



Consumer Duty - Closed book products

How to meet the FCA's expectations

2024

Background

Now that the FCA's Consumer Duty rules are in force (for open products), the financial services industry has moved from a world showing fair treatment and the avoidance of poor customer outcomes was enough, to one in which detailed rules require firms to proactively demonstrate good customer outcomes.

This is a significant shift in regulatory expectations, requiring firms to do much more than enhance their policies, procedures and management information (MI) dashboards if they are to truly embed the behaviours and culture sought by the regulator.

Embedding new practices smoothly into 'business as usual' is key to demonstrating that good outcomes are now being achieved consistently for all retail customer groups and all in-scope products and services.

Firms with closed book products face an additional challenge. The deadline for implementing the equivalent required infrastructure for closed book products in July 2024 will arrive quickly. For some firms, particularly those looking to efficiently and profitably run off large books of legacy business, complying with the Consumer Duty rules for closed products may be an even greater challenge than that already negotiated for open products. Balancing the need to meet this deadline of 31 July 2024 with embedding the changes already made will be difficult.

Following the considerable effort to prepare for the rules for open products in July 2023, there is a danger of Consumer Duty implementation 'fatigue.' However, the rules are just as important for closed book products, and the FCA has made clear that it expects firms to pursue readiness for the application of the rules to closed books with just as much focus and rigour as for open products. The additional year afforded to firms to prepare for the rules applying to closed books can be seen as a measure of the scale and complexity of the challenge, rather than its relative importance.

The rules on Fair Value Assessments (FVAs) are some of the most challenging to interpret and apply. These challenges may be even more acute for closed book products, which are more likely to have relatively complex or opaque features and charges, a customer base which may be harder to engage with, and, therefore, vulnerability may be harder to identify. Firms may be reliant on legacy systems, and many of the people with the intellectual capital and expertise from when the products were designed and sold may now have left the firm. Moreover, designing and conducting FVAs for closed book products may involve asking some fundamental questions which may be commercially uncomfortable and operationally difficult.

The Consumer Duty is a flagship initiative for the FCA, and it wants the rules to be a catalyst for tangible, significant improvements, not just in firms' policies, procedures and MI, but in better outcomes for customers. The regulator wants firms to continuously challenge themselves, in respect of all aspects of their operations: "if we do this, in this way, how will it lead to a good customer outcome?" Only by adopting this mindset will the desired culture be embedded.

We set out in the following pages our observations and practical guidance on what firms should be doing now in respect of closed book products to ensure they meet the new standards on time.

It is critical that firms invest the time and resources to get this right. This is clearly a key focus area for the FCA, as seen by the Consumer Duty being heavily referenced within the FCA's 'Commitment 2: Putting consumers' needs first' within the 2024-2025 Business Plan.

Planning and activities for the closed book deadline

The FCA has expressed concern that firms may have lost focus following the implementation deadline for open products. For some firms, applying the Consumer Duty's rules to closed book products may force consideration of some deep business model and product viability questions. These may be more challenging than for open products and require actions to address existing and foreseeable harms, including high charges and product features that customers do not need or do not use.

What is a closed product? The FCA defines a closed product as one with existing contracts with retail customers that were entered into before 31 July 2023, and which is not marketed or distributed to retail customers (including through renewals) on or after that date. In other words, a closed product is one with pre-existing contracts that is not actively promoted to new retail customers.

In this section we summarise the activities that firms should undertake or consider as they prepare for the implementation of the Consumer Duty rules for closed products on 31 July 2024.

FCA focused on approach to fair value assessments - do customers receive tangible value from the best possible product?
Consider why and how the product was closed

Focus on the biggest possible causes of harm

Consider differences between costs and benefits of similar open and closed products that may be difficult to explain and justify

Consider actions to amend product features, charges or service, or to arrange to move customers to a better product or service

Harness, maintain and enhance infrastructure, learning and project planning from the open product implementation plan

Target market and distribution strategy – given that the products have already been manufactured, distributed and sold, which cannot be undone, and that they will not be available to any new customers, firms can give minimal consideration to the related requirements regarding target market and distribution strategy.

