

CONSUMER DUTY INSTRUMENT 2022**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”) including as applied by paragraph 3 of Schedule 6 to the Payment Services Regulations 2017 (SI 2017/752) (“the PSRs”) and paragraph 2A of Schedule 3 to the Electronic Money Regulations 2011 (SI 2011/99) (“the EMRs”):
 - (a) section 64A (Rules of conduct);
 - (b) section 64C (Requirement for *relevant* authorised persons to notify regulator of disciplinary action);
 - (c) section 137A (The FCA’s general rules);
 - (d) section 137R (Financial promotion rules);
 - (e) section 137T (General supplementary powers);
 - (f) section 138C (Evidential provisions);
 - (g) section 139A (Power of the FCA to give guidance);
 - (h) section 247 (Trust scheme rules);
 - (i) section 261I (Contractual scheme rules);
 - (2) Regulation 120 (Guidance) of the PSRs;
 - (3) Regulation 60 (Guidance) of the EMRs;
 - (4) Regulation 6 (FCA Rules) of the Open-Ended Investment Companies Regulations 2001; and
 - (5) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA’s Handbook.
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 31 July 2023.

Amendments to the Handbook

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below.

(1)	(2)
Glossary of definitions	Annex A
Principles for Businesses (PRIN)	Annex B
Code of Conduct sourcebook (COCON)	Annex C
General Provisions (GEN)	Annex D
Product Intervention and Product Governance sourcebook (PROD)	Annex E

Notes

- E. In the Annexes to this instrument, the “notes” (indicated by “**Note:**” or “*Editor’s note:*”) are included for the convenience of readers, but do not form part of the legislative text.

Citation

- F. This instrument may be cited as the Consumer Duty Instrument 2022.

By order of the Board
15 July 2022

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

- closed product* a *product*:
- (1) where there are existing contracts with *retail customers* entered into before 31 July 2023; and
 - (2) which is not marketed or *distributed* to *retail customers* (including by way of renewal) on or after 31 July 2023; or
- COCON firm activities* (as defined in more detail in *COCON* 1.1.7AR(1) and in relation to conduct of a *person* in relation to a *firm*) the corresponding activities of the *firm* as referred to in *COCON* 1.1.6R to *COCON* 1.1.7R (To what conduct does it apply?).
- existing product* a *product* which:
- (1) was *manufactured*, marketed or *distributed* before 31 July 2023; and
 - (2) is marketed or *distributed* to *retail customers* (including by way of renewal) on or after 31 July 2023.
- non-retail financial instrument* a *financial instrument* in respect of which the conditions in either paragraphs (1)(a) and (b) or (2) are met:
- (1) (a) the marketing materials for the *financial instrument* (including the *prospectus*, if there is one) feature prominent and clear disclosures to the effect that the *financial instrument*:
 - (i) is being offered only to investors eligible for categorisation as *professional clients* or *eligible counterparties* under the *FCA's rules*; and
 - (ii) is not intended for *retail customers*;
 - (b) the issuer of the *financial instrument* or, in relation to secondary market offers, the distributor, has taken reasonable steps to ensure that the offer and any associated promotional communications are directed only to investors

eligible for categorisation as *professional clients* or *eligible counterparties*;

- product*
- (2) a minimum denomination or otherwise a minimum investment of £50,000 applies to the *financial instrument*, or equivalent amount for a *financial instrument* denominated in another currency, where the equivalent amount is calculated not more than three *business days* before the date the *financial instrument* was first issued.
- (1) any *specified investment distributed* or to be *distributed to retail customers*; and
 - (2) any service which involves or includes the carrying on of a *regulated activity* or an *ancillary activity*, providing a *payment service*, or issuing *electronic money* and activities connected to providing a *payment service* or issuing *electronic money* which is:
 - (a) provided directly to a *retail customer*;
 - (b) provided by Firm A to Firm B (further to an arrangement between them) for the purpose of enabling Firm B to distribute a *specified investment* to a *retail customer* or provide a *regulated activity* directly to a *retail customer* (for example providing a credit reference for the purposes of mortgage lending or consumer credit); or
 - (c) provided by Firm A to Firm B (further to an arrangement between them) to enable Firm B to operate or procure performance of the terms of a *specified investment*, or a *credit agreement*, that has been *distributed to a retail customer* (for example debt collection).
 - (3) The term '*product*' is intended to refer to the *distribution* of a *specified investment* or provision of a service generally and not, unless the contrary intention appears, to arrangements with or in relation to individual *retail customers*.

