

The Consumer Duty

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 **G** The definition of a *product* for the purposes of *Principle 12* and ■ PRIN 2A includes both products and services.
- 2A.1.5 **G** The definition of a *retail customer* for the purposes of *Principle 12* and ■ PRIN 2A includes a prospective customer.
- 2A.1.6 **G** 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 **R** 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 **G** 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*.

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*.

(2) In applying the obligations in ■ PRIN 2A.2, *firms* should note that each of the cross-cutting obligations in this section requires *firms* to act both proactively and reactively, as the context requires.

- 2A.2.24 **G** The obligations in ■ PRIN 2A.2 apply both at a *target market* and (where context requires) at an individual customer level, for example:
- (1) Where a *firm* interacts with an individual *retail customer* or is providing a bespoke service the obligations in ■ PRIN 2A.2 apply to those interactions and that service;
 - (2) Where a *firm* is not interacting with an individual *retail customer*, for example in the design of a *product*, when making pricing decisions or designing communications, the obligations in ■ PRIN 2A.2 apply at the level of that *target market*.

2A.2.25 **G** Each of the cross-cutting obligations in this section requires *firms* to understand and take account of cognitive and behavioural biases and the impact of characteristics of vulnerability and/or lack of knowledge on *retail customers'* needs and decisions.

Interaction between Principle 12 and the cross-cutting obligations

2A.2.26 **R** The cross-cutting obligations (the *rules* in ■ PRIN 2A.2) exhaust what is required under *Principle 12*.

2A.2.27 **G** The cross-cutting obligations define how *firms* should act to deliver good outcomes for *retail customers*.

Interaction between the cross-cutting obligations and the outcomes rules

2A.2.28 **G** The outcomes *rules* at ■ PRIN 2A.3 to ■ PRIN 2A.6 help to define what is required by *Principle 12* and ■ PRIN 2A.2 but do not exhaust those *rules*.



2A.3 Consumer Duty: retail customer outcome - products and services

General nature of product governance obligations

2A.3.1 **G** The product governance obligations on *firms* under *Principle 12* are general in nature and should be considered alongside any other legal or regulatory obligations that may apply, for example any marketing restrictions in relation to the *product*.

Manufacturer product governance arrangements

2A.3.2 **R** A *manufacturer* must maintain, operate and review a process for the approval of:

- (1) a *product*; and
- (2) significant adaptations of a *product*,

in each case before it is marketed or *distributed to retail customers*.

2A.3.3 **G** ■ PRIN 2A.3.2R includes any *product* which is a new *product* manufactured on or after 31 July 2023, or an *existing product*. In relation to an *existing product* “marketing” or “distributing” includes reference to any future activity regardless of whether the *product* has previously been made available for marketing or distribution.

Manufacturers: product approval process for products that are not closed products

2A.3.4 **R** For each *product* that is not a *closed product*, a *manufacturer’s* product approval procedures must:

- (1) specify the *target market* for the *product* at a sufficiently granular level, taking into account the characteristics, risk profile, complexity and nature of the *product*;
- (2) take account of any particular additional or different needs, characteristics and objectives that might be relevant for *retail customers* in the *target market* with characteristics of vulnerability;
- (3) ensure that all relevant risks to the *target market*, including any relevant risks to *retail customers* with characteristics of vulnerability, are assessed;

- (4) ensure that the design of the *product*:
 - (i) meets the needs, characteristics and objectives of the *target market*;
 - (ii) does not adversely affect groups of *retail customers* in the *target market*, including groups of *retail customers* with characteristics of vulnerability; and
 - (iii) avoids causing foreseeable harm in the *target market*;
- (5) ensure that the intended distribution strategy is appropriate for the *target market*; and
- (6) require the *manufacturer* to take all reasonable steps to ensure that the *product* is *distributed* to the identified *target market*.

Manufacturers: product approval process for closed products

- 2A.3.5 **R**
 - (1) A *manufacturer* of a *closed product* must maintain, operate and review a process to assess and regularly review whether any aspect of the *product* results in the *firm* not complying with the cross-cutting obligations (■ PRIN 2A.2) in relation to existing *retail customers*.
 - (2) The *manufacturer's* process in (1) does not have to comply with ■ PRIN 2A.3.2R, ■ PRIN 2A.3.4R, ■ PRIN 2A.3.7R, ■ PRIN 2A.3.9R, ■ PRIN 2A.3.10R, ■ PRIN 2A.3.11R or ■ PRIN 2A.3.12R.

- 2A.3.6 **R** The *manufacturer's* process must also assess and regularly review whether the *closed product* affects groups of *retail customers* in different ways and in particular whether any *retail customers* in the *target market* with characteristics of vulnerability are adversely affected by any aspect of the *product*.

Manufacturer: review

- 2A.3.7 **R** A *manufacturer* must regularly review its *products* taking into account any event that could materially affect the potential risk to the *target market*. In doing so, the *manufacturer* must assess at least the following:
 - (1) whether the *product* meets the identified needs, characteristics and objectives of the *target market*, including identified needs, characteristics and objectives of *retail customers* in the *target market* with characteristics of vulnerability; and
 - (2) whether the intended distribution strategy remains appropriate, including whether the *product* is being *distributed* to the *target market* or reaching *retail customers* outside the *target market*.

Manufacturer: action following review of products

- 2A.3.8 **R** Where a *manufacturer* identifies any circumstances related to the *product* that may adversely affect *retail customers*, the *manufacturer* must:
 - (1) take appropriate action to mitigate the situation and prevent any further harm; and

- (2) where appropriate, promptly inform other relevant *persons* in the distribution chain about the circumstances that led to action being taken and the remedial action taken.

Manufacturers: testing products

2A.3.9

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- (1) *Manufacturers* must test their *products* appropriately, including scenario analyses where relevant.
- (2) A *manufacturer* must, as part of discharging its obligations in (1), assess whether the *product* meets the identified needs, characteristics and objectives of the *target market*, including identified needs, characteristics and objectives of *retail customers* in the *target market* with characteristics of vulnerability.
- (3) *Manufacturers* must test their *products* in a qualitative manner and, depending on the type and nature of the *product* and the related risk of detriment to *retail customers*, quantitative manner.

2A.3.10

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If the results of the testing show that the *product* does not meet the identified needs, characteristics and objectives of the *target market*, including identified needs, characteristics and objectives of any group or groups of *retail customers* in the *target market* with characteristics of vulnerability:

- (1) in relation to a new *product* or a significant adaptation of an *existing product*, the *manufacturer* must not bring the new or adapted *product* to the market;
- (2) in relation to an *existing product*, it must immediately:
- (a) cease marketing or distributing the *product* (whether directly or indirectly);
 - (b) cease any renewals for existing *retail customers*, provided that existing *retail customers* are easily able to move to an alternative *product* that provides at least the same level of benefit at an equivalent cost to the customer, whether with the *firm* or with another *firm*; and
 - (c) (where the *firm* intends to continue to market and *distribute* the *product*), make such changes as are necessary for the *product* to meet the identified needs, characteristics and objectives of the *target market*, including identified needs, characteristics and objectives of any group or groups of *retail customers* in the *target market* with characteristics of vulnerability.

Manufacturers: collaborating on manufacture

2A.3.11

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Where *firms* collaborate to *manufacture* a *product*, they must set out in a written agreement their respective roles and responsibilities in the product approval process in ■ PRIN 2A.3.

