

## Jake Ghanty's payment services and e-money column: April 2023

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On a regular basis, Jake Ghanty, Partner (Financial Services Regulation) at Wedlake Bell LLP, shares his views with Practical Law Financial Services subscribers on topical payment services and electronic money issues.

In his April 2023 column, Jake looks at the FCA's Dear CEO Letter regarding the consumer duty to firms within its payments portfolio and some of the specific issues that payments firms will need to consider when embedding the duty.

The FCA has written a series of Dear CEO portfolio letters including one [letter](#) to firms within its payments portfolio, which includes payment institutions, electronic money institutions and registered account information service providers (together "payments firms") to remind them of their responsibilities under the FCA's incoming flagship policy, the consumer duty. The consumer duty is part of a three-year strategy by the FCA to set, and test, higher standards for consumers and requires firms to take action to deliver "good outcomes" for their customers. The FCA is adopting a clear pro-consumer attitude and it wants firms to think about customer outcomes and to ensure consumers' interests are at the heart of their activities. The FCA is developing a strategy in relation to payments firms to embed the consumer duty in its supervision work and tackle key harms, as well as metrics to measure the impact of the duty in its payments firms portfolio.

The FCA has identified three key areas that it believes payments firms should focus their attention on when implementing the consumer duty:

- Effective prioritisation.
- Embedding the substantive requirements.
- Working with other firms.

### Pro-active stance on supervision

The FCA has stated that larger payments firms should expect to be asked regularly to provide updates on their progress in implementing the consumer duty to their supervisors and such firms should expect to be challenged on these updates.

The message is clear: the FCA's expectation is that firms should be ready to comply with the consumer duty from

day one. All firms, not just larger firms, should be ready for the FCA to engage with them. Firms should therefore ensure that they keep an up-to-date record of the steps they have taken to implement the duty, as they are expected to be able explain their progress to the FCA on request. This does not mean that payments firms need to have completed all of their implementation of the consumer duty by now, but should have a clear roadmap, including milestones towards implementation. In reality, although the consumer duty does not come into effect until 31 July 2023, that does not leave firms with much time at all to develop and implement processes to ensure compliance.

### How the consumer duty applies to payments firms

The FCA has pointed out that payments firms that provide payment services through an agent or distribute or redeem electronic money (or e-money) through an agent or distributor are responsible for ensuring that the third party complies with the consumer duty. Given the way that parts of the payments industry are structured (for example, money remittance firms can have thousands of agents distributing their services), although the concept of the principal firm being liable for the acts and omissions of its agents from a regulatory perspective is not a new one, this represents a not insignificant burden for principals. In addition, firms are required to share information with other firms in their product/service distribution chain (and also to receive any necessary information) to enable all firms in the chain to comply with the duty. This may be giving rise to some new perceptions and realisations between firms of their respective responsibilities in the distribution chain.

## Key things for payments firms to consider

### Products and services

The consumer duty will require firms to ensure that their products and services are designed to meet the needs, characteristics and objectives of a specified target market and that they perform as expected. The FCA has placed particular emphasis on consumers who are vulnerable, particularly in the light of the rising cost of living, and whether products and services are causing them further harm and if so, what are firms doing to mitigate this.

The FCA has highlighted the potential impact of cross-selling, as it has come across cases where the promoted products were appropriate for the original target market but not necessarily for all wider groups of customers who could end up buying them. This creates a risk that customers may purchase products that do not suit their needs. The FCA also emphasised that firms should check that their distribution strategies are being followed and that products and services are being distributed to their intended target market correctly.

In some ways this is just a reminder of what firms should have been doing already, but the consumer duty is placing a more focused emphasis on ensuring that products end up in the hands of the correct target market.

The FCA recommends that firms use data and information management to monitor whether products and services continue to meet the needs of customers and contribute to good consumer outcomes. This includes reviewing this data regularly and taking any necessary mitigating actions. Firms need to ensure they are analysing who is actually buying their products and this may need to lead to a change in a target market or distribution strategy.

As a result, firms should consider their product distribution agreements to identify whether they have adequate change control provisions allowing for amendments to be made to address, for example, changes in distribution strategy that may be required in order to comply with regulatory requirements.

One area that the FCA has placed particular emphasis on for payments firms is strong customer authentication (SCA). The FCA expects payments firms to develop solutions that work for all groups of consumers, in particular those with protected characteristics.

This means that firms should, for example, consider permitting using methods of authentication that do not rely solely on mobile phones to cater for those who do not own, cannot or prefer not to use them.

### Price and value

Firms will be required under the consumer duty to ensure that products and services provide fair value with a reasonable relationship between the price consumers pay and the benefit they receive. Firms should consider whether regular charges or fees are proportionate and whether vulnerable customers are adversely impacted by charging structures. In particular, payments firms selling products via agents or distributors will need to consider the charges they are levying on customers as part of the assessment of fair value.

This may be of particular significance to the e-money market, where often the issuer of e-money acts as more of an infrastructure provider, with the customer-facing relationship being managed and the charging structure being designed mostly by a distributor and/or agent.

### Customer understanding

Firms' communications should enable customers to make informed decisions about financial products and services. Customers should be provided with information they need at the right time and in a way they can understand easily without using technical and overly complex language. There should be clarity over fees in particular.

Where firms are offering both regulated and unregulated products it should be made clear to customers which is which. This is common in the payments market, for example where an FX provider provides unregulated foreign exchange services alongside a regulated payment service. Firms that use agents and distributors should make clear to consumers how the split of responsibilities is arranged.

### Consumer support

Firms will be required under the consumer duty to provide support that meets their customers' needs throughout the life of the product or service.

It is a key theme of the duty that firms should be assessing and monitoring the performance of their products and services after the initial sale has taken place and have effective aftercare support in place, including user-friendly complaints processes. The FCA states that where customers can only contact firms through a mobile or an internet connection and cannot speak to someone directly, this may not be suitable in all cases (for example, for customers with certain types of protected characteristics).

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