Browne Jacobson

Regulatory

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The financial services landscape faces significant regulatory change in 2025, with the Financial Conduct Authority (FCA) intensifying its oversight of consumer protection and market integrity. This heightened scrutiny demands swift action from financial institutions across the sector.

The FCA's latest Consumer Duty review identifies areas for improvement in delivering fair outcomes for customers, reinforcing the need for firms to embed robust compliance frameworks. Meanwhile, the issue of undisclosed commissions in motor finance has led to increased legal and regulatory uncertainty, with potential consequences for lenders and intermediaries alike. Additionally, the FCA's multi-firm review of outcomes monitoring under the Consumer Duty underscores the importance of proactive oversight and transparency in financial services.

As regulatory expectations grow, firms must take a strategic approach to compliance, balancing consumer protection with commercial objectives. This report provides insights into the latest developments and their implications for the financial sector in 2025.

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Consumer Duty: The Financial Conduct Authority (FCA) highlights areas of improvement

Author: Jeremy Irving

On 20 February 2024, the FCA released its findings, highlighting both good practices and areas for improvement. These findings also reference the results of a survey conducted in autumn 2023, where 634 firms were asked questions about their implementation of the Consumer Duty, providing context for the FCA's future work.

Some examples in the FCA's findings reference specific markets or products. While these may not apply to every situation, the FCA has stated that firms of all sizes across retail sectors will benefit from considering them.

Examples of good practice identified

- Monitoring service level metrics, such as call abandonment rates, and conducting root-cause analyses of complaints and customer satisfaction surveys to take corrective action and improve service standards.
- Disabling productivity targets for customer service staff when dealing with vulnerable customers, allowing them to provide a more bespoke service tailored to individual needs.
- Aligning staff bonus structures with the goals of the Consumer Duty to ensure incentivisation supports the desired outcomes.
- Increasing the emphasis on consumer research and testing to ensure products are effective and meet customer needs.
- Enhancing the value of products and services. For example, the FCA observed improvements in the benefits provided by some insurance firms, such as widening the definitions of terms in policy wordings to cover more eventualities, introducing new benefits like physiotherapy and virtual medical care, and raising cover limits at no additional cost.
- Capping fees for long-term customers and waiving fees altogether where firms could not justify the product's cost.

- Working with experts to improve communication across various channels to enhance customer understanding of their products and services. For example, simplifying language and adjusting content layout for better clarity. In collaboration with the University of Nottingham, we conducted an academic study on the readability of insurance policy wordings.
- Updating customer interaction materials, such as call centre scripts, and providing training to ensure that staff are well-equipped to support customer understanding.
- Reviewing customer journeys to remove negative obstacles or 'sludge' practices that hinder customers from acting in their best interests. The FCA noted examples where firms allowed customers to exit products through a broader range of channels.

Areas for improvement include

- **Lack of leadership engagement:** The FCA has found that in many firms, the focus on good customer outcomes is not embedded at all levels. Responsibility is often left to risk and compliance teams, rather than being integrated into leadership, strategy, and people policies. The FCA expects firms to ensure that customer outcomes are a priority across all functions, from product design to post-sale support.
- **Failure to recognise vulnerable customers:** Some firms report having no vulnerable customers in their customer base, which the FCA finds concerning. Given that 50% of people will experience vulnerability at some point, all firms must be prepared to identify and support these customers.
- **Overly simplistic approach to vulnerability:** Some firms automatically categorise all customers above a certain age as vulnerable. While age can be a relevant factor, the FCA expects firms to provide tailored support that reflects individual needs rather than applying broad generalisations.
- **Inadequate tracking of vulnerable customers:** Many firms fail to track vulnerable customers across multiple product sets, limiting their ability to offer consistent and appropriate support.
- **Poor information sharing across the supply chain:** The FCA has identified issues with firms not sharing key information within their distribution chains, leading to gaps in customer protection. Manufacturers, for example, should be providing distributors with clear details on product characteristics, target markets, and the value customers should expect.
- **Lack of transparency around remuneration:** Some firms struggle to explain how their remuneration practices are proportionate to the work they carry out, raising concerns about fairness and value for customers.
- **Unclear customer communications on charges:** Many firms fail to clearly explain what charges apply and when. The FCA suggests using worked examples of product and service costs to improve customer understanding.
- **Weak protections against fraud and cyber threats:** Some firms do not have adequate systems in place to safeguard customer data from fraud and cyberattacks. The FCA expects firms to implement robust controls to prevent foreseeable harm and provide prompt support to affected customers.

What this means for insurers

The FCA has made it clear that data and evidence are central to achieving good consumer outcomes.

