

Chapter 2A

The Consumer Duty

2A.2 Cross-cutting obligations

Act in good faith

- 2A.2.1** **R** A *firm* must act in good faith towards *retail customers*.
- 2A.2.2** **R** Acting in good faith is a standard of conduct characterised by honesty, fair and open dealing and acting consistently with the reasonable expectations of *retail customers*.
- 2A.2.3** **G** Examples of where a *firm* is not acting in good faith would include:
- (a) failing to take account of *retail customers'* interests, for example in the way it designs a *product* or presents information;
 - (b) seeking inappropriately to manipulate or exploit *retail customers*, for example by manipulating or exploiting their emotions or behavioural biases to mis-lead or create a demand for a *product*;
 - (c) taking advantage of a *retail customer* or their circumstances, for example any characteristics of vulnerability, in a manner which is likely to cause detriment;
 - (4) carrying out the same activity to a higher standard or more quickly when it benefits the *firm* than when it benefits the *retail customer*, without objective justification.
- 2A.2.4** **G** Acting in good faith does not mean a *firm* is prevented from pursuing legitimate commercial interests or seeking a profit, provided it does so in a manner which is compliant with *Principle 12* and **PRIN 2A**. Acting in good faith does not require a *firm* to act in a fiduciary capacity where it was not already obliged to do so.
- 2A.2.5** **R** If a *firm* identifies through *complaints*, its internal monitoring or from any other source, that *retail customers* have suffered foreseeable harm as a result of acts or omissions by the *firm*, it must act in good faith and take appropriate action to rectify the situation, including providing redress where appropriate.
- [Note: **PRIN 2A.10** contains *rules* which are relevant when a *firm* is considering what "appropriate action" it must take.]

- 2A.2.6** **R** ■ PRIN 2A.2.5 does not apply where the harm identified was caused by risks inherent in a *product*, provided the *firm* reasonably believed that *retail customers* or the relevant *retail customer* (as the context requires) understood and accepted those risks.
- 2A.2.7** **G** Whether such a belief is reasonable will depend (among other things) on the nature of the *product* offered by the *firm*; the adequacy of the *firm's* product design, communications and customer services; the needs and characteristics of *retail customers* or the relevant *retail customer* (as the context requires); and the extent to which the *firm* is compliant with applicable law in relation to the sale of that *product*, including the rules set out in ■ PRIN 2A.
- Avoid causing foreseeable harm**
- 2A.2.8** **R** A *firm* must avoid causing foreseeable harm to *retail customers*.
- 2A.2.9** **R** Foreseeable harm may be caused by both act and omission, in a *firm's* direct relationship with a *retail customer* or through its role in the distribution chain even where another *firm* in that chain also contributes to the harm.
- 2A.2.10** **G** Avoiding causing foreseeable harm to *retail customers* includes:
- (1) ensuring all aspects of the design, terms, marketing, sale of and support for its *products* avoid causing foreseeable harm;
 - (2) ensuring that no aspect of its business involves unfairly exploiting behavioural biases displayed or characteristics of vulnerability held by *retail customers*;
 - (3) identifying the potential for harm that might arise if it withdraws a *product*, its *products* change or its understanding about the impact on *retail customers* changes;
 - (4) responding to emerging trends that identify new sources of harm, including FCA supervisory action and/or communications; and
 - (5) taking appropriate action to mitigate the risk of actual or foreseeable harm, including for example by:
 - (i) updating or otherwise amending the design of the *product* or distribution strategy;
 - (ii) updating information about a *product* or updating *investment advice*;
 - (iii) ensuring that *retail customers* do not face unreasonable barriers (including unreasonable additional costs), for example when they want to switch *products* or providers or to complain;
 - (iv) allowing time and support for *retail customers* to find suitable alternatives where a *product* is withdrawn.

- 2A.2.11** **G** A *firm* with an ongoing relationship with a *retail customer* in relation to a *product* would need to act to avoid causing foreseeable harm to that *customer* throughout the lifecycle of that *product*.
- 2A.2.12** **G** A *firm* which is involved with the provision of a *product* at a point in time and without an ongoing relationship with the *retail customer* does not need to act to avoid causing harm which only later becomes foreseeable.
- 2A.2.13** **G** Avoiding causing foreseeable harm to *retail customers* does not mean a *firm* has a responsibility to prevent all harm. For example:
- (1) a *product* may have inherent risks which *retail customers* accept by selecting that *product*. Where a *firm* reasonably believes a *retail customer* understands and accepts such risks, it will not breach the *rule* if it fails to prevent them;
 - (2) whether such a belief is reasonable will depend (among other things) on the nature of the *product* offered by the *firm*, the adequacy of the *firm's* product design, communications and customer services; and the extent to which it is compliant with applicable law in relation to the sale of that *product*, including the *rules* set out in ■ PRIN 2A; and
 - (3) examples of risks which are inherent to a *product* include that a mortgage carries a risk of repossession and most investments carry a risk that the market may move resulting in capital loss.
- Enable and support retail customers**.....
- 2A.2.14** **R** A *firm* must enable and support *retail customers* to pursue their financial objectives.
- 2A.2.15** **G** The conclusions a *firm* can properly reach about the financial objectives of *retail customers* will depend on the type of *product* it provides.
- 2A.2.16** **G** A *firm* which provides an execution-only service or a non-advised service can assume (unless it knows or could reasonably be expected to have known otherwise) that the financial objectives of *retail customers* are to purchase, use and enjoy the full benefits of the *product* in question.
- 2A.2.17** **G** A *firm* which provides advisory or discretionary services is entitled to rely on the objectives that *retail customers* have disclosed unless it knows or could reasonably be expected to know that information disclosed is manifestly out of date, inaccurate or incomplete.
- 2A.2.18** **G** Information a *firm* must obtain under a provision of law (including, but not limited to, information required by ■ COBS 9.2.1R, ■ COBS 9A.2.1R, ■ COBS 10.2.1R, ■ COBS 10A.2.1R, ■ ICOBS 5.2.2R, ■ MCOB 4.7A.6 R, ■ MCOB 11.6.2R and ■ CONC 5.2A.5R) is relevant to whether a *firm* knew or could reasonably be expected to know that a customer has different financial objectives for the purposes of ■ PRIN 2A.2.16G and ■ PRIN 2A.2.17G.

