

Complying with the Consumer Duty in a New Regulatory Environment

PFS Good Practice Guide



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Introduction

Since the introduction of the Consumer Duty, the Financial Conduct Authority (FCA) has paid more attention to ongoing advice and whether advice firms are fulfilling contractual obligations to carry out annual reviews.

Although the requirement for firms to provide an ongoing service in return for ongoing charges has been in place since the Retail Distribution Review,^{*} the Consumer Duty has made demonstrating value for money an even more integral part of giving advice. The emphasis has shifted to a position that demands all ongoing services must represent value for money, regardless of how much evidence there is of clients being passively content with the service they are getting in return for any ongoing charges.

The FCA recently published a summary of their Ongoing Advice Review, which shows that this remains a priority. They acknowledge the importance of ongoing advice services and how relationships between advisers and clients vary, but the regulator points to some cases where advisers 'haven't attempted to provide the services they offered and customers are paying for it. In those instances, they (advisers) will need to put that right'. The FCA will continue to review the regulatory approach for this.

This shift in emphasis has had a tangible impact on complaints. For example, the Ombudsman is seeing complaints from consumers which directly relate to the Duty,** with Abby Thomas, the Chief Ombudsman and Chief Executive at the Financial Ombudsman Service saying, 'The Consumer Duty has meant firms need to focus even more on the outcomes that customers receive'.

Consumers have complained that information they received from their firm was unclear and confusing. The Ombudsman put this down to poor administration and customer service. Some clients highlight that their firm has not considered their individual needs.

New data from the Financial Ombudsman Service also shows a surge in complaints in all product categories coming from claims management companies (CMCs). CMCs now account for around half of the complaints the FOS receives, compared to just 17% in the first three months of 2023/24.

This guidance aims to identify resources that advice firms can use in a regulatory environment that is characterised by heightened scrutiny and challenge.

Summary

- Firms should not have to overhaul the way they work, but complying with new expectations may mean more administrative work. Assessing capacity, whether in staffing or in technological solutions, might be the most appropriate first step.
- Reviewing current files and systems would put firms in the strongest position, checking that past activity is up to date and client reviews are logged. Firms will then be able to evidence the value that they provide to clients. Where appropriate, advisers might use a decency limit or guardrails.
- There are easy-to-access templates which firms can use when evidencing compliance.

* https://www.handbook.fca.org.uk/instrument/2010/2010_12.pdf

** <https://www.financial-ombudsman.org.uk/news/abby-thomas-speaks-fca-event-consumer-duty-one-year>

FCA Ongoing Advice Review

The FCA recently requested information from a number of financial adviser firms about their delivery of ongoing services following the introduction of the Consumer Duty. The regulator wanted to assess if it needed to undertake further work on this, if they were to evidence that firms were not adequately considering the relevance and costs of ongoing services for all their clients.

The FCA found, following their survey, that financial advisers are delivering suitability reviews in most cases, including when it comes to ongoing advice. There are still a small number of cases where advisers haven't attempted to provide the right service for ongoing advice. The FCA warns that this will need to be put right. All firms should review their services to ensure that regulatory requirements have been met, and where they fall short, to prepare appropriate steps to get up to standard.

During its review, the FCA found examples of good practice, including:

- Client agreements and consumer communications that clearly set out the nature and timing of the ongoing service.
- Effective systems, appropriate record keeping and adequate resources for ongoing advice.
- Policies in place to stop collecting fees 'where a client had not engaged with the service for a period of time'.
- Suitability reviews that:
 1. Fully updated clients' circumstances, objectives, attitude to risk and capacity for loss
 2. Checked that risk profiles, charges and performance of existing investments were all still suitable for the client
 3. Explained clearly to clients in writing that the outcome of a review was a personal recommendation.

The FCA also found that these good practice elements were not always being followed in relation to:

- Clarity of client contracts
- Processes, controls, monitoring and record-keeping for ongoing advice

It also found cases where there was insufficient management information to allow senior management to have adequate oversight.

In light of this, the FCA expects firms to:

1. Consider whether they can demonstrate they have met their obligations for ongoing service - this could include proactively contacting clients to assess if any harm was caused for services going back to 2018
 2. Deliver redress where this is warranted
 3. Discuss with clients who are paying for an ongoing service but choosing not to use it whether they really want to continue with the service
- The FCA said it will 'monitor complaint numbers' and conduct more work later in the year to assess how firms have responded and take any further action needed.

