Consumer Duty: Consumer Understanding, Financial Promotions and Communications

Regulatory Consulting and Financial Services Regulatory

Introduction

Communication is central to deliver a good outcome under the new Consumer Principle. We consider the types of correspondence and provide wealth management examples to assist in the development of the communication stream of your Consumer Duty project.

This is the latest in our series of articles on the Consumer Duty. View the hub for more information.

Firms will be familiar with Principle 7 on Communications with clients (*A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading*), however the new Consumer Duty Principle 12 will replace Principle 7 for retail businesses and, combined with existing but enhanced product governance obligations, require a raise to the minimum compliance threshold.

Central to a firm's ability to deliver good outcomes under the new Consumer Principle is the way in which it communicates with its intended target market as well as its existing customers. Firms must develop a conscious strategy in their communications, including through approval/communication of financial promotions, pre and post-sale disclosures and business as usual communications. Demonstrating they have considered obligations under the Consumer Duty in all retail customer communications will enable firms to evidence how they are working to meet Cross-cutting Rules and deliver the Four Outcomes (which include the 'consumer understanding' outcome, a key component of which will be how firms communicate with their clients).

In this latest article in our series, we discuss how firms in the wealth management sector can approach financial promotions and communications in the context of the incoming Consumer Duty. The illustrations are not intended to be exhaustive, but should provide firms a starting point or areas for consideration in implementing and embedding the Consumer Duty.

Consumer understanding outcome

Publication of the Final Guidance document outlined the FCA's expectations of firms in respect of the consumer understanding outcome. The overriding aspect of this outcome is ensuring that consumers have the information they need, at the right time, and presented in an accessible way which will allow them to make informed decisions (and, thereby, take responsibility for those decisions).

Expectations on firms to embed this outcome include:

- supporting customers' understanding by ensuring that communications meet the information needs of customers, are likely to be understood by customers intended to receive the communication, and equip them to make decisions that are effective, timely and properly informed;
- tailoring communications taking into account the characteristics of the customers intended to receive the communication – including any characteristics of vulnerability, the complexity of products, the communication channel used, and the role of the firm;
- when interacting directly with a customer on a one-to-one basis, where appropriate, tailoring communications to meet the information needs of the customer, and asking them if they understand the information and have any further questions; and
- testing, monitoring and adapting communications to support understanding and good outcomes for customers.

These expectations exist throughout the product and service lifecycle, the customer journey and any communications with the client. They also apply where a firm is involved in the production, approval or distribution of consumer communications, even if the firm does not have a direct relationship (e.g. FinProm approvers or brokers/distributors one (or more) steps removed from the end client).

Financial promotions

COBS 4.2.1 R already requires firms to ensure that financial promotions are fair, clear and not misleading. How are firms expected to go above their current obligations on financial promotions to ensure they are demonstrating they are acting to deliver good outcomes?

Provision of clear information in financial promotions will ensure retail consumers are better informed about the investments and choices available to them. This does not just mean the different types of investments, but the risks, costs, and benefits of various instruments or services. Signposting key risks, for example, will be important (if it is not already).

A by-product of the pandemic is increased social media use, and with that, influencers using platforms to promote financial products. More than ever, inexperienced investors are taking an interest in making investments. Firms must be conscious of this potential change and growth of their investor base, and take extra caution in how products and services are promoted. Even now, in our experience, not all firms have understood obligations arising from their use of social media. The FCA has already indicated its concern over the controls firms have in place for complying with their COBS 4 obligations.

Now would be a good time for firms to review their current financial promotion approval framework. For Principle 12, firms will need to consider if they can demonstrate they are taking the extra step to achieve good outcomes. For example, firms may consider adding questions to ensure they have considered how the communications being made could reach different types of individuals, whether within or outside the target market and, therefore, how the content may need to be tailored. Revisiting the social media example – if investments are being promoted via social media, it may be reasonable to assume a younger and potentially more inexperienced audience may see the promotion. Firms should take this into account (even under current rules but particularly as part of the Consumer Duty).

Establishing a considered approach to financial promotions can evidence how firms are attempting to act in good faith, working to avoid foreseeable harm, and trying to support retail customers in pursuing their financial objectives.

Disclosures and advice

Relevant to wealth management firms are obligations for pre-sale disclosure. Under COBS 2.2A.2 firms must provide clients, before investment: information on the firm and its services; the relevant financial instruments, proposed investment strategies and execution venues. MiFID firms also need to provide clients information on costs and associated charges under COBS 6.1ZA.14. For example, key information documents or risk disclosures are typically provided at this stage. While these follow a standardised format, firms should ensure that Consumer Duty is considered as part of the approval process. Firms should also consider how these documents are shared – whether published or sent directly to the client – and if the medium for providing this information to the client is appropriate in the circumstances. Do the communications that firms have with inexperienced or unsophisticated clients ensure they are likely to fully understand the proposition? Such considerations can help firms evidence they are working to deliver good outcomes.