Beyond this, however, all the Consumer Duty rules apply in principle to closed book products in the same way that they do for open products.

Therefore, firms should negotiate similar activities in preparing for the closed book deadline as they did for open products. The following activities should be well under way or complete, such that firms have enough time to ensure readiness, including allowing for project slippage and appropriate oversight and sign-off, while simultaneously continuing to pursue all the necessary activities regarding Consumer Duty compliance for open products.

Impact analysis – an essential starting point is to have a clear and complete list of all products and services that meet the FCA's definition of closed, and to formalise with rationale which rules apply to them. The FCA expects firms to prioritise their focus, when planning and making enhancements to their operations, on the biggest potential causes of possible harm, affecting the most customers.

Gap analysis and implementation plan – just as they did for open products and services, firms should conduct an analysis of the extent to which they can meet all the applicable Consumer Duty rules, recording their rationale in respect of those rules with which they are compliant, and the nature and extent of any gaps. The outputs of this gap analysis should form the basis of an implementation plan – a suitably detailed programme of activities, including prioritisation, to close the gaps by 31 July 2024.

Customer journey mapping and articulations of ‘good outcome’ and ‘foreseeable harm’ – while firms do not have to be concerned with articulating a target market or pursuing a distribution strategy, it is nevertheless just as important as for open products to have a clear map of interactions with customers throughout the whole lifecycle of the product. Similarly, firms should have an articulation, at each materially important (to the customer) stage in the journey, of what constitutes a ‘good outcome’ and ‘foreseeable harm’, and of their customers’ information and support needs, and how these will be met. Having this clear understanding can then form the basis for the MI the firm will use to measure the extent to which the good outcomes are being achieved in practice, any necessary enhancements to product governance arrangements, and FVAs for closed products.

Programme management – to the extent proportionate and appropriate for an individual firm, firms should set up and operate a programme to facilitate and oversee the activities in the implementation plan for the closed book deadline. The goal should be to extend or amend the infrastructure – including policies, procedures, and risk management and oversight arrangements – created for the open products deadline, to closed products, as appropriate.

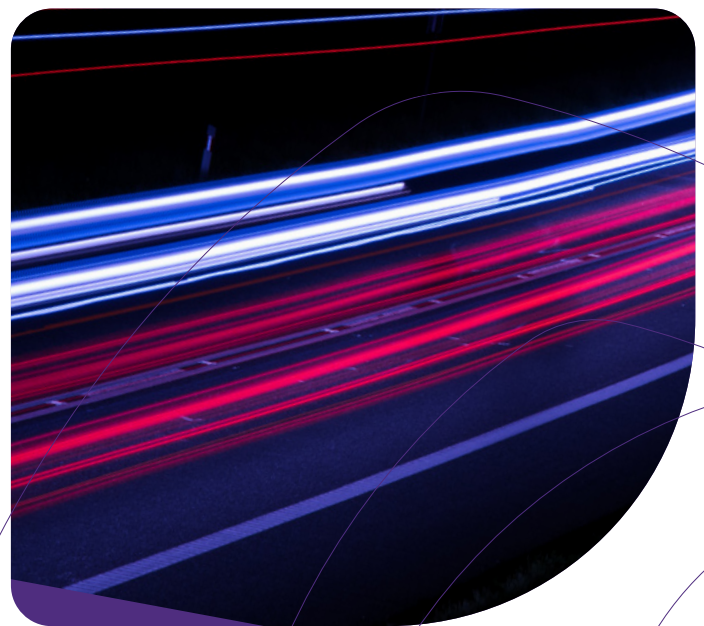
Firms can harness, maintain and enhance the project approach used for the open product implementation plan. The programme should have appropriate governance and oversight, including board awareness and intervention, as necessary. Firms should be able to demonstrate that the programme is organised into appropriate workstreams (e.g. by Consumer Duty outcome, product type or firm division), with activities that are actionable, delivered by suitable and sufficient resources.