Key expectations include:

- **Developing new data and metrics:** The FCA highlights that simply repackaging existing data is insufficient. Firms must carefully consider what information they need to truly understand customer outcomes and potential issues.
- **Identifying poorer outcomes for specific customer groups:** Firms must be able to recognise when certain groups, particularly vulnerable customers, receive worse outcomes than others and take proactive steps to address these disparities.
- **Demonstrating fair value:** Firms need to provide clear evidence that their products offer fair value to retail customers, rather than relying solely on comparisons with similar products in the market.
- **Enhancing data tracking and monitoring:** The FCA considers it good practice for firms to refine their data and monitoring processes to identify customers who have purchased a product or service despite falling outside the intended target market.

Last year, Sheldon Mills, Executive Director for Consumers and Competition at the FCA commented that while 37% of advice firms have reviewed or changed their fee structures since the Consumer Duty was introduced, many firms are not using solid data and credible evidence to justify the value of their products to retail customers.

The FCA has emphasised the importance of clear communication to help customers understand their products and services. For example, simplifying language and improving clarity. Over the years, we've partnered with insurers and the University of Nottingham to identify and replace low-frequency words in policy wordings. Our collaboration has used readability scores and other analytical tools to assess how easily policy wordings can be understood by different segments of the population.

Contact our team to find out how we can assist you with Consumer Duty, including our unique customer testing product.

Foreboding on the forecourt: implications of undisclosed commissions in motor finance

Author: Jeremy Irving

Johnson, Wrench, Hopcraft v Firstrand Bank and Close Bros [2024] was a conjoined appeal which addressed lenders' positions following car dealers' handling of disclosures to customers as to the commissions the dealers would receive from lenders in respect of the customers' motor finance loans.

The Court of Appeal held that:

"The dealers … were … acting as credit brokers on behalf of the [customers] ... [in] some cases [undertaking] to find the best … or … most suitable [deal] for the customer. They therefore owed the [customers] ["a duty to provide information, advice or recommendation on an impartial or disinterested basis ... [as per **Wood v Commercial First Business [2021]**"] ..."

Further, because:

"The [customers] needed the finance to be able to afford … the car they wanted, [making] them more vulnerable than someone who [could] pay in cash ...

… there was a reasonable … expectation that [the brokers] would act in [the customers'] best interests ...

… [so the brokers also] owed [customers] fiduciary duties."

Given the dealers' duties to their customers, the arrangements between the lenders and the dealers regarding the payment of commission created a conflict of interest between the dealers and the customers. The dealers failed to adequately disclose this conflict, if at all, including through the terms of standard customer-facing materials arising from the dealers' and lenders' arrangements. As a result, customers did not give informed consent to the payment, which in turn led to a breach of duty by the dealers, for which the lenders were partially responsible.

As such, the lenders were liable to reimburse the customers for the commission (and associated interest) that the customers had funded by borrowing from the lenders.

In the Johnson claim, the Court of Appeal also found the lenders similarly liable under the Consumer Credit Act 1974 (CCA) s140A:

"... the relationship between the lender and [claimant] ... was unfair ... because of things done (or not done) by, or on behalf of, the lender ... (either before or after the making of the agreement or any related agreement). Fairness in this context is a matter of degree, and the fact that the commission to the broker [on a particular agreement] was 25% of the sum advanced is a key fact ..."

Practical consequences

The judgment has implications across financial services, including general insurance. In particular, the judgment expressly referred to the Supreme Court decision in **Plevin [2014]** which dealt with commission disclosures on PPI affecting CCA s140A 'fairness'. Plevin addressed a fact scenario from 2006, and the relatively low priority accorded by the (then) Financial Services Authority as to disclosures to retail customers on insurance commissions. However, given the Financial Conduct Authority (FCA) statements about the Consumer Duty and vulnerable customers, any reliance by firms on Plevin should be re-appraised. The insurance market should be especially mindful as to the justification of the levels of commission paid to intermediaries.

The Court of Appeal noted the dearth of evidence available from circumstances arising several years previously on which it was now giving judgment. Collating and securing written materials, and assessing and making records of the structures and patterns in oral communications, are vital actions for firms to manage legal and regulatory risk. This is especially the case where the precise nature and scale of the legal and regulatory risk is currently unclear, not least in terms of the time periods in issue:

- The loans were taken out from 2014 – 2017
- The lenders did not seek to rely on a Limitation Act 1980 defence in relation to the claim form in Hopcraft being issued over 6 years after the repayment of the loan in issue.

In terms of the regulatory response and risk, the FCA said in a **speech on 29.10.24** that it was ‘considering’ the judgment and liaising with industry stakeholders to “*identify what action is required* ...” subject to the position on any appeal to the Supreme Court (status unannounced).

