Embedding the Consumer Duty: will you make it in time?

October 2022

The rush is on!

All regulated firms affected by the new Consumer Duty should by now have created their implementation plan frameworks and be working on Board approval. For some firms, it's a huge exercise. *Are you in control? Will you get everything done in time? Have you planned how to factor in engagement with relevant regulated and unregulated firms in your distribution chain?*

FCA's final rules and guidance don't always make its expectations as clear as you might hope. It's encouraging that FCA continues to engage with industry and offer help by means of webinars, constant website updates and the promise of focussed "dear CEO" and other correspondence. But the time for action started some time ago, with the need to meet the 31 October 2022 deadline for implementation planning. With only 9 months between that deadline and the date on which the majority of the Rules implementing the Duty take effect, most firms don't have the luxury of waiting. They will be ploughing through their own plans, whilst keeping an eye on any further guidance FCA might offer.

The FAQs that follow explore some of the common concerns and themes that keep coming up.

1

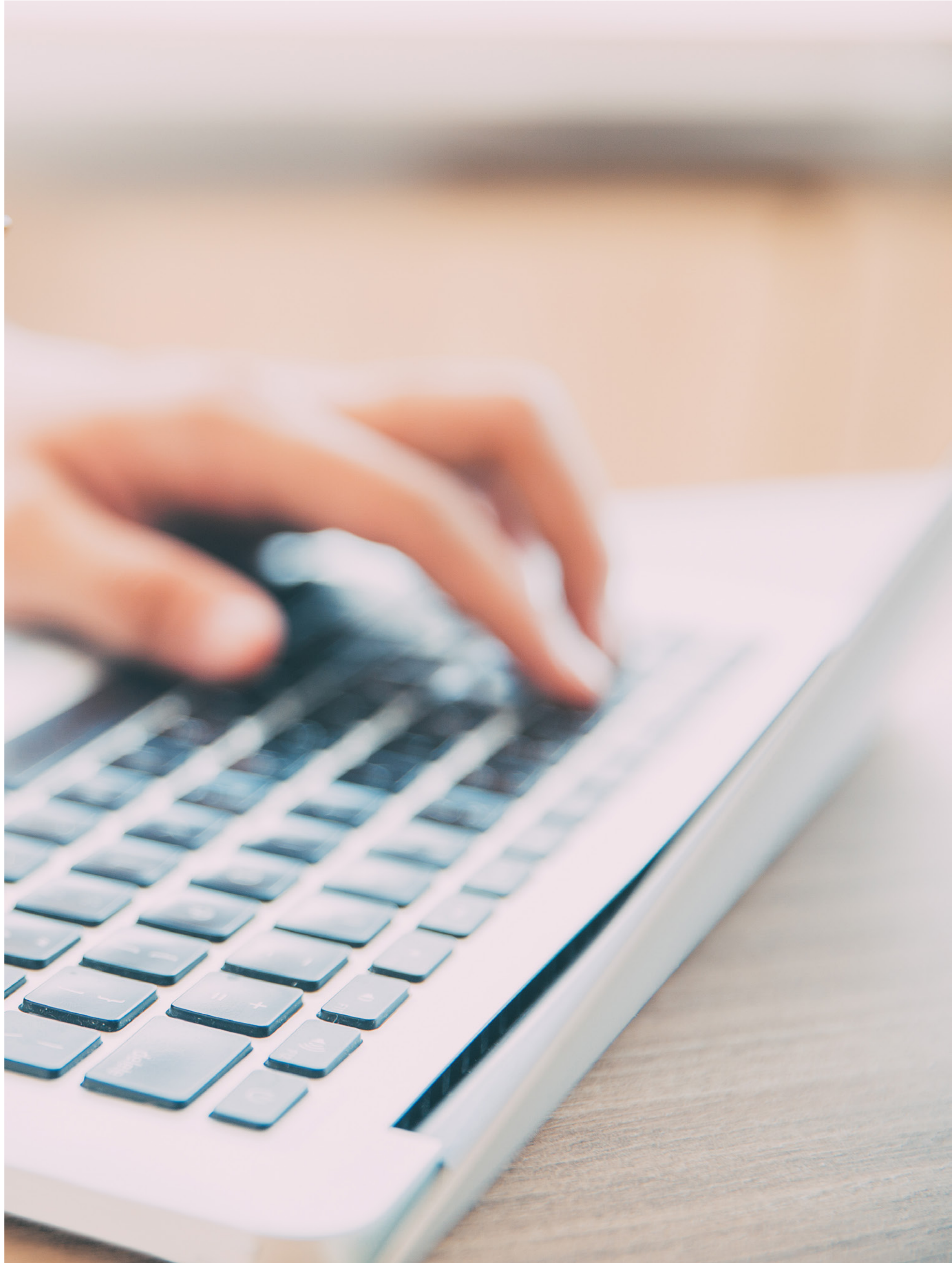
Process

Q: What should our implementation plan look like?