[**Note:** paragraph (1) includes a *fund* the *units* or *shares* of which are *distributed* or to be *distributed to retail customers*]

target market one or more groups of *retail customers* sharing common features whose characteristics, needs and objectives the *product* is or will be designed to meet, as identified by the *manufacturer* in accordance with *PRIN 2A.3.4R*.

retail market business the *regulated activities* and *ancillary activities* to those activities, *payment services*, issuing *electronic money*, and activities connected to the provision of *payment services* or issuing of *electronic money*, of a *firm* in a distribution chain (including a *manufacturer* and a *distributor*) which involves a *retail customer*, but not including the following activities:

- (1) the *manufacture* of a *product* that is:
 - (a) only marketed and approved for *distribution* to *non-retail customers*; and
 - (b) not a *product* provided by Firm A to Firm B (further to an arrangement between them) to enable Firm B to *distribute* another *product* to a *retail customer*, or operate a *specified investment* held by a *retail customer*;
- (2) activities carried on in relation to *non-retail financial instruments*;
- (3) an *offer* and any associated promotional communications, where that *offer* is:
 - (a) carried on by a *firm* with or for any issuer, holder or owner of a *financial instrument* and relates to the *offer, issue, underwriting, repurchase, exchange or redemption of, or the variation of the terms of that financial instrument* or any related matter; and
 - (b) of a *financial instrument* which meets all the following criteria:
 - (i) it is when issued, traded or intended to be traded on an *RIE* or *trading venue* operated by a *regulated market*;
 - (ii) it does not involve any actual or potential liability for the investor that exceeds the cost of acquiring the instrument;
 - (iii) it does not incorporate a clause, condition or trigger that could fundamentally alter the nature or risk of the investment or pay out profile, such as investments that incorporate a right to convert the instrument into a different investment; or where the return of initial capital invested at the end of the investment period is linked by a pre-set formula to the performance of an index, a combination of indices, a 'basket' of selected stocks (typically from an index or indices), or other factor or combination of factors;
 - (iv) it does not include any explicit or implicit exit charges that have the effect of making the investment illiquid even though there are technically frequent opportunities to dispose of, redeem or otherwise realise it;

(v) it is not a *collective investment scheme* or an *AIF*;
and

(vi) it is not a *structured finance product*;

[**Note:** paragraphs (ii) to (iv) derive from article 57 of the MiFID Org Regulation]

- (4) activities carried on in relation to *contracts of large risks* for a *commercial customer* or where the risk is located outside the *United Kingdom*;
- (5) the *regulated activity* of *administering a benchmark*, any *ancillary activity* to that activity and any activities undertaken by a benchmark administrator for the purpose of complying with the *Benchmarks Regulation*;
- (6) *insurance distribution activities* carried on by a *firm* in respect of a *group policy* that:
- (a) are carried on by the *firm* at the time the *group policy* is entered into or subsequently;
 - (b) are for the purpose of a *person*, other than the legal holder of the *policy*, becoming a *policyholder*; and
 - (c) do not involve any direct contact between the *firm* and that *person*.

Amend the following definitions as shown.

<i>banking customer</i>	(in <u>PRIN</u> and <i>BCOBS</i>):
	(a) a <i>consumer</i> ;
	(b) ...
<i>commercial customer</i>	(in <u>PRIN</u> , <i>ICOBS</i> and <i>SUP 16</i>) a <i>customer</i> who is not a <i>consumer</i> .
<i>complaint</i>	(1) ...
	...
	(3) (in <u>PRIN</u> , <i>DISP 1.1</i> and (in relation to <i>collective portfolio management</i>) in the <i>consumer awareness rules</i> , the <i>complaints handling rules</i> and the <i>complaints record rule</i>) ...
<i>conduct rules staff</i>	(1) any <i>persons</i> who are subject to <i>COCON</i> , as set out in <i>COCON 1 (Application)</i> ; <u>and</u>

	(2)	<u>a person is a “member” of the <i>conduct rules staff</i> of a firm in the circumstances described in COCON 1.1.7AR(2) (To what conduct does it apply?).</u>
<i>contracts of large risks</i>		(in <i>PRIN</i> , <i>ICOB</i> S and <i>PROD</i>) <i>contracts of insurance</i> covering risks within the following categories, in accordance with the UK provisions which implemented article 13(27) of the <i>Solvency II Directive</i> :
	(a)	<i>railway rolling stock, aircraft, ships</i> (sea, lake, river and canal vessels), <i>goods in transit, aircraft liability</i> and <i>liability of ships</i> (sea, lake, river and canal vessels);
	(b)	<i>credit</i> and <i>suretyship</i> , where the policyholder is engaged professionally in an industrial or commercial activity or in one of the liberal professions, and the risks relate to such activity;
	(c)	<i>land vehicles</i> (other than <i>railway rolling stock</i>), <i>fire and natural forces</i> , <i>other damage to property, motor vehicle liability, general liability</i> , and <i>miscellaneous financial loss</i> , in so far as the <i>policyholder</i> exceeds the limits of at least two of the following three criteria:
	(i)	balance sheet total: €6.2 million;
	(ii)	net turnover: €12.8 million;
	(iii)	average number of <i>employees</i> during the financial year: 250.
		[Note: article 13(27) of the <i>Solvency II Directive</i> and article 2(1)(16) of the <i>IDD</i>]
<i>distribute</i>	...	
	(5)	<u>(in <i>PRIN</i>) in relation to a <i>retail customer</i>, offering, selling, recommending, advising on, arranging, dealing, proposing or providing a <i>product</i> (including a renewal).</u>
		For the purposes of this definition <i>retail customer</i> has the same meaning as in <i>PRIN</i> .
<i>distributor</i>	...	
	(4)	<u>(in relation to <i>PRIN</i>) a firm which offers, sells, recommends, advises on, arranges, deals, proposes or provides a <i>product</i>.</u>
<i>eligible counterparty</i>	(1)	(for the purposes other than those set out in (2), <u>including in relation to the definition of <i>non-retail financial instrument</i></u>) (in accordance with <i>COBS</i> 3.6.1R) a client that is either a <i>per se eligible counterparty</i> or an <i>elective eligible counterparty</i> .