Manufacturer: selecting distribution channels and providing information to distributors

- 2A.3.12 **R** (1) A *manufacturer* must select distribution channels that are appropriate for the *target market*.
- (2) A *manufacturer* must provide each *distributor* with adequate information in good time to enable it to comply with the rules applicable to it in this section.
- (3) The information to be made available under (2) includes all appropriate information regarding the *product* and the product approval process from time to time to enable the *distributor* to comply with ■ PRIN 2A.3.16R.

2A.3.12A **G** A *manufacturer* that is a *manager* is reminded of its obligations under ■ ESG 4.1.8R and ■ ESG 5.2.9R in meeting its obligations under ■ PRIN 2A.3.12R.

Distributors: unregulated manufacturer

2A.3.13 **R** Where a *distributor* distributes a *product* manufactured by a *person* to whom the *rules* in ■ PRIN 2A.3 do not apply, it must take all reasonable steps to comply with ■ PRIN 2A.3.14R to ■ 2A.3.23G.

Distributor: distribution arrangements

- 2A.3.14 **R** A *distributor* must maintain, operate and review product distribution arrangements for each *product* it *distributes* that:
 - (1) avoid causing and, where that is not practical, mitigates foreseeable harm to *retail customers*;
 - (2) support a proper management of conflicts of interest; and
 - (3) ensure the needs, characteristics and objectives of the *target market* are duly taken into account.

2A.3.15 **G** ■ PRIN 2A.3.14R includes any *product* whether a new *product* distributed on or after 31 July 2023, or an *existing product*. In relation to an *existing product*, “distributes” includes reference to any future distribution activity regardless of whether the *product* has previously been made available for distribution, for example, renewing a contract with an existing *retail customer*.

Distributors: obtaining information from manufacturers

- 2A.3.16 **R** A *distributor* must ensure that the product distribution arrangements contain effective measures and procedures to obtain sufficient, adequate and reliable information from the *manufacturer* about the *product* to:
 - (1) understand the characteristics of the *product*;
 - (2) understand the identified *target market*;
 - (3) consider the needs, characteristics and objectives of any *retail customers* in the *target market* with characteristics of vulnerability;
 - (4) identify the intended distribution strategy for the *product*; and

(5) ensure the *product* will be *distributed* in accordance with the needs, characteristics and objectives of the *target market*.

2A.3.16A **G** A *distributor* is reminded of its obligations under ■ ESG 4.1.16R to ■ ESG 4.1.19R in meeting its obligations under ■ PRIN 2A.3.16R.

Distributors: specific distribution strategy

2A.3.17 **R** (1) This *rule* applies where a *distributor* sets up or implements a specific distribution strategy to supplement the *manufacturer's* strategy under ■ PRIN 2A.3.4R(5).

- (2) Any strategy set up or implemented by a *distributor* must be consistent with:
- (a) the *manufacturer's* intended distribution strategy; and
 - (b) the identified *target market*.

Distributors: providing sales information to manufacturers

2A.3.18 **R** To support *product* reviews carried out by *manufacturers*, a *distributor* must, upon request, provide *manufacturers* with relevant information including, where appropriate, sales information and information on the regular reviews of the product distribution arrangements.

Distributors: review

2A.3.19 **R** (1) A *distributor* must regularly review its distribution arrangements to ensure that they are still appropriate and up to date.

(2) When reviewing the *distribution* arrangements, a *distributor* must verify that it is only *distributing* each *product* to the identified *target market*.

Distributor: action following review of products

2A.3.20 **R** Where a *distributor* identifies an issue following a review, it must:

- (1) make appropriate amendments to the product distribution arrangements;
- (2) where harm has been identified, take appropriate action to mitigate the situation and prevent any further harm; and
- (3) promptly inform all relevant *persons* in the distribution chain about any action taken.

Vested rights

2A.3.21 **R** Where a *product* has existing contracts entered into before 31 July 2023, unless the *firm* has identified a breach of *rules* in force at the time, the appropriate action a *firm* must take under ■ PRIN 2A.3.8R or ■ PRIN 2A.3.20R does not require a *firm* to waive its vested rights under those existing contracts.

2A.3.22 **G** For the purposes of **■ PRIN 2A.3.21R**, vested rights are likely to include the following:

- (1) payments already due under the terms of the contract;
- (2) remuneration for services wholly or partly provided under the contract; and
- (3) contractual charges payable on early termination of the contract.

2A.3.23 **G** Whether a right is a vested right or not will depend on all the facts of the case and interpretation of the relevant contract.

Application of the product governance outcome

2A.3.24 **R** **■ PRIN 2A.3** does not apply to any *firm* subject to **■ PROD 3**, **■ PROD 4**, or **■ PROD 7** for any *product* they *manufacture* or *distribute* that falls within the scope of the relevant *PROD* chapter.

2A.3.25 **G** *Products* within scope of *PROD* include any *product* significantly adapted since the relevant *PROD* rules came into force, *legacy non-investment insurance* products and *funeral plans* which were existing products as of 29 July 2022.

2A.3.26 **R** A *closed product* not already subject to *PROD* must follow the *closed product rules* set out in **■ PRIN 2A.3.5R** to **■ PRIN 2A.3.6R** and **■ 2A.3.21R** to **■ PRIN 2A.3.23G**.

2A.3.27 **G** A *closed product* will already be subject to *PROD* if it is:

- (1) a *financial instrument* or *structured deposit* manufactured by a *firm* subject to **■ PROD 3** on or after 3 January 2018;
- (2) an *insurance product* manufactured on or after 1 October 2018 or a *legacy non-investment insurance product*; or
- (3) a *funeral plan product* manufactured on or after 29 July 2022.

2A.3.28 **R** **■ PRIN 2A.3** does not apply to both:

- (1) *units* in an *authorised fund* or the *sub-fund* of such a scheme, where the relevant authorised fund or sub-fund is in the process of winding up or termination under, or in accordance with, **■ COLL 7.3**, **■ COLL 7.4**, or **■ COLL 7.4A**; and
- (2) *units* or *shares* in a *fund* or *sub-fund* which is not an *authorised fund* or a *sub-fund* of such a scheme or *AIF*, where the relevant *fund* or *sub-fund* is in a process of winding up or termination which is equivalent to that referred to in (1).

Compliance with other Handbook provisions

2A.3.29

G

A *firm* which either:

- (1) conducts business in relation to *products* that would be covered by chapters in *PROD* if they were *manufactured* after the date the relevant chapter in *PROD* came into force; or
- (2) is subject to ■ PROD 1.3.2R,

may choose whether to apply either the processes set out in the relevant chapter of *PROD* that applies to the *product* (■ PROD 3 for *financial instruments* and *structured deposits* and ■ PROD 4 for insurance products) or the processes set out in ■ PRIN 2A.3. ■ PRIN 2A.3.30E sets out the circumstances where a *firm* that chooses to comply with the relevant chapter of *PROD* is likely to be considered in breach of ■ PRIN 2A.3.

2A.3.30

E

(1) This provision applies to:

- (a) any *firm* to which ■ PROD 1.3.2R applies;
- (b) a *manufacturer* of an *existing product* manufactured before 3 January 2018, which is a *financial instrument* or a *structured deposit*; and
- (c) a *manufacturer* of an *existing product* manufactured before 1 October 2018 which is an insurance product, but which is not a *legacy non-investment insurance product*.