What firms can do to mitigate risks

Identifying issues with past activity

The Consumer Duty sets the standard of care that firms should give to clients in retail financial markets. Firms must demonstrate a proactive approach to compliance and client service by acknowledging the additional time and cost implications of meeting the Consumer Duty. This may sometimes have a material impact on firms, as they take steps to facilitate extra capability and capacity.

In its 'Dear CEO' letter* to retail investment firms in October 2024, the FCA outlined its expectations for advice firms around ongoing advice:

'You should ensure the service offered is appropriate for your clients' circumstances, that it provides fair value, and is delivered within the terms of the agreement. You should also clearly confirm the details of the ongoing service to your clients, its associated charges, and how clients can cancel the service should they wish. You should not charge clients for services that are not delivered. Firms must maintain records to ensure appropriate monitoring and demonstrate they are delivering good outcomes.'

Many firms have begun by reviewing current files and systems, even when they are confident that they have no systemic issues, to ensure all client reviews have been carried out (whether in person, digitally or by correspondence depending on clients' preferences). As well as helping to build trust with clients, annual reviews are vital and need to be carried out in a timely manner, reflecting a firm's dedication to fulfilling ongoing service commitments to clients.

Best practice

Firms know that they provide value to clients, the FCA simply wants more evidence of this. The FCA has added to the guidance it gives to firms significantly, most recently with the Thematic Review of Post-Retirement Advice and with the rollout of the Consumer Duty. Firms will have reacted to the reemphasised need to evidence fair value. The PFS published an example fair value statement which firms can tailor to their own needs: <https://www.thepfs.org/news-insight/consumer-duty/>. As part of this, it is likely that firms have given thought to charging structures, especially for ongoing services. The FCA wants to ensure that customers are only paying fees appropriate for the service received and required.

As part of their approach to fair value, some firms may choose to have a decency limit, limiting the total fees that customers with large fund values would pay for ongoing service. Guardrails, such as automatically reviewing when a level of charge is high relative to the work involved, can also be put in place to ensure sufficient customer protection and good outcomes. This does not mean to say that high charges themselves are problematic. Sometimes high charges are required because the work for a customer can be extensive and create significant risks for the firm. Outsourced work, including legal advice and compliance consultancy, could be required. Justifying those costs and continually evidencing the work firms do for their customers will make it easier for a firm in any future conversations with the FCA or Ombudsman.

The Personal Finance Society Code of Ethics** requires personal finance professionals to act in the best interests of each client. The Code can be another tool for firms to refer to.

* <https://www.fca.org.uk/publication/correspondence/portfolio-letter-advisers-intermediaries-2024.pdf>

** <https://www.cii.co.uk/about-us/professional-standards/code-of-ethics/>

What firms can do to mitigate risks

Taking advantage of technological solutions

Up-to-date technology can also help by enhancing accessibility and improving service delivery, showing a forward-thinking approach. For example, some systems document client reviews, creating a record that can give evidence of compliance. They can also use AI to transcribe meetings, making it less labour-intensive to record client reviews. Having a robust Customer Relationship Management (CRM) system is increasingly useful, as it can improve productivity by creating draft suitability reports and post-review letters. It can also help to identify clients in vulnerable circumstances. Investing in IT infrastructure not only improves efficiency but also demonstrates commitment to continuous improvement in clients' interests. For more detail on this, PFS Power has some introductory presentations for firms looking to automate routine tasks to improve efficiency and get the right system to support client relationships:

<https://pfspower.org/webinars/automate-the-tedious-focus-on-what-matters/>

<https://pfspower.org/webinars/technology-where-do-you-start-with-client-relationship-management/>

Using concepts and templates created by the regulator and professional bodies

One strong way to evidence compliance is to use templates created by regulators and professional bodies that have been designed to cover a comprehensive range of issues related to specific regulatory requirements.

One example of this is the FCA's [Retirement Income Advice Assessment Tool \(RIAAT\)](#). The FCA reviewed retirement income advice in March 2024 and identified good practice in the market and examples where firms were not taking account of the needs of their customers.

It developed the RIAAT to help firms understand how they assessed retirement income advice.* It is a good insight into how the FCA assesses a particular type of financial advice and indicates what information they look for when making a decision on the suitability of retirement income advice.