	(2)	...
<i>employer</i>	(1)	(for the purposes of <i>SUP</i> 15.11 (Notification of conduct rule breaches and disciplinary action) and <i>COCON</i> , and as defined in more detail in section 64A of the <i>Act</i> (Rules of conduct)), the <i>person</i> described as the “employer” in paragraph (4) of the <i>Glossary</i> definition of <i>employee</i> .
	(2)	...
<i>financial promotion rules</i>	...	
	(8)	<u>(in relation to <i>PRIN</i>) any or all of the <i>rules</i> in <i>PRIN</i> that impose requirements in relation to a <i>financial promotion</i> (including, in particular, <i>Principles</i> 7 and 12 and the <i>rules</i> in <i>PRIN</i> 2A.2 and <i>PRIN</i> 2A.5) but only to the extent that they apply to a <i>financial promotion</i>.</u>
	(9)	<u>(otherwise, in accordance with section 417(1) of the <i>Act</i>) a rule made under section 137R of the <i>Act</i>.</u>
<i>firm</i>	(1)	...
	...	
	(11)	(in <i>PRIN</i> 2 and <i>PRIN</i> 2A) includes an <i>electronic money institution</i> , a <i>payment institution</i> and a <i>registered account information service provider</i> .
<i>governance advisory arrangement</i>		(in <i>PRIN</i> , and <i>COBS</i> 19.5) ...
<i>IGC</i>		(in <i>PRIN</i> , <i>COBS</i> 19.5 and <i>COBS</i> 19.8) ...
<i>legacy non-investment insurance product</i>		(in <i>PRIN</i> and <i>PROD</i>) ...
<i>offer</i>	(1)	...
	(2)	...
	(3)	...
	(4)	<u>(in <i>PRIN</i>) an offer as defined in the <i>Takeover Code</i> or an <i>offer of transferable securities to the public</i>.</u>
<i>prospectus</i>	(1)	(in <i>LR</i> and <i>PRR</i> , <i>FEES</i> , and <i>FUND</i> 3 (Requirements for managers of alternative investment funds) <u>and in the definition</u>

of non-retail financial instrument) a *prospectus* required under the *Prospectus Regulation*.

- ...
- regulated market*
- (1) ...
- (2) (in addition, in *INSPRU*, *IPRU(INS)*, *SYSC 3.4*, ~~and~~ *COBS 2.2B* and for the purposes of *Principle 12* and *PRIN 2A* only) a market situated outside the *United Kingdom* which is characterised by the fact that:
- (a) it meets comparable requirements to those set out in (1); and
- (b) the *financial instruments* dealt with are of a quality comparable to those in a regulated market in the *United Kingdom*.
- (3) ...
- relevant scheme*
- (1) ...
- ...
- (3) (in *PRIN*, *SYSC 3.2*, *SYSC 4.1* and *COBS 19.5*) ...
- ...
- retail customer*
- (1) (other than in *PRIN* and *COCON*) an individual who is acting for purposes which are outside ~~his~~ their trade, business or profession.
- (2) (in *PRIN* and *COCON*):
- (a) in relation to activities to which *BCOBS* applies, a *banking customer* or prospective *banking customer*;
- (b) in relation to activities to which *ICOBS* applies, a *policyholder* or prospective *policyholder*;
- (c) in relation to activities to which *COBS* applies, a *customer* who is not a *professional client*;
- (d) in relation to *managing a UK UCITS*, *managing an AIF* or *establishing, operating or winding up a collective investment scheme*, a person who is a *unitholder*, an investor in an *AIF* or the beneficial owner of *units* or *shares* in a *fund*, excluding a *customer* who is or would be a *professional client*;

- (e) in relation to any other activities, a *customer* for the purpose of that activity;
- (f) where a *firm* is involved in a distribution chain, any *person* who is, or would be, the end *retail customer* in that distribution chain but is not a direct client of that *firm*;
- (g) where a *firm* carries out activities in relation to an *occupational pension scheme*, any *person* who is not a *client* of the *firm* but who is or would be a beneficiary in relation to *investments* held in that *occupational pension scheme*.