Product governance and reviews – although the products are already held by customers and closed to new business, the Consumer Duty rules nevertheless require firms to measure whether they continue to perform as intended and consistently generate good customer outcomes. This is likely to entail the extension of enhancements to product review arrangements made for open products to closed products, with suitable adjustments to consider issues specific to closed products. For example, are there any features of closed products whose presence or absence increases the inherent likelihood of a good or poor outcome? What information, activities, outputs and metrics will you use to identify these, and are they already available? How will we intervene and act in any instances of potential or actual instances of a product not consistently delivering good customer outcomes?

FVAs – the FCA is already supervising assertively regarding the Consumer Duty rules for open products and has focused on firms’ responses to the price and value rules. This is not surprising, given that the requirement to conduct FVAs was new for much of the financial services industry, and the FCA’s concern that those firms – general insurers and some asset managers – to whom similar requirements (in the PROD and COLL sourcebooks) already applied were not necessarily meeting the regulator’s expectations. (Firms that meet the value rules in PROD 4 for non-investment insurance or COLL 6.6, COLL 8.5 or COLL 15.7 for asset management will meet the price and value outcome).

It is therefore safe to assume that the FCA will look closely at how firms design and conduct FVAs for closed products, not least given pre-existing concerns regarding the fair treatment of longstanding customers. It is important to understand why and how the product was closed. Firms should consider:

- The extent to which customers need and use the product’s features and benefits, particularly if the product was sold in a way that did not demonstrably consider the needs of a target market
- The possibility of opaque charges that are hard for customers to identify
- Any differences between costs and benefits of similar open and closed products that may be difficult to explain and justify
- Actions to amend product features, charges or service, or to arrange to move customers to a better value product or service.



How we can help

We have over 50 regulatory conduct specialists who have been immersed in Consumer Duty since it was first proposed by the FCA, and who have already provided extensive support to a wide range of clients across the financial services industry with their Consumer Duty compliance.

One of our distinguishing features is that we can select and deliver the right people to provide you with intelligent and agile solutions for your rapidly evolving business environment. Our resource model ensures that our team of regulatory conduct and Consumer Duty specialists is supplemented by our wider pool of subject matter experts from across our Financial Services Group, which consists of over 650 staff. Our experts are skilled professionals who bring maturity, pragmatism and deep insight, with a common, overriding objective to add value for the clients they work with. Embedded in our team is economic expertise from colleagues who have worked for and with the FCA.

Our clients range from small, newly authorised firms to FTSE 100 institutions, and we tailor each assignment to the specific clients' needs.

Our work has covered all aspects of firms' preparations, including impact and gap analyses, project plan reviews, assurance and internal audit, technical and regulatory advice, readiness assessments, benchmarking, governance and culture reviews, MI design, board training, programme management and resource augmentation. We offer deep insights into responding to the Consumer Duty challenge in a positive and pragmatic way.

We can help ensure that you are in the best possible position to demonstrate that you are taking Consumer Duty seriously and meeting the FCA's expectations. We can provide practical advice, support and resources to ensure you meet the price and value rules in a way that combines compliance with commercial and operational pragmatism.

We can design, deliver, support or provide opinion or assurance on:

- Customer journey mapping, to identify and articulate 'good outcome,' 'foreseeable harm' and 'fair value'
- Closed book impact and gap analyses, and implementation plans, including resourcing, actions and project governance
- Designing frameworks, metrics and benchmarks for assessing fair value and executing assessments across closed books
- Assessment of cross-subsidies on with-profits business
- Product SMEs for complex legacy business lines
- Product Governance arrangements – both new products and reviews of existing products
- Product simplification and modernisation
- Determining financial impact of proposed Consumer Duty actions, e.g. charge caps
- Remediation programmes, including principles, methodologies and customer communications
- Second and third line review, including on a co-source basis.

We can also provide advice to boards, governance forums on any aspect of Consumer Duty, including liaison with the FCA.

Please get in touch with us to discuss your specific requirements. We are here to help.

Key contacts



Supriya Manchanda

Partner

T +44 (0)20 7728 3089

E supriya.manchanda@uk.gt.com



Schellion Horn

Partner

T +44 (0)20 7865 2288

E schellion.j.horn@uk.gt.com



Peter Lovegrove

Director

T +44 (0)20 7865 2767

E peter.w.lovegrove@uk.gt.com

GRANTTHORNTON.CO.UK

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