

## Chapter 2A

# The Consumer Duty



2A.1 Application and purpose

Application

- 2A.1.1
- R
- References in *PRIN* to the obligations on *firms* under *Principle* 12 include the obligations imposed by *rules* in ■ PRIN 2A.
- 2A.1.2
- R
- References in *PRIN* to obligations imposed on *firms* under ■ PRIN 2A include the obligation imposed by *Principle* 12.
- 2A.1.3
- G
- The application of *Principle* 12 and ■ PRIN 2A is set out in ■ PRIN 3, including ■ PRIN 3.2.6R to ■ PRIN 3.2.12G. *Principle* 12 applies in relation to a *firm's retail market business* or where the *firm communicates* or *approves financial promotions* which are addressed to, or disseminated in such a way that they are likely to be received by, a *retail customer*. To the extent that *Principle* 12 applies, *Principles* 6 and 7 do not apply.
- 2A.1.4
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- The definition of a *product* for the purposes of *Principle* 12 and ■ PRIN 2A includes both products and services.
- 2A.1.5
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- The definition of a *retail customer* for the purposes of *Principle* 12 and ■ PRIN 2A includes a prospective customer.
- 2A.1.6
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- The *rules* in *Principle* 12 and ■ PRIN 2A are to be interpreted in accordance with the standard that could reasonably be expected of a prudent *firm* carrying on the same activity in relation to the same *product* and taking appropriate account of the needs and characteristics of *retail customers* as set out in ■ PRIN 2A.7.1R. Further guidance about what can reasonably be expected and the needs and characteristics of *retail customers* is set out at ■ PRIN 2A.7.2G to ■ 2A.7.5G.
- 2A.1.7
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- References in this chapter (including those within Glossary definitions used in this chapter) to *regulated activities* include *payment services* and issuing *electronic money* (whether or not the activity of *issuing electronic money* specified in *article 9B* of the *Regulated Activities Order*); and unless otherwise stated are to be taken to include activities connected to the provision of *payment services* and to the issuing of *electronic money* (whether or not the activity of *issuing electronic money* specified in *article 9B* of the *Regulated Activities Order*).

## Purpose

- 2A.1.8** **G** *Principle 12* reflects a general expectation by the FCA that *firms* should conduct their business to a standard which ensures an appropriate level of protection for *retail customers*.
- 2A.1.9** **G** While recognising the general principle that *consumers* should take responsibility for their decisions, having regard to the other factors set out in s.1C of the Act, it is appropriate to require a high level of protection for *retail customers* for reasons including:
- (1) that they typically face a weak bargaining position in their relationships with *firms*;
  - (2) that they are susceptible to cognitive and behavioural biases;
  - (3) that they may lack experience or expertise in relation to *products* offered through *retail market business*; and
  - (4) that there are frequently information asymmetries involved in *retail market business*.
- 2A.1.10** **G**
- (1) The cross-cutting obligations at **PRIN 2A.2** set out the overarching conduct which *firms* must demonstrate when they act to deliver good outcomes for *retail customers*.
  - (2) The main elements of *firms'* conduct obligations under *Principle 12* and **PRIN 2A** are set out in **PRIN 2A.3** to **PRIN 2A.11**.
  - (3) The *retail customer* outcome rules and guidance at **PRIN 2A.3** to **PRIN 2A.6** set out *firms'* key obligations in relation to product governance, price and value, consumer understanding and supporting consumers.
  - (4) There are particular provisions concerning *closed products* and *existing products* distributed to retail customers before 31 July 2023 in **PRIN 2A.3** and **PRIN 2A.4**.
- 2A.1.11** **G** *Principle 12* does not change the nature of a *firm's* relationship with any given *retail customer*. In particular, it does not create a fiduciary relationship where one would not otherwise exist nor require a *firm* to provide advice or carry out any other *regulated activity* where it would not otherwise have done so.
- 2A.1.12** **G** The FCA has issued guidance on the Consumer Duty in FG22/5, which *firms* should read alongside *Principle 12* and **PRIN 2A** as a guide to the FCA's view as to how *Principle 12* and **PRIN 2A** might be complied with.
- Guidance on responsibilities of firms in a product's distribution chain**
- 2A.1.13** **G**
- (1) *Principle 12* imposes obligations on *firms* towards *retail customers* of *products* irrespective of whether the customer is a *client* of the *firm*.

- (2) This extended application aims to ensure the effectiveness of obligations under *Principle 12* which may properly relate to activities which determine or materially influence *retail customer* outcomes carried out by a *firm* with whom the *retail customer* is not in a *client relationship*.
- (3) A *firm's* role in the distribution chain may mean it is unable to determine or materially influence *retail customer* outcomes in connection with the *product*. If so, the *firm* may not be subject to any obligation under *Principle 12*.
- 2A.1.14** G Obligations on *firms* in the distribution chain of a *product* must be interpreted reasonably, in a manner that reflects the *firm's* role in that distribution chain and the degree to which it can determine or materially influence *retail customer* outcomes.
- 2A.1.15** G The extent of a *firm's* responsibilities under *Principle 12* in any one case will turn on the substance of the *firm's* role in the arrangements relating to the *product*. A *firm* which determines or has a material influence over retail customer outcomes is accountable notwithstanding that the *retail customer* may not be its *client* due to the indirect nature of their relationship.
- 2A.1.15A** G For example, where a *firm's* sole activity subject to obligations under *Principle 12* is *communicating* or *approving a financial promotion*, the rules and guidance in ■ **PRIN 2A.3** (products and services), ■ **PRIN 2A.4** (price and value), ■ **PRIN 2A.6** (customer support) and ■ **PRIN 2A.11** (sale and purchase of product books) are likely to have limited relevance.
- Relevance of guidance about Principles 6 and 7** .....
- 2A.1.16** G Given the high-level nature and breadth of application of the *Principles*, guidance about a *Principle* cannot exhaustively cover its implications (see also ■ **PRIN 1.1.9G**).
- 2A.1.17** G
- (1) In general terms, *Principle 12* and ■ **PRIN 2A** impose a higher and more exacting standard of conduct in relation to a *firm's* activities relative to what *Principles 6* or *7* would have otherwise required. *Principle 12* and ■ **PRIN 2A** also have a broader application in relation to a *firm's* activities relative to *Principles 6* and *7*, with a greater focus on consumer protection outcomes for *retail customers*, including where those *retail customers* do not stand in a *client* relationship with that *firm* in the distribution chain.
  - (2) While existing, formal guidance on *Principles 6* and *7* will remain relevant to *firms* in considering their obligations under *Principle 12*, *firms* should also take due account of the inherent limits of such guidance in light of the factors in (1). See also ■ **PRIN 2A.1.3G**.
  - (3) To the extent that a *firm* is not acting in accordance with existing guidance on *Principles 6* and *7* and the behaviour would amount to a breach of *Principle 6* or *7* in the event that they had continued to apply, the behaviour is likely to amount to a breach of *Principle 12*.

- (4) Where a *firm* is acting in accordance with guidance on *Principles* 6 and 7 that should not be relied on alone in considering how to comply with *Principle* 12. *Firms* also need to consider all their obligations not only under the *Principles*, but under any other applicable law, including other *FCA rules* such as those expanding upon *Principle* 12 as set out in ■ PRIN 2A.

## 2A.1.18

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The effect of ■ PRIN 3.2.10R is that the application of *Principles* 6 and 7 is unchanged with respect to a firm's activities insofar as they are not subject to *Principle* 12.