Where firms are providing advice and must fulfil suitability requirements under COBS 9(A), firms should consider how these assessments and subsequent communications can be used to demonstrate careful consideration of good outcomes. For example, in implementing the MiFID II fact finding requirements, firms will want to consider if there is anything else they (and their clients) would benefit from knowing. Firms should consider whether the Cross-cutting Rules and the Four Outcomes would require them to ask further targeted questions to ensure they meet the rules. Integrating the Consumer Duty into advisory processes will support wealth management firms in demonstrating compliance.

Client transfers

We regularly deal with the practical, contractual and regulatory considerations that arise in client book transfers as part of acquisitions from the FCA's (evolving) position on 'novation' in light of COBS 8 / COBS 8A:

- View agreement for transferring investment business on FCA site >
- View Supervision review report: Acquiring clients from other firms >

The client communication plan is already a key component of this transfer process and it will be even more important in light of the consumer understanding outcome. Firms will need to ensure they have explained all important aspects and options and not simply extolled the virtues of their own proposed service. Consideration will also need to be given to how firms communicate, including the methods of communication. It will also be incumbent on firms to ensure consumers understand issues such as where any complaints should be made and what will happen with the previous firm and whether that should impact the consumer.

If a client book transfer involves different types of services and/or products, it may benefit clients to segment and send bespoke mailings to various different groups. This will help ensure they only receive concise information which is relevant to them, rather than information about services/products which is not relevant.

BAU communications

Firms are expected to have ongoing communications with clients to provide relevant information and updates on products and services. For example, under COBS 14.3A.10 where there are material changes to information provided as part of pre-sale disclosures, the firm must communicate this in good time. In carrying out Consumer Duty obligations, firms should consider how best to communicate product and service updates in the context of the impact such changes are likely to have on the end client. The medium, tone, and timing can all impact whether or not communications empower clients to understand and take control of their own investment decisions which, in turn, helps facilitate good outcomes for them.

With reference to the COBS 16A requirement to issue client reports on services provided, firms should consider how best to issue communications in the context of the information in them. Understanding the prescriptive nature of COBS 16A, firms should consider how reporting can be issued in a way which is digestible and highlights key information that the investor may want to know. It is not necessarily acceptable just to copy out the required information anymore without thinking about how best to present it and/or if additional information should be included.

Conclusion

The Consumer Duty will need to be considered across the entirety of the customer journey. Firms can no longer focus more on pre-sales processes than the post-sale support it offers to clients. One of the areas with the most direct impact will be communications, as this is the area that will provide retail clients with the most comfort and sense of control. If firms are unable to appropriately communicate with clients before and during the relationship, not only will they not meet requirements under the Consumer Duty, but they will find themselves losing clients to competitors that can.

[1] See also COBS 6.1ZA.5 for 'Information about a firm and its services: MiFID business' and 6.1ZA.8 for 'Information about a firm's portfolio management service: MiFID business'.
[2] See COBS 14.s

Contacts

Robbie Constance
Head of Financial Regulatory Services

E Robbie.Constance@dwf.law

Andrew Jacobs
Partner & Head of Regulatory Consulting

E Andrew.Jacobs@dwf.law

Aaron Osborn
Senior Associate

E Aaron.Osborn@dwf.law

Kristina MacPherson
Consultant

E Kristina.MacPherson@dwf.law

DWF is a leading global provider of integrated legal and business services.

Our Integrated Legal Management approach delivers greater efficiency, price certainty and transparency for our clients. All of this, without compromising on quality or service. We deliver integrated legal and business services on a global scale through our three offerings; Legal Advisory, Mindcrest and Connected Services, across our eight key sectors. We seamlessly combine any number of our services to deliver bespoke solutions for our diverse clients.

dwfgroup.com

© DWF 2022, all rights reserved. DWF is a collective trading name for the international legal practice and multi-disciplinary commercial business comprising DWF Group plc and all of its subsidiaries and subsidiary undertakings of which, the entities that practice law are separate and distinct law firms. Please refer to the Legal Notices page on our website located at dwfgroup.com for further details. DWF's lawyers are subject to regulation by the relevant regulatory body in the jurisdiction in which they are qualified and/or in which they practise.
This information is intended as a general discussion surrounding the topics covered and is for guidance purposes only. It does not constitute legal advice and should not be regarded as a substitute for taking legal advice. DWF is not responsible for any activity undertaken based on this information and makes no representations or warranties of any kind, express or implied, about the completeness, accuracy, reliability or suitability of the information contained herein.