(2) For *firms* within (1)(a) or (b), where the *firm* is following the provisions of ■ PROD 3, contravention of ■ PROD 3 may be relied on as tending to establish contravention of those provisions of ■ PRIN 2A.3 that apply to the *firm*.

(3) For *firms* within (1)(c), where the *firm* is following the provisions of ■ PROD 4, contravention of ■ PROD 4 may be relied on as tending to establish contravention of those provisions of ■ PRIN 2A.3 that apply to the *firm*.

2A.4 Consumer Duty: retail customer outcome on price and value

What is value?

- 2A.4.1** **R** For the purposes of this outcome:
- (1) value is the relationship between the amount paid by a *retail customer* for the *product* and the benefits they can reasonably expect to get from the *product*; and
 - (2) a *product* provides fair value where the amount paid for the *product* is reasonable relative to the benefits of the *product*.

Price and value: manufacturers general obligation

- 2A.4.2** **R** A *manufacturer* must:
- (1) ensure that its *products* provide fair value to *retail customers* in the *target markets* for those *products*; and
 - (2) carry out a value assessment of its *products* and review that assessment on a regular basis appropriate to the nature and duration of the *product*.

- 2A.4.3** **R** An initial value assessment must be carried out for:
- (1) a *product*; and
 - (2) any significant adaptation of a *product*,
- in each case before it is marketed or *distributed* to a *retail customer*.

- 2A.4.4** **G** ■ PRIN 2A.4.2R and ■ PRIN 2A.4.3R include any *product* whether a new *product* manufactured on or after 31 July 2023, an *existing product* or a *closed product*. In relation to an existing product or a closed product, “marketing” or “distributing” includes reference to any future activity regardless of whether the *product* has previously been made available for marketing or distribution.

- 2A.4.5** **R** In ensuring that a *product* provides fair value, a *manufacturer* must be satisfied that this will be the case from the point at which the *manufacturer* completes the assessment for a reasonably foreseeable period, including, where the *product* is one that renews, following renewal.

2A.4.6 **G** What constitutes a ‘reasonably foreseeable period’ will depend on the type of *product*. This could include the expected length of time a *retail customer* in the *target market* will keep it, including, where relevant, the number of occasions the *firm* would reasonably expect that a *retail customer* would renew the *product*.

Product packages

2A.4.7 **R** Where a *product* is intended to be provided with one or more other *products*, a *manufacturer* must ensure that:

- (1) each component *product*; and
- (2) the package as a whole,

provides fair value to *retail customers* in the *target market*.

The value assessment

2A.4.8 **R** A *manufacturer’s* assessment of whether or not a *product* provides fair value must include (but is not limited to) consideration of the following:

- (1) the nature of the *product*, including the benefits that will be provided or may be reasonably expected and its quality;
- (2) any limitations that are part of the *product*;
- (3) the expected total price to be paid by the *retail customer* or that may become due from the *retail customer*. The expected total price includes:
 - (a) the price paid or agreed to be paid by the *retail customer* on entering into a contract for the *product*, including by way of repayments;
 - (b) any regular charges or fees payable over the lifetime of the *product*, for example an annual management charge;
 - (c) any contingent fees or charges, for example, administrative charges for changes of address, charges for falling into arrears on a loan, or charges for transferring investments; and
 - (d) any non-financial costs the *retail customer* is asked or required to provide to the *firm*; and
- (4) any characteristics of vulnerability that *retail customers* in the *target market* display and the impact these characteristics have on the likelihood that *retail customers* may not receive fair value from its *products*.

Guidance on the value assessment: factors that may be considered

2A.4.9 **G** A *manufacturer* may consider one or more of the following in its assessment of whether or not a *product* is providing fair value:

- (1) the costs incurred by the *firm* in *manufacturing* or *distributing* the *product*;

- (2) the market rate and charges for a comparable *product*;
- (3) any accrued costs and/or benefits for *existing* or *closed products*; and
- (4) whether there are any *products* that are priced significantly lower for a similar or better benefit.

Guidance on the value assessment: benefits and costs

- 2A.4.10 **G**
- (1) The types of benefits that *retail customers* may reasonably expect to obtain may include non-financial benefits such as an enhanced level of customer service providing extra assistance to *retail customers* in using the *product*.
 - (2) Examples of non-financial costs include the provision of personal data and the granting of permission to use that data.

Guidance on the value assessment: characteristics of retail customers

- 2A.4.11 **G**
- In considering the value assessment and how it applies when *manufacturers* have different groups of *retail customer* in their target market for a *product*, they should have regard in particular to the following:
- (1) whether any *retail customers* who have characteristics of vulnerability may be less likely to receive fair value; and
 - (2) whether the *product* provides fair value for each of the different groups of *retail customer* in the *target market*, including in circumstances where the pricing structure of the *product* involves different prices being charged to different groups of *retail customers*.

Guidance on the value assessment: interaction with the Duty and the retail customer outcomes

- 2A.4.12 **G**
- In ensuring that a *product* provides fair value, a *manufacturer* should have regard to how the cross-cutting obligations (■ PRIN 2A.2) and the other *retail customer outcome rules* (■ PRIN 2A.3 to ■ PRIN 2A.6) are met in respect of the *product*.

Manufacturers: collaboration with another firm or with unregulated persons

- 2A.4.13 **R**
- Where *firms* collaborate to *manufacture* a *product*, they must set out in a written agreement their respective roles and responsibilities in the value assessment in ■ PRIN 2A.4.
- 2A.4.14 **R**
- Where a *firm* collaborates with a *person* who is not a *firm* to *manufacture* a *product*, it remains fully responsible for discharging all its obligations under ■ PRIN 2A.4.

Manufacturers: information for distributors

- 2A.4.15 **R** The *manufacturer* of a *product* must ensure that *firms distributing* the product have all necessary information to understand the value that the *product* is intended to provide to a *retail customer*.

Price and value: distributors general obligation

- 2A.4.16 **R**
- (1) A *distributor* must not *distribute* a *product* unless its distribution arrangements are consistent with the *product* providing fair value to *retail customers*.
 - (2) Arrangements will be consistent with providing fair value to *retail customers* where they enable the *distributor* to obtain enough information from the *manufacturer* to understand the outcome of the value assessment and in particular to identify:
 - (a) the benefits the *product* is intended to provide to a *retail customer*;
 - (b) the characteristics, objectives and needs of the *target market*;
 - (c) the interaction between the price paid by the *retail customer* and the extent and quality of any services provided by the *distributor*; and
 - (d) whether the impact that the *distribution* arrangements (including any remuneration it or (so far as the *distributor* is aware of it) another person in the distribution chain receives) would result in the *product* ceasing to provide fair value to *retail customers*.

Distributors: unregulated manufacturer

- 2A.4.17 **R** Where a *distributor distributes* a *product manufactured* by a *person* to whom the *rules* in ■ PRIN 2A.4 do not apply, it must take all reasonable steps to comply with ■ PRIN 2A.4.16R.

Distribution chains

- 2A.4.18 **R**
- (1) A *firm* which *distributes products* to *retail customers* is responsible for ensuring the fair value obligations in relation to distribution are met in respect of any *product* it distributes to a *retail customer*.
 - (2) A *firm* which *distributes products* to other *distributors* must ensure that all information relevant to the value assessment is passed to the distributor at the end of the *distribution* chain.
 - (3) A *firm* which *distributes products* to other firms in the distribution chain must consider whether they are also a *co-manufacturer* of the product they are *distributing* and if they are, apply the *manufacturer rules* in this section.