COCON 2.4.3R modifies this definition for the purposes of COCON.

[Note: article 2(d) of the Distance Marketing Directive]

[Note: for the purposes of *retail customer* the term *customer* has the definition given for the purposes of the activity for which it is defined, or the chapter of the Handbook which applies (as relevant).]

manufacture

- (1) ...
- ...
- (5) (in PRIN)
 - (a) creating, developing, designing, issuing, managing, operating, carrying out, or (for insurance or credit purposes only) underwriting a *product*; or
 - (b) in relation to a *closed product* or an *existing product*:
 - (i) having created, developed, designed or issued the *product*; or
 - (ii) currently managing, operating, carrying out, or (for insurance or credit purposes only) underwriting the *product*.

manufacturer

- (1) ...
- ...
- (4) (in PRIN) a *firm* which:
 - (a) creates, develops, designs, issues, manages, operates, carries out, or (for insurance or credit purposes only) underwrites a *product*; or

- (b) in relation to a *closed product* or an *existing product*:
- (i) created, developed, designed or issued the *product*; or
- (ii) manages, operates, carries out, or (for insurance or credit purposes only) underwrites the *product*.

Annex B

Amendments to the Principles for Businesses (PRIN)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

1 Introduction

...

1.2 Clients and the Principles

Characteristics of the client

1.2.1 G *Principles* 6 (Customers’ interests), 7 (Communications with clients), 8 (Conflicts of interest), 9 (Customers: relationships of trust) ~~and~~, 10 (Clients’ assets) and 12 (Consumer Duty) impose requirements on *firms* expressly in relation to their *clients* or *customers*. These requirements depend, in part, on the characteristics of the *client* or *customer* concerned. This is because what is “due regard” (in *Principles* 6 and 7), “fairly” (in *Principles* 6 and 8), “clear, fair and not misleading” (in *Principle* 7), “reasonable care” (in *Principle* 9), ~~or~~ “adequate” (in *Principle* 10) or “good outcomes” (in *Principle* 12) will, of course, depend on those characteristics. ~~For example, the information needs of a general insurance broker will be different from those of a retail general insurance policyholder.~~

...

2 The Principles

2.1 The Principles

2.1.1 R The Principles

...	
<u>12 Consumer Duty</u>	<u>A firm must act to deliver good outcomes for retail customers.</u>

Insert the following new chapter PRIN 2A, after PRIN 2 (The Principles). All of the text is new and is not underlined.

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* is set out in *PRIN 3*, including *PRIN 3.2.6R* to *PRIN 3.2.12G*. *Principle 12* only applies in relation to a *firm's retail market business*. 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.

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* imposes a higher and more exacting standard of conduct in relation to a *firm's retail market business* relative to what *Principles 6* or *7* would have otherwise required. *Principle 12* also has a broader application in relation to a *firm's retail market business* 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;
 - (d) 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 <i>firm</i> must enable and support <i>retail customers</i> to pursue their financial objectives. |
| 2A.2.15 | G | The conclusions a <i>firm</i> can properly reach about the financial objectives of <i>retail customers</i> will depend on the type of <i>product</i> it provides. |
| 2A.2.16 | G | A <i>firm</i> 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 <i>retail customers</i> are to purchase, use and enjoy the full benefits of the <i>product</i> in question. |
| 2A.2.17 | G | A <i>firm</i> which provides advisory or discretionary services is entitled to rely on the objectives that <i>retail customers</i> 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 <i>firm</i> must obtain under a provision of law (including, but not limited to, information required by <i>COBS 9.2.1R</i> , <i>COBS 9A.2.1R</i> , <i>COBS 10.2.1R</i> , <i>COBS 10A.2.1R</i> , <i>ICOBS 5.2.2R</i> , <i>MCOB 4.7A.6 R</i> , <i>MCOB 11.6.2R</i> and <i>CONC 5.2A.5R</i>) is relevant to whether a <i>firm</i> knew or could reasonably be expected to know that a customer has different financial objectives for the purposes of <i>PRIN 2A.2.16G</i> and <i>2A.2.17G</i> . |
| 2A.2.19 | G | To the extent that a <i>firm</i> becomes aware or should reasonably have become aware of a specific financial objective sought by a <i>retail customer</i> in connection with a <i>product</i> , it should consider how to support progress towards achieving that objective in its interactions with that <i>retail customer</i> . |
| 2A.2.20 | G | Enabling and supporting <i>retail customers</i> to pursue their financial objectives includes acting to empower <i>retail customers</i> 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 R
- (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 R 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 R 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*.

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 *PRIN 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*.

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 *2A.3.6R* and *PRIN 2A.3.21R* to *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 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.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* 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* within scope of *Principle 12* in relation to a *firm's retail market business*.