The judgment in Johnson identified some of the commission at issue as discretionary (i.e. a rate set at the dealer’s option). However, the FCA has not suggested this affects the previously-announced pause as to discretionary commission arrangement (“DCA”) complaints handling.

As at 21.11.24, the FCA stated it was consulting “on 2 options for extending the time firms have to provide final responses to [non-DCA] motor finance complaints …

- Until 31 May 2025, reflecting how long it may take to hear whether the Supreme Court has granted permission to appeal. The FCA plans to set out its next steps on DCA complaints in May 2025. Subject to the outcome of any Supreme Court application, the FCA would update on motor finance non-DCA commission complaints at the same time.
- A longer extension until 4 December 2025, to align with the current rules for motor finance firms dealing with discretionary commission complaints.”

FCA multi-firm review of outcomes monitoring under the Consumer Duty

Author: Jeremy Irving

In 2023, the FCA undertook a sample review of how insurance firms were monitoring, assessing, and testing outcomes under the Consumer Duty (CD), including actions where poor outcomes had been identified.

The sample covered the reports to boards at 20 large insurance firms (general / life insurers, insurance intermediaries and regulated third-party outsourcers servicing insurers). The reports were assessed against the monitoring requirements set out in PRIN 2A.9 and Chapter 11 of FG22/5: Final non-Handbook Guidance for firms on the Consumer Duty.

The FCA published the report on its review in June 2024. Its objectives were to:

- “Determine themes in firm approaches
- Identify the good practices firms have employed to be consistent with CD
- Assess whether there are areas of improvement needed.”

The FCA decided to focus on monitoring because it “is essential for firms to identify and remediate” poor customer outcomes, even though “inadequate monitoring itself would not necessarily result in poor customer outcomes ...” The review did not address any underlying processes (such as value assessments) or compliance with other aspects of CD.

The report set out an extensive analysis of the insurance market’s approach to outcomes monitoring. In summary, the FCA said it “saw a wide variety in the quality of responses by firms … some showed good progress in developing a clear and comprehensive firm-wide approach to monitoring customer outcomes”, especially where there was an explicit recognition of the function of the following factors in producing a “causal chain” for effective, actionable monitoring:

- “Clearly defined customer outcomes [in particular, “Where firms formally documented a range of key foreseeable harms relating to a product or service, this led them to better determine what data they required to monitor outcomes to avoid these harms …”]
- A suite of metrics chosen to monitor those outcomes
- Identification of poor or potentially poor outcomes
- Investigation and, where needed, actions taken
- Evaluation of customer outcomes using targeted metrics”

On the other hand, “many firms need to make improvements in their monitoring to enable them to determine whether they are delivering good outcomes …” For example:

- “Some approaches were overly focused on processes being completed rather than on outcomes delivered.
- Some … reporting contained limited insight into actual customer outcomes. This was often because of:
  1. Metrics/data not being comprehensive enough
  2. Data which lacked analysis and explanation

3. Thresholds/standards in place which did not appear to be appropriately set and/or communicated …"

In relation to insufficiently comprehensive metrics, the FCA noted:

"Some firms appeared to be reliant on metrics which confirmed the number/percentage of product reviews or value assessments, or other processes being completed (such as a communications review of a sales document). We sometimes saw such metrics were reported with limited, or no insight into key findings of the process or any learnings or actions to be taken. In the example of a communications review, completion of a document review alone does not provide assurance that customers are equipped with the right information to make effective, timely and properly informed decisions."

As ever in insurance, the 'acid test' of the effectiveness of compliance, risk and governance in relation to firms' conduct and customer treatment is understanding what claims-related data means in terms of individual customers' actual experiences:

"While most insurers showed they were monitoring the timeliness of claims and number/percentage of declined claims, we saw little monitoring of whether overall good outcomes were being achieved in relation to claim settlements. We only saw a few examples where firms demonstrated claim settlements being comprehensively monitored, tested, assessed, and understood."

A comprehensive handling of claims data requires in particular:

- "Analysis of overall settlement values
- Benchmarking of claim settlements
- Claims complaints,
- Root cause analysis of declined or withdrawn claims, and
- Internal deep-dive reviews (such as internal audits)."

For the FCA, findings as above on inadequate claims analysis are indicative of wider problems within the insurance market, being echoed "with the findings of our review into insurers' valuation of vehicles which found most firms did not collect basic data on motor total loss claims, such as the number, scale, and reasons for increases to initial settlement offers."

While the picture is not universally bleak, the insurance market as a whole needs to respond to the clear indications of the FCA's concerns about the market's treatment of customers. As the FCA put it: "Few firms were able to provide clear evidence of where the monitoring of outcomes had directly led to proactive action being taken to improve these outcomes …" Overall, improvements to governance and analysis are needed to ensure better practical outcomes.

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