When must a manufacturer and a distributor consider the value assessment?

- 2A.4.19 **R** *Manufacturers* and *distributors* are responsible for the value assessment as follows:

- (1) A *manufacturer* must consider the fair value assessment at every stage of the product approval process, including in particular when:
 - (a) designing the *product*;
 - (b) identifying *retail customers* in the *target market* for whom the *product* needs to provide fair value; and
 - (c) selecting distributions methods/channels.
- (2) A *distributor* must consider the fair value assessment when determining the distribution strategy for the *product* and in particular where the *product* is to be *distributed* with another *product* whether as part of a package or not.

The value assessment: general

2A.4.20 **R** In determining whether a *product* provides fair value, or distribution arrangements are consistent with fair value being provided, a *firm* must not rely on individual *retail customers* to consider whether they believe the *product* provides fair value in place of the *firm's* own assessment.

Closed products

- 2A.4.21 **R**
 - (1) The obligation on *manufacturers* in ■ PRIN 2A.4.2R to ensure that a product provides fair value applies to *closed products* as well as new and *existing products*.
 - (2) In the case of a *closed product*, the reference to a *target market* in ■ PRIN 2A.4.2R should be read as referring to the *retail customers* who are *customers* of the *closed product*.

Guidance on the value assessment: closed and existing products

2A.4.22 **G** The assessment of whether a *closed product* or an *existing product* provides fair value should be on a forward-looking basis only. Unless required to do so by any other *rule*, *manufacturers* do not need to consider whether their *closed products* or *existing products* provided fair value prior to these *rules* coming into force.

2A.4.23 **G** In assessing whether a *closed product* or an *existing product* provides fair value, a *manufacturer* may take into account the benefits provided, the costs charged to the *retail customer* and the costs incurred by the *firm* prior to these *rules* coming into effect.

[Note: See also ■ PRIN 2A.4.29R regarding appropriate action for *closed products* if the *product* no longer provides fair value.]

Reviewing the value assessment

2A.4.24 **R** (1) A *manufacturer* must regularly review the value assessment throughout the life of the *product* to ensure that the *product* continues to provide fair value to *retail customers* in the *target market*.

(2) A *distributor* must regularly review its distribution arrangements throughout the life of the *product* to ensure that they remain consistent with the *product* providing fair value to *retail customers* in the *target market*.

2A.4.25 **R** Where a *manufacturer* identifies in its review of its value assessment that the *product* no longer provides fair value, it must take appropriate action to:

- (1) mitigate, and where appropriate, remediate any harm caused to existing *retail customers*; and
- (2) prevent harm to new *retail customers*.

2A.4.26 **R** Appropriate action under **PRIN 2A.4.25R** includes notifying the *distributor(s)* of the *product* of the issue and of any changes to the *product* and the *distribution strategy* that the *manufacturer* has put place to mitigate and prevent further harm.

2A.4.27 **R** Where a *distributor* identifies that the *product* no longer provides fair value, whether that is due to aspects of the *product* or the distribution arrangements, it must take appropriate action to:

- (1) mitigate the situation and prevent further occurrences of any possible harm to *retail customers*, including, where appropriate, amending the distribution strategy for that *product* (and, where relevant, the package);
- (2) redress any foreseeable harm that has been caused to *retail customers* by faults in the *distributor's* distribution arrangements; and
- (3) inform any relevant *manufacturers* and other *distributors* in the chain promptly about any concerns they have and any action the *distributor* is taking.

2A.4.28 **G** The appropriate action that a *distributor* may need to take under **PRIN 2A.4.27R** will depend on the role the *distributor* has in the distribution chain and in relation to the *product* being *distributed*. A *distributor* who is a *co-manufacturer* of the *product* being *distributed* is likely to be able to do more to mitigate the situation than *distributors* who are not *co-manufacturers*.

Vested rights

2A.4.29 **R** In the case of a *closed product*, or an *existing product* held by a *retail customer* before 31 July 2023, unless the *firm* has identified a breach of *rules* in existence before 31 July 2023, the appropriate action a *firm* may take does not require a *firm* to waive its vested contractual rights.

2A.4.30 **G** For the purposes of **PRIN 2A.4.29R**, vested contractual rights include the following:

- (1) payments already due under the terms of the contract;

- (2) remuneration for services wholly or partly provided under the contract; and
- (3) contractual charges payable on early termination of the contract.

2A.4.31 **G** Whether a right is a vested right or not will depend on all the facts of the case and interpretation of the relevant contract.

Application of the price and value outcome

2A.4.32 **R**

- (1) The *rules* in ■ PRIN 2A.4 do not apply to:
 - (a) a *firm* which *manufactures or distributes a non-investment insurance product or a legacy non-investment insurance product*;
 - (b) a *firm* which *manufactures or distributes any funeral plan product* subject to ■ PROD 7; and
 - (c) an *authorised fund manager* in relation to *products* subject to ■ COLL 6.6.19R to ■ 6.6.26G, ■ COLL 8.5.16R to ■ 8.5.22R, or ■ COLL 15.7.16R to ■ 15.7.24R.

- (2) A *firm* in (1) must continue to apply ■ PROD 4 and ■ PROD 7 or the relevant *COLL rules* .

2A.4.33 **R** ■ PRIN 2A.4 does not apply to both:

- (1) *units* in an *authorised fund* or the *sub-fund* of such a scheme, where the relevant *authorised fund* or *sub-fund* is in the process of winding up or termination under, or in accordance with, ■ COLL 7.3, ■ COLL 7.4, or ■ COLL 7.4A; and
- (2) *units* or *shares* in a *fund* or *sub-fund* which is not an authorised fund or a sub-fund of such a scheme or *AIF*, where the relevant fund or sub-fund is in a process of winding up or termination which is equivalent to that referred to in (1).

2A.4.34 **R**

- (1) A *manufacturer of a funeral plan product* which is a *closed product* and was *manufactured* before 29 July 2022 must apply the *closed product rules and guidance* in ■ PRIN 2A.4..
- (2) The *closed product rules and guidance* are ■ PRIN 2A.4.1R to ■ 2A.4.2R, ■ 2A.4.4G to ■ 2A.4.6G, ■ 2A.4.8R to ■ 2A.4.12G ■ 2A.4.20R to ■ 2A.4.25R and ■ 2A.4.29R to ■ 2A.4.31G.

2A.4.35 **E** Where a *manufacturer of a closed product* which is a *funeral plan product* *manufactured* before 29 July 2022 is following the provisions of ■ PROD 7 concerning the fair value of *funeral plan products*, contravention of ■ PROD 7 may be relied on as tending to establish contravention of those provisions of ■ PRIN 2A.4 that apply to the *firm*.

Application to pension scheme operators and providers of pathway investments

2A.4.36

R

- (1) This *rule* applies to a *firm* that is required to comply with ■ COBS 19.5 (Independent Governance Committees (IGCs) and publication and disclosure of costs and charges).
- (2) A *firm* to which this *rule* applies must use the value for money assessment carried out by the *IGC* or the *governance advisory arrangement* when carrying out its value assessment under ■ PRIN 2A.4.2R.
- (3) Where a *firm* disagrees with the value for money assessment carried out by the *IGC* or the *governance advisory arrangement* it must:
 - (a) explain why it disagrees with the assessment; and
 - (b) set out how it considers the *relevant scheme or pathway investment* provides fair value.
- (4) In setting out how it considers the *relevant scheme or pathway investment* provides fair value the *firm* must use the framework set out in ■ COBS 19.5.
- (5) A *firm* that is unable to adequately explain why it disagrees with a value for money assessment conducted under ■ COBS 19.5 must apply ■ PRIN 2A.4.25R to the *relevant scheme or pathway investment*.