- 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 (1) 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:
- (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* 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* within scope of *Principle 12* in relation to a *firm's retail market business*.

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

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 *retail customer* 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 *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*.

Amend the following as shown.

3 Rules about application

3.1 Who?

...

- 3.1.6 R A firm will not be subject to a *Principle* or *PRIN 2A* to the extent that it would be contrary to the requirements of an *EU* measure passed or made before *IP completion day*, to the extent that those requirements continue to have effect after *IP completion day* under the *EUWA*.
- 3.1.7 G *PRIN 4* provides specific guidance on the application of the *Principles* and *PRIN 2A* for *MiFID business*.
- 3.1.8 R The *Principles* will not apply to the extent that they purport to impose an obligation which is inconsistent with requirements which implemented the *Payment Services Directive*, the *Consumer Credit Directive* or the *Electronic Money Directive*. For example, there may be circumstances in which *Principle 6 12* and *PRIN 2A* may be limited by the conduct of business obligations derived from the *Payment Services Directive* and the *Electronic Money Directive* and applicable to *payment service providers* and *electronic money issuers* (see Parts 6 and 7 of the *Payment Services Regulations* and Part 5 of the *Electronic Money Regulations*) or derived from the *Consumer Credit Directive* (see, for example, the information requirements in the *Consumer Credit (Disclosure of Information) Regulations 2010* (SI 2010/1013)).

...

- 3.1.10 R Only *Principles 1, 2, 3, 7, 9, and 11, 12* and *PRIN 2A*, and to the extent that *Principle 12* and *PRIN 2A* do not apply *Principle 7*, apply to a *TP UCITS qualifier* and a *TP AIFM qualifier*, and only with respect to the activities in *PRIN 3.2.2R* (Communication and approval of financial promotions).

...

- 3.1.12 R *Principle 12* and *PRIN 2A* only apply where a *client* is a *retail customer*, or there is distribution chain which involves a *retail customer*.

- 3.1.13 R *Principle 12* and *PRIN 2A* apply to:

- (1) a *TP firm*; and
- (2) a *Gibraltar-based firm*.

3.2 What?

- 3.2.1A R *PRIN* (other than *Principle 12* and *PRIN 2A*) applies with respect to the carrying on of:
- (1) *regulated activities*;
 - (2) activities that constitute *dealing in investments as principal*, disregarding the exclusion in *article 15* of the *Regulated Activities Order* (Absence of holding out etc);

- (3) *ancillary activities in relation to designated investment business, home finance activity, credit-related regulated activity, insurance distribution activity and accepting deposits; and*
- (4) *activities directly arising from insurance risk transformation.*

...

Principle 12 and PRIN 2A: additional application provisions

- 3.2.6 R *Principle 12 and PRIN 2A apply to a firm’s retail market business only, including in respect of existing products and closed products.*
- 3.2.7 R *Where a firm’s retail market business involves operating in a distribution chain, Principle 12 and PRIN 2A apply only to the extent that the person is responsible in the course of that retail market business for determining or materially influencing retail customer outcomes.*
- 3.2.8 R *Subject to PRIN 3.2.7R, Principle 12 and PRIN 2A do not apply to activities to the extent that those activities are not included in a rule which sets out the scope of protections offered to retail customers by COBS, ICOBS, MCOB, BCOBS, CMCOB, FPCOB, PROD or CONC.*
- 3.2.9 G *Where an activity is carried on within the scope of an exemption in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 it is not an activity to which Principle 12 and PRIN 2A apply.*

Interaction between Principle 12 and Principles 6 and 7

- 3.2.10 R *Principles 6 and 7 do not apply to a firm’s activities to the extent that Principle 12 and PRIN 2A apply.*
- 3.2.11 G *Activities to which Principles 6 and 7 rather than Principle 12 and PRIN 2A may apply include, for example, services provided to professional clients.*
- 3.2.12 G *Principle 12 and PRIN 2A have a broader application than Principles 6 and 7, for example they apply to firms in the distribution chain for whom the retail customer may not be a client.*

...

3.3 Where?

- 3.3.1 R Territorial application of the Principles

Principle	Territorial application
...	...
<i>Principles 6, 7, 8, 9₂ and 10</i>	<i>Principle 8, in a prudential context, applies with respect to activities wherever they are carried on; otherwise these Principles apply with respect to</i>

	activities carried on from an establishment maintained by the <i>firm</i> (or its appointed representative) in the <i>United Kingdom</i> , or in respect of <i>regulated claims management activities</i> , apply with respect to activity carried on in <i>Great Britain</i> , even if the establishment from which it is carried on is not located in the <i>UK</i> (see <i>PERG 2.4A</i>), unless another applicable <i>rule</i> or <i>onshored regulation</i> which is relevant to the activity has a wider territorial scope, in which case the <i>Principle</i> applies with that wider scope in relation to the activity described in that <i>rule</i> or <i>onshored regulation</i> .
<i>Principle 11</i>	applies with respect to activities wherever they are carried on.
<u><i>Principle 12 and PRIN 2A</i></u>	<u>apply with respect to activities carried on with <i>retail customers</i> located in the <i>United Kingdom</i> unless another applicable <i>rule</i> or <i>onshored regulation</i> which is relevant to the activity has a different territorial scope, in which case <i>Principle 12 and PRIN 2A</i> apply with that scope in relation to the activity described in that <i>rule</i> or <i>onshored legislation</i>.</u>

...