A: The uncomfortable reality is that there's no way to create a template for a plan. It's often said that there's no "one-size-fits-all" solution to any regulatory requirement, and it's never more true than here. The answer is the plan should look like it will work for your business. It should be identifying what areas of the business are relevant to ultimate consumer outcomes, whether direct or indirect, and what needs to be done to assess all relevant activities of the firm and those it works with against the consumer outcomes. So for some firms, the plan might be quite short and relatively simple. For others, it will be a complex, multi-faceted document. What is important is that thought has gone into its production, and it has the backing of the board.

Q: What do we do now?

A: The short answer is, get building on the plan. The secret to getting to the line on time is going to be in having appointed all the right people to the project, and set realistic deadlines both for internal tasks and those which involve third parties. Manufacturers will already be getting requests from distributors and should be well advanced in their plans for the most effective way to share the information distributors need (by the end of April 2023) as well as their own reviews. If the team includes all the right people, they will know which parts of the project will take longest and which the firm should priorities. Each strand can then progress as appropriate, but there should be regular reviews of overall progress. And while getting the Duty in place is most definitely the job of many, not few, there has to be strong project leadership, which will ensure that deadlines don't slip. The leader doesn't have to be a senior manager or a board member, but needs to have board backing.



Q: What should we do if our board isn't meeting until November?

A: Obviously the ideal is to meet the 31 October deadline however it can be tricky if your board cycle doesn't fit with FCA's timescales. What's important is that the board is engaged and has an opportunity to scrutinise the plans so in situations where the board won't be able to sign off by the end of October, you might consider organising a teach in session to ensure the board is well informed in advance of the board meeting. The project team also needs to be confident that the plan is in good shape so that when it is presented to the board, they will be able to have confidence that it will work. Also consider documenting the rationale for not meeting the end October deadline – we would expect FCA to accept reasonable justifications so long as those teach ins have happened.

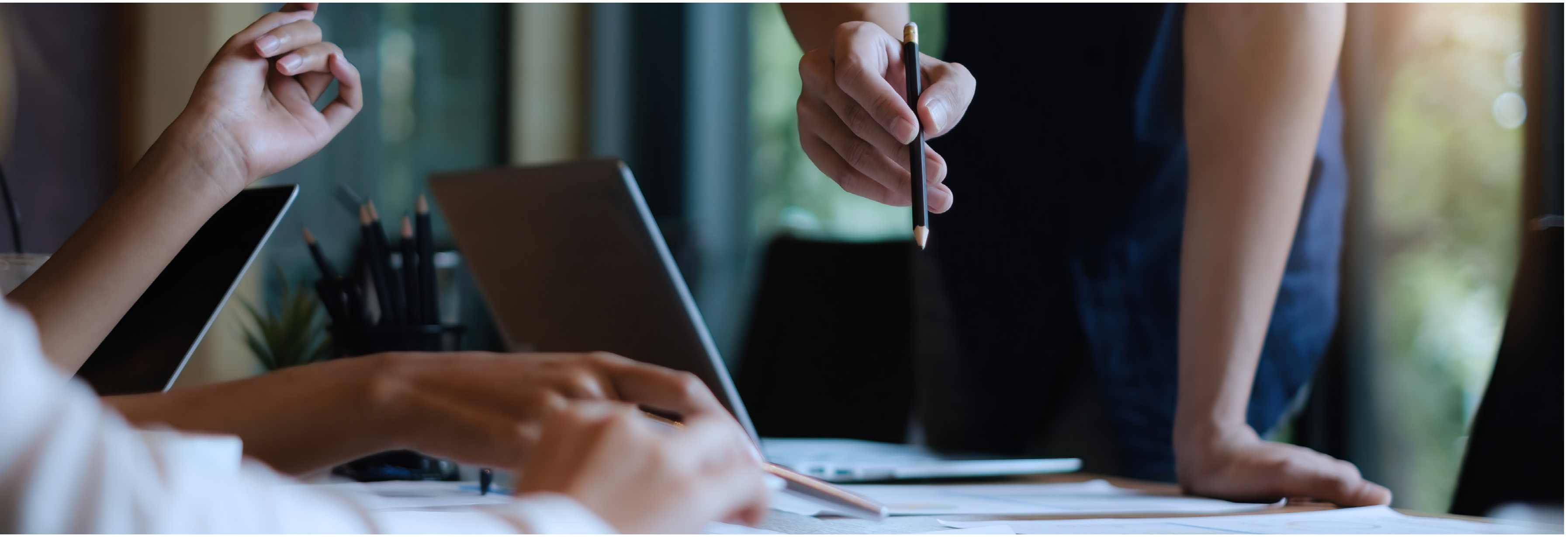
Q: We have recently submitted our application for FCA authorisation. When do we need to comply with the new rules?

