

**The Consumer Duty**

## Chapter 2A

# The Consumer Duty

## 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:
- 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

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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

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- (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

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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*.

2A.5.15

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**Providing information to other firms**

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

- (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*.