3.4 General

...

Guarantors etc

- 3.4.3A R (1) Paragraph (2) applies in relation to an *individual* who:
- (a) has provided, or is to provide, a guarantee or an indemnity (or both) in relation to a *regulated credit agreement*, a *regulated consumer hire agreement* or a *P2P agreement*; and
 - (b) is not the *borrower* or the *hirer*.
- (2) If the *individual* is not a *customer*, they are to be treated as if they were a *customer* for the purposes of *Principles 6 and 7* and as if they were a *retail customer* for the purposes of *Principle 12 and PRIN 2A*.
- (3) For the purposes of this *rule*, a guarantee does not include a *legal or equitable mortgage* or a *pledge*.

...

4 Principles: MiFID business

4.1 Principles: MiFID business

- 4.1.1 G *PRIN 3.1.6R* gives effect to the provisions of the *EUWA* concerning the continuing application of the principle of the supremacy of *EU* law. It ensures that the *Principles* and *PRIN 2A* do not impose obligations upon *firms* which are inconsistent with a relevant *EU* measure. If a *Principle* or *PRIN 2A* does purport to impose such an obligation *PRIN 3.1.6R* disapplies that *Principle* or provision of *PRIN 2A*, but only to the extent necessary to ensure compatibility with the relevant *EU* measure. This disapplication has practical effect only for certain matters covered by *MiFID*, which are explained in this section.

Where?

- 4.1.2 G Under *PRIN 3.3.1R*, the territorial application of a number of *Principles* and *PRIN 2A* to a *UK MiFID investment firm* is extended to the extent that another applicable *rule* or *onshored regulation* which is relevant to an activity has a wider territorial scope.

...

What?

- 4.1.4 G (1) ...
- (2) Under *PRIN 3.1.6R*, these disapplications may affect *Principles 1, 2, 6, and 9, 12 and PRIN 2A*. *PRIN 3.1.6R* applies only to the extent that the application of a *Principle* or *PRIN 2A* would be contrary to the *UK's* obligations under a relevant *EU* measure in respect of a particular transaction or matter. In line with *MiFID*, these limitations relating to *eligible counterparty business* and transactions under the rules of a *multilateral trading facility* or on a *regulated market* only apply in relation to a *firm's* conduct of business obligations to its clients derived from *MiFID*. They do not limit the application of those *Principles* or *PRIN 2A* in relation to other matters, such as client asset protections, systems and controls, prudential requirements and market integrity. Further information about these limitations is contained in *COBS 1 Annex 1*.
- (3) *Principles 3, 4, 5, 7, 8, 10 and 11* are not limited in this way.

...

TP 1 Transitional provisions

TP 1.1

	Material to which the transitional provision applies		Transitional Provision	Transitional Provision: dates in force	Handbook provision: coming into force
1.	<i>PRIN 1 Annex 1R 1.2(2)</i>	R	A <i>firm</i> need not comply with <i>PRIN 1 Annex 1R 1.2(2)</i> in relation to an <i>eligible counterparty</i> if the <i>client</i> was correctly categorised as a <i>market counterparty</i> on 31 October 2007 and the <i>firm</i> complied with <i>COB 4.1.12R(2)</i> (Large intermediate customer classified as market counterparty).	From 1 November 2007 indefinitely	1 November 2007
<u>2.</u>	<u><i>Principle 12 and PRIN 2A</i></u>	R	<u><i>Principle 12 and PRIN 2A apply in relation to ancillary activities or other connected activities in accordance with PRIN 3.2 where those activities are carried on after 31 July 2023 regardless of whether the underlying activities were carried on before or after 31 July 2023.</i></u>	<u>From 31 July 2023 indefinitely</u>	<u>31 July 2023</u>
<u>3.</u>	<u><i>Principle 12 and PRIN 2A</i></u>	G	<u>An example of how <i>PRIN TP 1.1</i> paragraph 2 applies is that a <i>firm</i> which has accepted a deposit prior to 31 July 2023 would be subject to <i>Principle 12 and PRIN 2A</i> in respect of customer services or other <i>ancillary activities</i> related to that deposit carried on after 31 July 2023.</u>	<u>From 31 July 2023 indefinitely</u>	<u>31 July 2023</u>