2A

2A.5 Consumer Duty: retail customer outcome on consumer understanding

Application

- 2A.5.1** **R** (1) Other than **PRIN 2A.5.15R**, this section applies to:
- (a) all *firms* to whom *Principle 12* and **PRIN 2A** apply, involved in the production, *approval* or distribution of *retail customer* communications, regardless of whether the *firm* has a direct relationship with a *retail customer*, and including where a *firm* produces, *approves* or distributes *financial promotions* or other advertisements, sales-related communications, and post-sale communications (and references to a *firm's* communications or a *firm* communicating are to be read accordingly);
 - (b) all communications throughout a *firm's* interactions with *retail customers*, including:
 - (i) before, during, and after any sale of a *product*; and
 - (ii) interactions that do not relate to a specific *product*; and
 - (c) all communications including verbal, visual or in writing, from a *firm* to a *retail customer*, regardless of the channel used or intended to be used for the communication, including *electronic communications*, such as on social media.
- (2) **PRIN 2A.5.15R** applies to all *firms* to whom *Principle 12* and **PRIN 2A** apply.

- 2A.5.2** **G** *Retail customers* in this section means the *retail customers* intended to receive the communication.

Communications to retail customers

- 2A.5.3** **R** (1) A *firm* must support *retail customer* understanding so that its communications:
- (a) meet the information needs of *retail customers*;
 - (b) are likely to be understood by *retail customers*; and
 - (c) equip *retail customers* to make decisions that are effective, timely and properly informed.
- (2) A *firm* must communicate information to *retail customers* in a way which is clear, fair and not misleading.

- 2A.5.4 **R** With regard to ■ PRIN 2A.5.3R(1):
- (1) for *product*-specific communications, a *firm* should consider the *target market* for that *product*; or
 - (2) for non *product*-specific communications, a *firm* should consider its *retail customers*.
- 2A.5.5 **R** With regard to ■ PRIN 2A.5.3R(1)(c), for a *firm* to provide information on a timely basis, it must communicate in good time for *retail customers* to make effective decisions, including:
- (1) before the purchase of a *product*; and
 - (2) at suitable points throughout the lifecycle of the *product*.
- 2A.5.6 **R** In considering the methods of communicating with *retail customers*, a *firm* must satisfy itself that the communication channel:
- (1) enables the communication of relevant information which *retail customers* are likely to need in a way that supports effective decision making; and
 - (2) provides an appropriate opportunity for retail customers to review the information and, where relevant, assess their options.
- 2A.5.7 **G** In supporting the understanding of *retail customers* through its communications, a *firm* should:
- (1) explain or present information in a logical manner;
 - (2) use plain and intelligible language and, where use of jargon or technical terms is unavoidable, explain the meaning of any jargon or technical terms as simply as possible;
 - (3) make key information prominent and easy to identify, including by means of headings and layout, display and font attributes of text, and by use of design devices such as tables, bullet points, graphs, graphics, audio-visuals and interactive media;
 - (4) avoid unnecessary disclaimers; and
 - (5) provide relevant information with an appropriate level of detail, to avoid providing too much information such that it may prevent *retail customers* from making effective decisions.
- 2A.5.8 **R** In supporting the understanding of *retail customers*, the *firm* must tailor communications provided to *retail customers*, taking into account:
- (1) the characteristics of *retail customers*, including any characteristics of vulnerability;
 - (2) the complexity of the *product*;

- (3) the communication channel(s) used; and
- (4) the role of the *firm*, including whether the *firm* is providing regulated advice or information only.

Interacting on a one-to-one basis

2A.5.9

R

When a *firm* is interacting directly with a *retail customer* on a one-to-one basis, such as in branch, during a telephone conversation or other interactive dialogue, the *firm* must, where appropriate:

- (1) tailor the communication to meet the information needs of that *retail customer*, taking into account whether they have characteristics of vulnerability; and
- (2) ask the *retail customer* whether they understand the information and if they have any further questions, particularly if the information is reasonably regarded as key information, such as where it prompts that *retail customer* to make a decision.

Testing, monitoring and adapting communications

2A.5.10

R

- (1) Where appropriate, a *firm* must:
 - (a) test communications before communicating them to *retail customers*; and
 - (b) (as set out in ■ PRIN 2A.9) regularly monitor the impact of the communications once they have been communicated, to identify whether they are supporting good outcomes for *retail customers*.
- (2) Where a *firm* has identified any issues in its communications through ■ PRIN 2A.5.10R(1), it must:
 - (a) investigate the issue;
 - (b) correct any deficiencies through:
 - (i) adapting its communications; and
 - (ii) (where appropriate) adapting its *products* or processes, for example its sales processes, if it is aware or ought to reasonably be aware that adapting its communications would not be sufficient in isolation to support good outcomes for *retail customers*; and
 - (c) (where appropriate) follow the requirements in relation to remedies and other action in ■ PRIN 2A.2.5R and ■ PRIN 2A.10.

2A.5.11

G

With regard to the *firm's* role, it would be more appropriate for the *firm* to:

- (1) test communications if the *firm* is or ought to reasonably be responsible for:
 - (a) the production of those communications; or
 - (b) adapting those communications after testing; and

- (2) monitor the impact of communications where the *firm* has direct interactions with *retail customers*, such as through the provision of customer services (whether outsourced in whole or in part).

2A.5.12 **G**

In determining whether testing of a communication is appropriate, a *firm* should consider factors such as:

- (1) the purpose of the communication and, in particular, if it is designed to prompt or inform a decision, and the relative importance of that decision;
- (2) the context of the communication, its timing, and its frequency (for example, it is likely to be more appropriate to test communications that could impact many *retail customers*);
- (3) the information needs of *retail customers*;
- (4) the characteristics of vulnerability of *retail customers*;
- (5) whether the scope for harm to *retail customers* is likely to be significant, including if the information being conveyed were misunderstood or overlooked by *retail customers*; and
- (6) whether, to support good outcomes for *retail customers*, it is more important to communicate information urgently, rather than carrying out testing beforehand.

2A.5.13 **G**

A *firm* should adapt its communications in accordance with **PRIN 2A.5.10R(2)(b)(i)** to support *retail customer* understanding if it identifies that:

- (a) there are areas of common misunderstanding among *retail customers*; or
 - (b) *retail customers* are not experiencing good outcomes, including particular groups of *retail customers* such as those with characteristics of vulnerability.
- (2) For the purposes of **PRIN 2A.5.13G(1)(a)**, if there is a notably different response by *retail customers* than was reasonably anticipated by the *firm* or ought to have been reasonably anticipated, including a notably lower response rate, following a communication prompting *retail customers* to take action, then this would suggest that the communication has not been understood.

2A.5.14 **R**

Where a *firm* identifies or becomes aware of a communication produced by another *firm* in its distribution chain that is not delivering good outcomes for *retail customers*, it must promptly notify the issue to the relevant firm in the distribution chain, such as a *manufacturer*.