In this instance, they want evidence that the firm has obtained information on:

- the client's investment and retirement objectives
- the client's investment risk profile
- the client's knowledge and experience
- the client's estimated expenditure throughout retirement
- the client's financial situation
- ceding scheme(s) and the proposed scheme(s) or solution(s)

If firms can keep their client records in line with the expectations set out in the tool, then they put themselves in the best position when presenting their evidence of compliance with the Consumer Duty – both in terms of justifying decisions to the FCA and defending complaints to the Ombudsman.

While the RIAAT is a useful way to present compliance with suitability standards, the [PFS Consumer Duty toolkit](#) is designed to demonstrate compliance with the Consumer Duty at management level. It includes templates for use in evidencing compliance with the Consumer Duty, including fair value statements for initial and ongoing advice, and a vulnerable client checklist and register.

* <https://www.fca.org.uk/firms/retirement-income-advice-assessment-tool-riaat>

Complaints management companies

A complaints management company (CMC) handles complaints for consumers.* They manage the process for their clients and usually take a fee, often a percentage of the compensation if their client “wins” their case.

A financial advice firm should investigate a complaint that is brought to them by a third party on behalf of their client in the same way as it would for a client when they complain directly. The outcome should be exactly the same in either case. If a complaint is subsequently referred to the FOS, it will also assess it in the same way whether it was through a CMC or directly from the client. The FOS does, however, have the power to dismiss complaints which are considered ‘frivolous or vexatious’ but such cases are rare.

A frivolous or vexatious complaint would be one where a customer is pursuing a complaint, which perhaps has neither merit nor serious purpose or value. It would be made with the intention of annoying or inconveniencing the company. While firms should consider whether a case is made frivolously or not, it can sometimes be deceiving, and firms should tread with care. The Ombudsman points out that customers ‘can sometimes pursue complaints in an unfocused way and this may make them appear unreasonable to the business they complain to’. A firm should be careful not to aggravate the problem by responding to customers ‘unhelpfully and defensively’.”

The presumption should be that a complaint is made in good faith. The Ombudsman makes decisions about vexatious complaints on a case-by-case basis and it is up to the firm, in the first instance, to carefully distinguish between genuine concerns and a customer just being difficult. In some cases, it may be more obvious, for example when a complainant continually changes the subject of the complaint or by failing to identify the substance of the complaint. In all cases, a firm managing the complaint can put itself in the best position by offering reasonable assistance to fully understand the complainant’s concern.

A complaint should be treated the same regardless of whether it came from an individual directly or through a CMC.

A CMC must send a valid letter of authority to the firm that is subject to the complaint, explaining that the CMC is representing the client and what its role is. Firms should respond transparently and promptly, as they would for all complaints. CMCs should then provide as much information as possible to firms so they can investigate the complaint as completely as possible.

CMCs are often regulated by the FCA and are subject to the requirements of the Consumer Duty. The FCA wants CMCs to be a means of support for customers who have legitimate complaints. They should only ever help customers ‘secure redress in a way that complies with FCA rules and be authorised so that they meet a common set of standards.’** Firms should notify the FCA if they are aware that another firm, including a CMC, may not be complying with the Duty. The Solicitors Regulation Authority (SRA) also has a role in regulating some of these companies. They regulate law firms, including those who work on financial compensation claims. It has the same responsibility to review poorly conducted claims and ensure good practice by the companies that they regulate.

* <https://www.fca.org.uk/publication/publications/claims-management-companies-financial-services-complaints.pdf>

** <https://www.financial-ombudsman.org.uk/files/2931/96.pdf>

*** <https://www.fca.org.uk/firms/claims-management-regulation>

Complaints management companies

The FCA wrote to CMCs in 2023*, saying, 'We have seen examples of exploitation and misleading information [from CMCs]. These practices are counterproductive and detrimental to a healthy financial services system and are the types of poor practices the Consumer Duty seeks to prevent.'