	Material to which the transitional provision applies		Transitional Provision	Transitional Provision: dates in force	Handbook provision: coming into force
<u>4</u>	<u>Principle 12, PRIN 2A</u>	R	<u>Except to the extent specified in PRIN TP5 and TP6, the provisions listed in column 2 only apply to a closed product from 31 July 2024.</u>	<u>From 31 July 2023 indefinitely</u>	<u>31 July 2023</u>
<u>5</u>	<u>PRIN 2A.3 and PRIN 2A.4</u>	R	<u>A manufacturer of a closed product must review the closed product by 31 July 2024 and ensure it meets the requirements of PRIN 2A.3 and PRIN 2A.4, including taking any appropriate mitigating action required by those rules.</u>	<u>From 31 July 2023 to 31 July 2024</u>	<u>31 July 2023</u>
<u>6</u>	<u>PRIN 2A.11.4R</u>	R	<p><u>Where a firm proposes to sell a book of closed products between 31 July 2023 and 30 July 2024 inclusive:</u></p> <p>(1) <u>the purchasing firm will only be required to comply with Principle 12 and PRIN 2A from 31 July 2024;</u></p> <p>(2) <u>the selling firm is not required to provide the information specified in PRIN 2A.11.4R(3)(b) and (d); and</u></p> <p>(3) <u>the selling firm must provide relevant information to enable the purchasing firm to comply with the</u></p>	<u>From 31 July 2023 to 31 July 2024</u>	<u>31 July 2023</u>

	Material to which the transitional provision applies		Transitional Provision	Transitional Provision: dates in force	Handbook provision: coming into force
			<u>obligations that will apply to it from 31 July 2024.</u>		
<u>7</u>	<u>PRIN 2A.8.3R-2A.8.5R and PRIN 2A.9</u>	<u>G</u>	<u>Where a firm has both existing and closed products the first annual report compiled by the firm under PRIN 2A.8.3R-2A.8.5R using its monitoring under PRIN 2A.9 need only refer to the firm's new and existing products.</u>	<u>From 31 July 2023 indefinitely</u>	<u>31 July 2023</u>

Annex C

Amendments to the Code of Conduct sourcebook (COCON)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

1 Application and purpose

1.1 Application

...

To whom does it apply?

...

1.1.3 R *Rules 1 to ~~5~~ 6 in COCON 2.1 apply to all conduct rules staff.*

...

1.1.5 G ...

1.1.5A R The conduct of a member of the *conduct rules staff* of a *firm* is not within the scope of *Rule 6* in COCON 2.1 (You must act to deliver good outcomes for retail customers):

- (1) unless the corresponding COCON firm activities of the firm are within the scope of PRIN 3.1 (Who?) so far as it applies to Principle 12; and
- (2) except to the extent that Principle 12 applies to that firm under PRIN 3.1.

To what conduct does it apply?

1.1.5B R (1) The restrictions of the scope of COCON in COCON 1.1.7AR to COCON 1.1.7ER (when they apply) are in addition to those in COCON 1.1.6R to COCON 1.1.7R.

(2) The restrictions of the scope of COCON in COCON 1.1.7AR to COCON 1.1.7ER (when they apply) are cumulative.

1.1.5C G (1) The effect of COCON 1.1.5BR(1) is that conduct that is within the scope of COCON 1.1.7AR to COCON 1.1.7ER but outside the scope of COCON 1.1.6R to COCON 1.1.7R is outside the scope of COCON and vice versa.

(2) The effect of COCON 1.1.5BR(2) is that conduct of a member of the *conduct rules staff* of a *firm*:

- (a) is outside the scope of COCON even if it is excluded by only one of the rules in COCON 1.1.7AR to COCON 1.1.7ER; and
- (b) is outside the scope of:
 - (i) Rule 4 in COCON 2.1 (You must pay due regard to the interests of customers and treat them fairly) even if the only rule excluding it is COCON 1.1.7ER; and
 - (ii) Rule 6 in COCON 2.1 (You must act to deliver good outcomes for retail customers) even if the only rule excluding it is COCON 1.1.7CR.

...

1.1.7 R ...

1.1.7-A R (1) The term “COCON firm activities” means (in relation to conduct of P in relation to Firm A) the corresponding activities of Firm A as referred to in COCON 1.1.6R to COCON 1.1.7R (To what conduct does it apply?).

(2) A person is a member of the conduct rules staff of Firm A if they meet the description of P in relation to that firm in COCON 1.1.6R to COCON 1.1.7R.

(3) The terms “P” and “Firm A” have the same meaning as they do in COCON 1.1.6R to COCON 1.1.7R.

1.1.7A R ...

(3) ...

(4) This rule does not apply to Rule 6 in COCON 2.1 (You must act to deliver good outcomes for retail customers).

1.1.7B R ...

1.1.7C R The conduct of a member of the conduct rules staff of a firm is not within the scope of Rule 6 in COCON 2.1 (You must act to deliver good outcomes for retail customers) unless the corresponding COCON firm activities of the firm are within the scope of PRIN 3.2 (What?) so far as it applies to Principle 12.