Providing information to other firms

2A.5.15 **R**

A *firm* must provide information in good time to another *firm* in the same distribution chain, where such information is:

2A

- (1) requested by the other *firm* and is reasonably required; or
 - (2) otherwise considered to be reasonably required by the *firm*,
- so that it can be communicated to *retail customers*.

2A.6 Consumer Duty: retail customer outcome on consumer support

Application

2A.6.1

R

- (1) Other than in ■ PRIN 2A.6.6R, this section applies:
- (a) to all *firms* to whom *Principle 12* and ■ PRIN 2A apply, who are responsible for interacting directly with, and providing support to, *retail customers*, such as through its customer services functions and including where the *firm* outsources its interactions with *retail customers* to a third party (in whole or part);
 - (b) regardless of the channel used or intended to be used when interacting with, or providing support to, *retail customers*, including via *electronic communications* such as on social media; and
 - (c) to all support provided by a *firm* to *retail customers*, such as in the course of or in connection with the *firm* providing customer services, including:
 - (i) before, during, and after any sale of a *product*; and
 - (ii) support that does not relate to a specific *product*.
- (2) ■ PRIN 2A.6.6R applies to all *firms* to whom *Principle 12* and ■ PRIN 2A apply.

Design and delivery of customer support

2A.6.2

R

A *firm* must design and deliver support to *retail customers* such that it:

- (1) meets the needs of *retail customers*, including those with characteristics of vulnerability;
- (2) ensures that *retail customers* can use their *product* as reasonably anticipated;
- (3) ensures that it includes appropriate friction in its customer journeys to mitigate the risk of harm and give *retail customers* sufficient opportunity to understand and assess their options, including any risks; and
- (4) ensures that *retail customers* do not face unreasonable barriers (including unreasonable additional costs) during the lifecycle of a *product*, such as when they want to:
 - (a) make general enquiries or requests to the *firm*;

- (b) amend or switch the *product*;
- (c) transfer to a new *product* provider;
- (d) access a benefit which the *product* is intended to provide;
- (e) submit a claim;
- (f) make a *complaint*; or
- (g) cancel a contract, agreement or arrangement or otherwise terminate their relationship with the *firm*.

2A.6.3 **G** For the purposes of ■ PRIN 2A.6.2R(4):

- (1) unreasonable barriers are those which are likely to cause *retail customers* to take unreasonable additional steps to progress their objectives, including:
 - (a) steps which are:
 - (i) unreasonably onerous or time consuming;
 - (ii) complex for a *retail customer* to carry out; or
 - (iii) difficult for a retail customer to understand; and
 - (b) asking *retail customers* for unnecessary information or evidence;
- (2) where a firm has included appropriate friction in its customer journeys to comply with ■ PRIN 2A.6.2R(3), this would not amount to an unreasonable barrier; and
- (3) unreasonable additional costs includes where *retail customers* incur unreasonable exit fees or other charges, delays, distress or inconvenience.

2A.6.4 **G** A *firm* would be unlikely to meet its obligations in ■ PRIN 2A.6.2R if its support to *retail customers* causes or would be likely to cause:

- (1) prospective *retail customers* to be prioritised over existing retail customers;
- (2) unreasonable delays when *retail customers* attempt to engage with the *firm*, including disproportionately longer call waiting times to cancel or make changes to an existing *product* than to purchase a new *product*; or
- (3) unreasonable delays to:
 - (a) any payments due to *retail customers* after they have been agreed;
 - (b) the firm requesting necessary information or evidence from *retail customers*; or
 - (c) the *firm* processing information or evidence received from retail customers.

Dealing with representatives

2A.6.5

R

- (1) Where a *person* is authorised by a *retail customer* or by law to assist in the conduct of the *retail customer's* affairs (such as a power of attorney), the *firm* must provide the same level of support to that *person* that they would have provided to the *retail customer*.
- (2) ■ PRIN 2A.6.5R(1) does not apply where the *person* assisting in the conduct of the *retail customer's* affairs is also a *firm*.

Dealing with requests from other firms

2A.6.6

R

A *firm* must deal with reasonable requests from another *firm* in an effective way and in good time to enable the other *firm* to support *retail customers*.

2A.7 General

Expected standards under Principle 12 and PRIN 2A

- 2A.7.1** **R** *Principle 12* and the obligations in **PRIN 2A** must be interpreted in accordance with the standard that could reasonably be expected of a prudent *firm*:
- (1) carrying on the same activity in relation to the same *product*; and
 - (2) taking appropriate account of the needs and characteristics of *retail customers* based on the needs and characteristics of *retail customers* in the relevant target market or of individual *retail customers* as the context requires.
- 2A.7.2** **G** What is reasonable depends on all the relevant circumstances, including:
- (1) the nature of the *product* being offered or provided, in particular:
 - (a) the risk of harm to *retail customers*. For example, if a *product* is higher risk, *firms* should take additional care to ensure it meets *retail customers'* needs, characteristics and objectives and is targeted appropriately;
 - (b) the *product's* relative complexity. *Retail customers* may find it more difficult to assess the features, suitability or value offered by more complicated *products*. Long-term products where the outcome is not easy to predict, or non-standard charging structures, or other features which may not be easy for *retail customers* to understand may require greater care from a *firm* to promote, monitor and support consumer understanding;
 - (c) the costs, fees and charges involved with the *product*;
 - (d) the relative utility to *retail customers* of the *product* as a whole and of specific features, options, or services within the *product*, if subject to separate fees or charges;
 - (2) the characteristics of the *retail customer* or *retail customers* including (to the extent that a *firm* either knows about or should reasonably have known about them), in particular:
 - (a) their reasonable expectations in relation to the *product*; and
 - (b) their resources, degree of financial capability or sophistication, characteristics of vulnerability and corporate structure (where relevant).
 - (3) the *firm's* role in relation to the *product*, including:

- (a) the *firm's* relationship with the *retail customer*. Acting reasonably does not require a *firm* to assume a fiduciary duty or require an advisory service where it does not already exist;
- (b) whether the *firm* has provided or will provide advice to the *retail customer*. What is reasonable may be different where advice is being provided;
- (c) the *firm's* role in the *product's* distribution chain, in particular its role in determining or materially influencing outcomes for *retail customers* in relation to the *product*;
- (d) the stage in the *firm's* relationship with the *retail customer*. There will be times when retail customers are particularly exposed to harm, for example when they fall into arrears or are considering long-term investment decisions. The actions a *firm* needs to take to be acting reasonably in such circumstances may be greater than when a *retail customer* is making decisions which carry a lesser risk of adverse outcomes.

2A.7.3 G Acting in a way that could reasonably be expected of a prudent *firm* requires more than adopting a single solution that is reasonable. It includes (among other things) considering whether the preferred solution provides good outcomes for all *retail customers* affected or only some; and if only some, why it does not work for all, and how best to identify additional actions which might mitigate the outcome for those adversely affected.

Protected characteristics and characteristics of vulnerability.....

