is for discussion whether Principle 6 and 7 should remain for all firms or be disapplied where the Consumer Principle applies. The FCA's preference seems to be to retain existing Principles for all firms to make it easier to apply guidance associated with existing Principles. The value of this overlap is unclear.

rules introducing

Consumer Duty

The story so far

General developments Decision Paper on fair pricing The FCA's Final report Final guidance in financial services. "Our Approach Feedback on fair treatment and Consultation to Consumers" Market study on general statement on Paper on general of vulnerable published. insurance pricing. insurance pricing. fair pricing. customers. July October July September **February** 2018 2018 2019 2020 2021 2021 Decision Paper on Feedback statement Consultation Consultation Consultation New rules on duty of care and following duty of care Paper proposing period closes expected on Consumer

potential approaches

Contacts



Alison

Partner
Tel: +44 20 7456 5725
alison.wilson@linklaters.com



Nikunj Kiri

Partner
Tel: +44 20 7456 3256
nikunj.kiri@linklaters.com



Ben Packer

Partner
Tel: +44 20 7456 2774
ben.packer@linklaters.com



Clare McMullen

Partner
Tel: +44 20 7456 2129
clare.mcmullen@linklaters.com



Gavin Lewis

Partner
Tel: +44 20 7456 4209
gavin.lewis@linklaters.com



Julia Dixon

Partner
Tel: +44 20 7456 4406
julia.dixon@linklaters.com



Martyn Hopper

Partner
Tel: +44 20 7456 5126
martyn.hopper@linklaters.com



Susana Cao Miranda

Partner
Tel: +44 20 7456 5529
susana.caomiranda@linklaters.com



Elizabeth Dowd

Counsel Tel: +44 20 7456 3409 elizabeth.dowd@linklaters.com



Sara Cody

Counsel Tel: +44 20 7456 3577 sara.cody@linklaters.com