Consumer Duty Rules – preparing for the latest FCA regime

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BY NEIL HERBERT ON 1ST OCTOBER 2022 REGULATORY GENERAL

We have been here before. You finally get on top of the FCA's latest regulatory and certification regimes and rules – and along comes a whole new set to deal with. I'm thinking:

- TCF
- Retail Distribution Review
- MiFID I&II
- Financial Advice Market Review
- SMCR

The latest is of course the Consumer Duty Rules – due to come into effect next year. But how different is this new set of rules to the others that have gone before and what must employers prepare for and focus on? Is it just more of the same?

What many of the above have in common and at their core is:

- Ensuring fair and satisfactory outcomes through delivery of quality and suitable advice and products.
- Advisers upholding minimum standards of competence integrity, and conduct and delivery standards – at expected levels

Put aside the products themselves and focus on delivery and these two points – and we see a renewed determination at the FCA to focus on the people in the industry – how they behave – how they perform – their fitness and propriety to perform their roles – and the standards to which they deliver them. The ultimate objective being the protection of consumers and markets.

These are things that have long been in place through TCF and RDR – and it is tempting to assume that Consumer Duty is just more of the same but with bigger teeth.

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However – that would be an underestimation. One of the key differences is that – in the past when under investigation, firms could demonstrate to the regulator that all the right policies, training, frameworks and controls were in place. Boxes had been ticked, responsibilities for ensuring competence conduct and quality had been delivered.

What wasn’t being demonstrated clearly was whether these measures were in fact delivering fair outcomes for consumers. Under Consumer Duty, outcomes will be the main focus and senior management and the board will be on the hook should firms fall short.

Setting customer outcomes and identifying that customers are getting suitable advice and results – not just automatically renewing products without full assessment of their ongoing suitability for example – will become automatic requirements.

But before there are outcomes there is the Adviser and their advice. Whether they have acted appropriately and to expected standards and – by extension whether the firm has ensured that. That part hasn’t changed at all.

A senior executive at the FCA recently said – “Where we identify serious misconduct that breaches that duty, we will use our full range of powers to tackle that … issuing fines, removing permissions and securing redress for consumers. And we will hold firms, including senior managers and boards, to account for delivering these outcomes.”

Time then is running out as is the FCA’s patience as fines hit record levels. In fact – the deadline for firms to have board-approved implementation plans is the end of October 2022. Any firm taking the rather relaxed view that Consumer Duty doesn’t represent much of a departure from TCF, does so at their own peril. The more prudent firms out there will be looking at strategies and technologies to help them meet guidance requirements not just for the Q4 deadline, but well into the future as Consumer Duty beds in.

One of the biggest problems I see – is that in my experience many firms already aren’t doing all this to satisfactory RDR and TFC standards. Let alone to the standards of Consumer Duty.

Those firms wanting to catch up before they can hope to move forward – might urgently consider getting in place a solid framework of process and technology that:

- Defines and delivers accepted benchmarks for behaviour, competence and quality/suitability of advice
- Sets benchmarks and then KPI’s for staff through which these can be properly assessed and monitored
- Defines training/CPD plans – at an across-the-board level and individually
- Identifies risks through behaviour performance delivery and quality and mitigates them through the setting of relevant individual T&C plans.

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ABOUT AUTHOR

NEIL HERBERT

Neil Herbert is CEO at HRComply. The firm was founded in 2009, capitalising on many years spent assisting financial institutions in delivering T&C and conduct solutions under FCA supervision. As new regulatory regimes have been introduced, HRComply has worked with its clients to develop the software to its current four-solution structure. Our focus is delivering products, content processes and support that are individually tailored to our customers' needs. All of our development work has been conducted in collaboration with our clients, designed to meet their business requirements and address their regulatory risks Neil can be contacted by calling 020 31767 859 or emailing neil.herbert@hrcomply.co.uk

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