2A.7.4 G In relation to the needs and characteristics of *retail customers*, a *firm* should, among other things:

- (1) pay appropriate regard to the nature and scale of characteristics of vulnerability that exist in any relevant *target market*;
- (2) pay appropriate regard to the impact of characteristics of vulnerability on the needs of *retail customers* in any relevant *target market*;
- (3) when dealing with a particular *retail customer* pay appropriate regard to the needs and characteristics of that *retail customer*, such as characteristics of vulnerability;
- (4) assist frontline staff to understand how to actively identify information that could indicate vulnerability and, where relevant, seek information from *retail customers* with characteristics of vulnerability that will allow staff to respond to their needs; and
- (5) set up systems and processes in a way that supports and enables *retail customers* with characteristics of vulnerability to disclose their needs.

2A.7.5 G (1) *Firms* should be aware that groups of *retail customers* with specific protected characteristics may have, or be more likely to have, characteristics of vulnerability, for example older customers. In addition, where health is a driver of vulnerability it will likely have substantial overlap with the protected characteristic of 'disability' under the Equality Act 2010. *Firms* should be mindful of this when

considering whether they are compliant with *Principle 12* and ■ PRIN 2A and their obligations under the Equality Act 2010 or equivalent legislation.

- (2) *Firms* should keep themselves apprised of any evidence that may emerge that *retail customers* with specific protected characteristics are more likely to have characteristics of vulnerability. *Firms* should take account of any such evidence when considering whether they are compliant with *Principle 12* and ■ PRIN 2A and their obligations under the Equality Act 2010 or equivalent legislation.

2A.8 Governance and culture

2A

Governance, strategy and policies

2A.8.1

R

A *firm* must:

- (1) ensure that *Principle 12* and the obligations in this chapter are reflected in their strategies, governance, leadership and people policies, including incentives at all levels; and
- (2) ensure that *retail customer* outcomes are a central focus of:
 - (a) the *firm's* risk control arrangements under SYSC; and
 - (b) the *firm's* internal audit function.

Staff incentives

2A.8.2

G

A *firm* should not use staff incentives, performance management or remuneration structures in a way that conflicts with their obligations under *Principle 12* and ■ PRIN 2A. *Firms* should be aware that these structures are capable of causing harm to *retail customers* and should design their structures in a way that is consistent with ensuring good outcomes for *retail customers*.

Governing body report

2A.8.3

R

A *firm* must prepare a report for its governing body setting out the results of its monitoring under ■ PRIN 2A.9 and any actions required as a result of the monitoring.

2A.8.4

R

At least annually, the governing body of a *firm* must:

- (1) review and approve the *firm's* report on the outcomes being received by *retail customers*;
- (2) confirm whether it is satisfied that the *firm* is complying with its obligations under *Principle 12* and ■ PRIN 2A; and
- (3) assess whether the *firm's* future business strategy is consistent with its obligations under *Principle 12* and ■ PRIN 2A.

2A.8.5

R

When approving the *firm's* report under ■ PRIN 2A.8.4R(1), the governing body of the *firm* must also agree:

- (1) any action required to address any identified risk that *retail customers* may not receive good outcomes;
- (2) any action required to address any identified instance where *retail customers* have not received good outcomes; and
- (3) any amendments to the *firm's* business strategy to ensure that it remains consistent with meeting the *firm's* obligations under *Principle 12* and ■ PRIN 2A.

2A.9 Monitoring of consumer outcomes

General

- 2A.9.1** **R** This section sets out the general obligation on *firms* to monitor under *Principle 12* and **PRIN 2A** the outcomes that *retail customers* are experiencing from their *products*.
- 2A.9.2** **G** The purpose of the monitoring obligation is to enable *firms* to identify whether there are any risks that they are not meeting the requirements of the cross-cutting obligations and the *retail customer* outcomes, and consequently they are not acting to deliver good outcomes for *retail customers*.
- 2A.9.3** **G** The frequency of monitoring, and the nature of the information a *firm* must collect to effectively monitor the outcomes received by *retail customers* depends on the type of *firm* and its role in the distribution chain, the nature of the *product*, and the *target market*.
- 2A.9.4** **G**
- (1) The monitoring obligation applies proportionately to a *firm's* role in the distribution chain. Where a *firm* does not have direct contact with *retail customers* it should monitor the outcomes of the service it provides, having regard to any information it has about the outcomes experienced by *retail customers* at the end of the distribution chain.
 - (2) A *firm* that does not have direct contact with *retail customers* should act reasonably to obtain information about the outcomes experienced by *retail customers* of the *products* the *firm* has distributed.
- 2A.9.5** **G** To the extent that a *firm* is also required to carry out specific monitoring or reviews under any of the outcomes in **PRIN 2A.3** to **PRIN 2A.6**, the specific monitoring or reviews form part of the general monitoring required by this section and *firms* may utilise the information gathered through these processes in preparing the report required under **PRIN 2A.8.3R**.
- 2A.9.6** **G** In relation to communications, **PRIN 2A.5.10R** to **PRIN 2A.5.14R** set out specific requirements on the testing and monitoring of communications.
- 2A.9.7** **G** Where a *firm's* compliance with any other *rules* replaces their requirement to comply with provisions of **PRIN 2A**, or tends to show compliance with

provisions of ■ PRIN 2A, the *firm* may use any monitoring or reviews it carries out under those other *rules* in complying with its monitoring obligations under this section.

Requirement to monitor retail customer outcomes

2A.9.8 **R** A *firm* must regularly monitor the outcomes *retail customers* receive from:

- (1) the *products* the *firm* manufactures or distributes;
- (2) the communications the *firm* has with *retail customers*; and
- (3) the customer support the *firm* provides to *retail customers*.

2A.9.9 **R** The monitoring carried out by a *firm* must enable it to determine at least:

- (1) whether *retail customers* are being, or have been, sold *products* that have been designed to meet their needs, characteristics and objectives;
- (2) whether the *products* that *retail customers* purchase provide fair value and appropriate action has been taken to address *products* identified as not providing fair value;
- (3) whether *retail customers* are equipped with the right information to make effective, timely and properly informed decisions; and
- (4) whether *retail customers* receive the support they need.

2A.9.10 **R** The *firm's* monitoring must also enable it to identify:

- (1) whether the *firm* is complying with *Principle 12* and the cross-cutting obligations in ■ PRIN 2A.2;
- (2) whether for any *product* the *firm* manufactures or distributes, any group of *retail customers* is experiencing different outcomes compared to another group of *retail customers* of the same *product*; and
- (3) whether any *retail customers* have suffered harm as a result of the *firm's* acts or omissions.

Action required of firms

2A.9.11 **R** A *firm* must have in place processes to identify the root causes of any failure to deliver the outcomes listed in ■ PRIN 2A.9.9R for *retail customers*.

2A.9.12 **R** Where a *firm* identifies that:

- (1) *retail customers* are not receiving the outcomes listed in ■ PRIN 2A.9.9R, or there is a risk that *retail customers* will not receive these outcomes;

(2) any group of *retail customers* for a *product* are receiving worse outcomes than another group of *retail customers* for the same *product*;

(3) the *firm* is not complying with *Principle 12* and the cross-cutting obligations in ■ PRIN 2A.2,

it must take appropriate action to address the situation.

2A.9.13 **G** ■ PRIN 2A.9.12R does not require a *firm* to take action to remove the effects of risks inherent in a *product* that the *firm* reasonably believed the *retail customer* understood and accepted.

2A.9.14 **G** *Firms* should have regard to ■ PRIN 2A.10 in considering what may be appropriate action under ■ PRIN 2A.9.12R.