The FCA listed a range of practices carried out by CMCs that gave it concern:

- 'Misleading, unclear and unfair advertising...'
- 'Inappropriate sourcing of customers where firms do not always conduct or document appropriate checks when purchasing customer data or leads, or do not ensure this has been sourced lawfully from a firm with the correct FCA permissions where these are required.'
- 'Firms failing to investigate the existence and merits of each element of a potential claim. Our rules require firms to ensure that they make representations which substantiate the basis of the claim, relate to the nature of the claim and are specific to the claim, and are not false or misleading, or an exaggeration. This is further supported by our Consumer Duty, which requires products and services to meet the needs and objectives of consumers. It is important that CMCs and the firms they are claiming against work together in the interests of consumers to resolve disputes and agree streamlined claims handling processes where necessary...'
- 'Poor attitude to regulatory obligations where firms do not take a proactive approach to regulatory compliance and do not deal with the FCA in an open and cooperative way.'

The FCA went on to say, 'We will carry out proactive work to consider whether relevant CMCs are investigating the existence and merits of each element of a potential claim before making or pursuing the claim or advising the customer to make or pursue the claim.'

Where firms or personal finance professionals are aware of CMCs not following the requirements of the Consumer Duty, they can raise concerns directly with the FCA confidentially through the firm contact centre:

- **email:** firm.queries@fca.org.uk
- **call:** 0300 500 0597

* <https://www.fca.org.uk/publication/correspondence/claims-management-companies-portfolio-letter-2023.pdf>

Appendix A: Ombudsman and Complaints Processes

Ombudsman process

The Financial Ombudsman Service was set up by Parliament to resolve individual complaints that consumers and financial service firms were not able to work out themselves. The FOS is an independent service and settles complaints at no cost to consumers. The financial service provider/firm must be given the chance to resolve the complaint first. Firms are obliged by FCA rules to handle complaints fairly, consistently and promptly. They are given eight weeks to do so before the complaint can be escalated to the Ombudsman.

The FOS will allocate a case handler who will ask for both the complainant and the firm's sides of the story. They will look at how the firm has tried to resolve the case before it was escalated to FOS. Once they have investigated, they will give an initial assessment. The FOS will either:

- let the complainant know if they think it's a case of simple misunderstanding
- let the firm know what they should do to make it right if it is deemed that the complainant was treated unfairly

If either party disagree with that initial assessment, they can request a final decision from an ombudsman. The FOS aims to give answers to complaints within 90 days of first receiving it. If they deem a complainant has lost out financially, then they will aim to compensate them with a sum which covers the cost to them of the firm's "mistake".

Responsibilities of complainants

A complainant must contact the firm they wish to make a complaint about first to give them the chance to resolve it. They should tell the firm what has happened and how they would like to resolve the issue to resolve the problem. The FOS has a guide on how a person can complain, and you can find it here: <https://www.financial-ombudsman.org.uk/consumers/how-to-complain>.

The firm should give the complainant a final response within 8 weeks on the complaint. If the complainant wishes to escalate, perhaps because they are unhappy with the response or because the firm didn't respond within the 8 weeks, they would then submit their complaint to the Financial Ombudsman Service. The Ombudsman will accept relevant cases and investigate.

Responsibilities for firms

Firms will have their own complaints procedure. They can also refer to the FCA's rules surrounding complaints.* Being aware of and encouraging your colleagues' understanding of your procedures and rules is important. A firm may even have a complaint handler who can focus on resolving complaints when they arise.

The FCA's complaints resolution rules state that a firm must investigate the complaint competently, diligently and impartially. The firm should obtain as much information as is necessary to make an informed decision. It must assess the complaint fairly, consistently and promptly. Once the assessment is made by the firm, it should offer remedial action or compensation when appropriate. The decision, whatever that may be, should be fully and clearly explained to the complainant.

* <https://www.financial-ombudsman.org.uk/news/new-data-reveals-70-jump-financial-complaints>

Appendix A: Ombudsman and Complaints Processes

Responsibilities for firms cont.

When assessing the evidence, a firm should compare the complaint to other similar cases received previously. They should also look at relevant guidance published by the FCA and similar cases already dealt with and decided on by the FOS. This should be taken into account when making a final decision.

Where a complaint is referred to the FOS, the firm has a responsibility to cooperate fully with the FOS and comply with their decision in a timely fashion.

Useful Links

[FCA RIAAT tool](#)

PFS toolkit, including templates, guides and podcasts at <https://www.thepfs.org/news-insight/consumer-duty/>

PFS Suitability Report Writing Guide: <https://www.thepfs.org/learning/learning-content-hub/articles/paraplanning-suitability-report-guide/109497>