2A.2.19 **G** To the extent that a *firm* becomes aware or should reasonably have become aware of a specific financial objective sought by a *retail customer* in connection with a *product*, it should consider how to support progress towards achieving that objective in its interactions with that *retail customer*.

2A.2.20 **G** Enabling and supporting *retail customers* to pursue their financial objectives includes acting to empower *retail customers* to make good choices in their interests, including by:

- (1) ensuring all aspects of the design, terms, marketing, sale of and support for its *products* meet and not frustrate the objectives and interests of *retail customers*;
- (2) making sure *retail customers* have the information and support they need, when they need it, to make and act on informed decisions;
- (3) enabling *retail customers* to enjoy the use of their *product* and to switch or exit the *product* where they want to without unreasonable barriers or delay; and
- (4) taking account of *retail customers'* behavioural biases and the impact of characteristics of vulnerability in all aspects of customer interaction.

2A.2.21 **G** Enabling and supporting *retail customers* to pursue their financial objectives may include the proactive provision of information or offer of support when a *firm* declines to provide a particular *product* to a *retail customer*. In particular:

- (1) *firms* should consider in light of the financial objectives of that *retail customer* whether it would be appropriate to provide information to enable and support that *retail customer* to achieve those objectives, and where appropriate should provide it; and
- (2) they should take reasonable steps to ensure any information they provide to a *retail customer* which is produced by an external third party such as a money advice charity, to which the *retail customer* is signposted, is independent and reliable.

2A.2.22 **G** Enabling and supporting *retail customers* to pursue their financial objectives does not mean that a *firm* is expected to go beyond what a prudent *firm* carrying out the same activity in relation to the same *product*, taking appropriate account of the needs and characteristics of *retail customers*, including in particular as set out in ■ PRIN 2A.7.4G to ■ PRIN 2A.7.5G, would do. For example, it does not require *firms* to go beyond what is reasonably expected by *retail customers* in the delivery of the *product*.

Guidance on the cross-cutting obligations

2A.2.23 **G** (1) The obligations in ■ PRIN 2A.2 apply at all stages of the customer journey and during the whole lifecycle of a *product*. *Firms* will therefore need to keep *products* under regular review and consider the impact of any changes they make to those *products*.

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| | | <p>(2) In applying the obligations in ■ PRIN 2A.2, <i>firms</i> should note that each of the cross-cutting obligations in this section requires <i>firms</i> to act both proactively and reactively, as the context requires.</p> |
| 2A.2.24 | G | <p>The obligations in ■ PRIN 2A.2 apply both at a <i>target market</i> and (where context requires) at an individual customer level, for example:</p> <p>(1) Where a <i>firm</i> interacts with an individual <i>retail customer</i> or is providing a bespoke service the obligations in ■ PRIN 2A.2 apply to those interactions and that service;</p> <p>(2) Where a <i>firm</i> is not interacting with an individual <i>retail customer</i>, for example in the design of a <i>product</i>, when making pricing decisions or designing communications, the obligations in ■ PRIN 2A.2 apply at the level of that <i>target market</i>.</p> |
| 2A.2.25 | G | <p>Each of the cross-cutting obligations in this section requires <i>firms</i> to understand and take account of cognitive and behavioural biases and the impact of characteristics of vulnerability and/or lack of knowledge on <i>retail customers’</i> needs and decisions.</p> |
| | | <p>Interaction between Principle 12 and the cross-cutting obligations</p> <p>.....</p> |
| 2A.2.26 | R | <p>The cross-cutting obligations (the <i>rules</i> in ■ PRIN 2A.2) exhaust what is required under <i>Principle 12</i>.</p> |
| 2A.2.27 | G | <p>The cross-cutting obligations define how <i>firms</i> should act to deliver good outcomes for <i>retail customers</i>.</p> |
| | | <p>Interaction between the cross-cutting obligations and the outcomes rules</p> <p>.....</p> |
| 2A.2.28 | G | <p>The outcomes <i>rules</i> at ■ PRIN 2A.3 to ■ PRIN 2A.6 help to define what is required by <i>Principle 12</i> and ■ PRIN 2A.2 but do not exhaust those <i>rules</i>.</p> |