Record keeping

2A.9.15 **G** ■ SYSC 3 and ■ SYSC 9 contain high level requirements in relation to record keeping. *Firms* will need to decide, in line with these requirements, what records they need to keep in relation to their obligations under *Principle 12*, the cross-cutting obligations and the consumer outcomes.

Obligation to notify the FCA

2A.9.16 **G** *Firms* are reminded of their obligations under *Principle 11* to inform the *FCA* of anything relating to the *firm* of which the *FCA* would reasonably expect notice.

2A.9.17 **R** A *firm* in a distribution chain must notify the *FCA* if it becomes aware that any other firm in that distribution chain is not or may not be complying with *Principle 12* or ■ PRIN 2A.

2A.10 Redress or other appropriate action

Purpose

- 2A.10.1 **G** The purpose of this section is to set out the conduct required of *firms* where they identify foreseeable harm has been caused to *retail customers*.

Appropriate action

- 2A.10.2 **R** Where a *firm* is considering what action may be appropriate under ■ PRIN 2A.2.5R:

- (1) if a *complaint* or *MiFID complaint* has been received a *firm* shall follow the *rules* in *DISP* as applicable;
- (2) if no *complaint* or *MiFID complaint* has been received the following *rules* and *guidance* apply with the modifications set out below:
 - (a) ■ DISP 1.1A.20R as if it read:

Once foreseeable harm has been identified by a *MiFID investment firm*, the *firm* must:

- (1) investigate the circumstances which led to the foreseeable harm competently, diligently and impartially, obtaining additional information as necessary;
- (2) assess fairly, consistently and promptly:
 - (a) the subject matter of the foreseeable harm;
 - (b) [does not apply]
 - (c) what remedial action or redress (or both) may be appropriate;
 - (d) if appropriate, whether it has reasonable grounds to be satisfied that another *firm* may be solely or jointly responsible for causing the foreseeable harm;
- (3) comply promptly with any offer of remedial action or redress accepted by the *retail customer*.

- (b) ■ DISP 1.1A.21G as if it read:

Factors that may be relevant in the assessment of the foreseeable harm under DISP 1.1A.20R(2) include the following:

- (1) all the evidence available and the particular circumstances of the foreseeable harm;
- (2) similarities with complaints received by the *firm* and with other instances in which foreseeable harm has been caused without a complaint;
- (3) relevant guidance published by the *FCA*, other relevant regulators, the *Financial Ombudsman Service* or former schemes; and
- (4) appropriate analysis of decisions by the *Financial Ombudsman Service* concerning *complaints* which were similar in their fact pattern or outcomes to the circumstances which led to the foreseeable harm in question.

(c) ■ DISP 1.4.1R as if it read:

Once foreseeable harm has been identified by a *firm*, it must:

- (1) investigate the circumstances which led to the foreseeable harm competently, diligently and impartially, obtaining additional information as necessary;
- (2) assess fairly, consistently and promptly:
 - (a) the subject matter of the foreseeable harm;
 - (b) [does not apply]
 - (c) what remedial action or redress (or both) may be appropriate;
 - (d) if appropriate, whether it has reasonable grounds to be satisfied that another *firm* may be solely or jointly responsible for causing the foreseeable harm;

taking into account all relevant factors.

- (3) offer redress or remedial action when it decides this is appropriate;
- (4) explain to the *retail customer* promptly and in a way that is fair, clear and not misleading that harm has been identified, its assessment of the harm, its decision as to what action is appropriate and the fact that the *retail customer* has a right to make a *complaint* if it is not satisfied with that decision;
- (5) comply promptly with any offer of remedial action or redress accepted by the *retail customer*.

(d) ■ DISP 1.4.2G as if it read:

Factors that may be relevant in the assessment of the foreseeable harm under DISP 1.4.1R(2) include the following:

- (1) all the evidence available and the particular circumstances of the foreseeable harm;
- (2) similarities with *complaints* received by the *firm* and with other instances in which foreseeable harm has been caused without a *complaint*;

- (3) relevant guidance published by the *FCA*, other relevant regulators, the *Financial Ombudsman Service* or *former schemes*; and
- (4) appropriate analysis of decisions by the *Financial Ombudsman Service* concerning *complaints* which were similar in their fact pattern or outcomes to the circumstances which led to the foreseeable harm in question (the procedures for which are described in DISP 1.3.2AG).

2A.10.3 **R** A *firm*, *MiFID investment firm* or *third country investment firm* which identifies that it has caused *retail customers* foreseeable harm but which does not have a client relationship with that customer or the means to contact them shall take all reasonable steps to notify a customer of the matters in ■ DISP 1.4.1R as modified by ■ PRIN 2A.10.2R(2).

2A.10.4 **G** Reasonable steps for the purposes of ■ 2A.10.3R might include (among other things) contacting the *distributor* of the relevant *product* and asking whether information can be passed on to the *retail customer*.

2A.10.5 **R** Where a *firm*, *MiFID investment firm* or *third country investment firm* identifies that a *retail customer* has been caused harm but concludes that another *firm* in the distribution chain was the sole or joint cause of that harm, it shall promptly notify that other *firm* and provide appropriate information about the harm caused.

2A.11 Sale and purchase of product books

- 2A.11.1** **R** This section applies where:
- (1) a *firm* has purchased or purchases a *product* book from another *firm*; and
 - (2) a *firm* sells a *product* book.
- 2A.11.2** **R**
- (1) Where the *product* book was purchased before 31 July 2023, the *firm* must comply with *Principle 12* and ■ PRIN 2A.
 - (2) Unless:
 - (a) the *firm* was a co-manufacturer of the *product*; or
 - (b) the *firm* has significantly adapted the product on or after 31 July 2023,the requirement in (1) to comply with ■ PRIN 2A.3 and ■ PRIN 2A.4 is a requirement on the *firm* to use its best endeavours to comply with the applicable *rules* in those chapters.
- 2A.11.3** **G** A *firm* that is required to apply ■ PRIN 2A.3 or ■ PRIN 2A.4 to a *product* book on a 'best endeavours' basis should continue to have regard to the *RPPD* and should read references in the *RPPD* to *Principles 6* and *7* as referring to *Principle 12*.
- 2A.11.4** **R**
- (1) This *rule* applies where a *product* book is sold for the first time after 31 July 2023.
 - (2) The *firm* selling the *product* book must provide relevant information to the purchasing *firm* to enable the purchasing *firm* to comply with *Principle 12* and ■ PRIN 2A from the date of purchase.
 - (3) A *firm* which purchases a *product* book after 31 July 2023 must carry out sufficient due diligence to ensure they understand in particular:
 - (a) whether any group or groups of *retail customers* of the *product* have characteristics of vulnerability or as a group have in common a specific protected characteristic in the same form (for example customers of the same sex or race);

- (b) the outcome of the selling *firm's* product approval process for the *product* book and the outcome of any *product* reviews carried out by the selling *firm* under ■ PRIN 2A.3;
- (c) the benefits the *product* is intended to provide and the costs the *retail customer* pays for the *product*; and
- (d) the basis on which the *product* has been assessed as providing fair value under ■ PRIN 2A.4.

(4) The due diligence conducted by the purchasing *firm* must be sufficient to enable the purchasing *firm* to comply with *Principle 12* and ■ PRIN 2A in respect of the *product* book.

2A.11.5

R

Where a *firm* purchases a *product* book after 31 July 2023 and the first sale of that *product* book took place before 31 July 2023, the *firm* must apply ■ PRIN 2A.11.2R.