A: FCA expects applications now being lodged already to take account of the Consumer Duty. In terms of when, as a newly authorised firm, you will be required to have embedded it and be compliant with it, then these would be the same dates as for all firms that are already authorised – that is, if you are lucky enough to get your authorisation before the end of July 2023, then you would technically need to comply with the rules that take effect from then as from the date they apply more widely. That said, there would be no harm in being compliant earlier, but if you would not be dependent on the compliance of any other parties before the deadline, it would be most practical to apply the standards from the date your authorisation takes effect.

2 Products

Q: It's still not clear what's in scope?

A: For some firms, it's simple – your business is all directly with consumers, so everything is covered. For others, it's not so simple. What about where your business is part retail, and part not retail (for instance, as a retailer who lends or brokes credit to both consumers and businesses)? What if you are an insurer or broker who deals with retail and commercial customers? It can be confusing. FCA says the Duty follows the relevant conduct of business Rules. That's not always easy in itself, especially for insurance firms, and it's also not easy because FCA says the Duty applies to unregulated activities that are "ancillary" to unregulated activities. For many firms, it is a question of taking a view, and sometimes it may be easier to apply Consumer Duty standards across the board, rather than risk letting something slip outside the net when it should be caught.



3

Governance

Q: But who is in charge?

A: It is interesting, and perhaps slightly baffling, that FCA has not added a specific Prescribed Responsibility under the SMCR for "implementation of the Consumer Duty". Regardless, the appointed Consumer Duty Champion (ideally an iNED), is required to work with the Chair and CEO to make sure the firm focuses properly on getting the job done, and it is clear FCA has wider expectations of the board as a whole. Many firms will give an appropriate "other responsibility" to the most appropriate senior manager, while ensuring the entire board is aware of its obligations.

Q: How do we evidence progress?

A: The granular plan should be clear on actions and milestones, and in each identified plan area, who is responsible for monitoring progress and signing off stages as they complete. There will be different appropriate levels of sign off for specific parts of implementation – and certain stages that will need sign off from the board. And the way in which the plan operates should be such that the board is able easily to understand what has been done, any problem areas or delays, and most importantly, how to address the inevitable things that won't quite go to plan. Presenting clear gap analyses and updated checklists to the board would be a good way to show how the plan is progressing. FCA will be wanting to see proof that firms are keeping a constant monitoring eye on implementation, with the resources and supervision necessary to achieve it.

4 People

Q: How does this affect individuals?

A: There aren't going to be many individuals within firms with moderate or larger levels of consumer business who won't be affected by the Duty. As the implementation process should be showing, it will affect not only the obvious areas, such as sales, customer service, complaints and compliance, but many other areas too. Good employee training in the run up to implementation will be key. The training, as always, will be best if focussed to the employee's role. At the very least, all senior managers, anyone involved in product design or pricing, procurement teams or those responsible for distributor relationships, sales, marketing and customer service teams, compliance, risk and audit, and IT will need to understand how the duty applies to them and will be subject the new COCON Rule 6. In principle, the starting point will be that anyone who is subject to the Conduct Rules is likely to be subject to COCON Rule 6 unless they clearly have no link to consumers at all.

Q: What about how we manage our people?

A: Statements of Responsibility for Senior Managers, and job descriptions for other staff will need to be reviewed, and employment contracts should be checked to assess whether any compliance obligations need to be updated. More widely, firms need to be thinking of how to embed the Duty into the culture of the firm, performance and behavioural expectations and how to ensure nothing in the remuneration and incentive structure would encourage behaviour that could lead to poor consumer outcomes.

We can help

It often helps for a fresh pair of eyes to take a look. We're helping clients in many parts of the retail financial services marketplace with their compliance plans. We're happy to provide you with suggestions, sense checks, reviews or training in the way that works best for your business. We know we can help our clients best when we understand how they work, and we don't apply a one-size-fits-all approach to the help we give.

If you'd like to discuss your implementation plans, or any particular element of them, please get in touch. And please keep an eye on FIN, where we'll be sharing all the updates from FCA.

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