1.1.7D G The effect of COCON 1.1.7C is that a person’s conduct is not within the scope of Rule 6 in COCON 2.1 if the related activities of the firm fall outside the scope of Principle 12. If Principle 12 applies, Rule 6 in COCON 2.1 only applies if the conduct is also within the scope of the other relevant COCON application rules (although one of the COCON application rules (COCON 1.1.7AR) does not apply to Rule 6).

1.1.7E R To the extent that Rule 6 in COCON 2.1 (You must act to deliver good outcomes for retail customers) applies to the conduct of a person, Rule 4 in

COCON 2.1 (You must pay due regard to the interests of customers and treat them fairly) does not apply to that conduct of that person.

- 1.1.8 G (1) More than one of COCON 1.1.6R to ~~COCON 1.1.7BR~~ COCON 1.1.7ER may apply to the same individual performing several roles.

...

...

Where does it apply?

- 1.1.8B R The restrictions of the scope of COCON in COCON 1.1.9R to COCON 1.1.10R on the one hand and COCON 1.1.11C on the other are cumulative.

...

- 1.1.11B G ...

- 1.1.11C R The conduct of a member of the *conduct rules staff* of a *firm* is not within the scope of Rule 6 in COCON 2.1 (You must act to deliver good outcomes for retail customers) unless the corresponding COCON firm activities of the firm are within the scope of PRIN 3.3 (Where?) so far as it applies to Principle 12.

- 1.1.11D G The effect of COCON 1.1.8BR and COCON 1.1.11CR is that conduct of a member of a firm's *conduct rules staff* is only within the territorial scope of Rule 6 in COCON 2.1 if it is within the scope of COCON 1.1.9R to COCON 1.1.10R and the corresponding activity of their firm is within the territorial scope of Principle 12 as set out in PRIN 3.3.

...

2 Individual conduct rules

2.1 Individual conduct rules

...

- 2.1.5 R ...

- 2.1.6 R Rule 6: You must act to deliver good outcomes for retail customers.

[Note: See COCON 2.4 for what this means]

...

Insert the following new section COCON 2.4, after COCON 2.3 (Firms: training and breaches). All of the text is new and is not underlined.

2.4 The Consumer Duty

Application

- 2.4.1 R This section applies to *Rule 6* in *COCON 2.1* (You must act to deliver good outcomes for retail customers).
- 2.4.2 R In this section, the term “you” means a member of a *firm’s conduct rules staff*.

Meaning of retail customer

- 2.4.3 R (1) This *rule* describes how the definition of *retail customer* applies for the purposes of *Rule 6*.
- (2) A *retail customer* means, in relation to a member of the *conduct rules staff* of a *firm*, a *retail customer* of that *firm* for the purposes of *PRIN*.
- 2.4.4 G A *person* may be a *retail customer* of a *firm* for the purposes of *Rule 6* even though that *person* is not a direct client of that *firm* and there is no direct relationship between them. This is in particular the effect of paragraphs (2)(f) and (2)(g) of the definition of *retail customer*.

Obligations: Introduction

- 2.4.5 R (1) *COCON 2.4.6R* to *COCON 2.4.8R* exhaust what is required by *Rule 6*.
- (2) Any reference in the *Handbook* to the obligations on a member of a *firm’s conduct rules staff* under *Rule 6* is a reference to the requirements imposed by *COCON 2.4.6R* to *COCON 2.4.8R*.

Obligations: Rules

- 2.4.6 R (1) You must act in good faith towards *retail customers*.
- (2) 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*.
- 2.4.7 R You must avoid causing foreseeable harm to *retail customers*.
- 2.4.8 R You must enable and support *retail customers* to pursue their financial objectives.

Reasonable application of Individual Conduct Rule 6

- 2.4.9 R The obligations in *Rule 6* must be interpreted in accordance with the standard that could reasonably be expected of a prudent *person* subject to *COCON* (as set out in *COCON 1* (Application)):
- (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.

References to Principle 12

- 2.4.10 R Any reference in *COCON* to *Principle 12* must be read in accordance with *PRIN 2A.1.1R* and *PRIN 2A.1.2R* (Application) and *PRIN 2A.2.26R* (Interaction between Principle 12 and cross-cutting obligations).

Amend the following as shown.

4 Specific guidance on individual conduct rules

4.1 Specific guidance on individual conduct rules

...

- 4.1.18 G ...

Rule 6: You must act to deliver good outcomes for retail customers: Relevance of rules and guidance in PRIN

- 4.1.19 G The guidance in PRIN 2A.2 (Cross-cutting obligations) will also be helpful in interpreting COCON 2.4.6R to COCON 2.4.8R and thus Rule 6.

- 4.1.20 G (1) The rules in PRIN 2A.2, insofar as not mirrored in COCON, will also be helpful in interpreting COCON 2.4.6R to COCON 2.4.8R and thus Rule 6.

(2) So for example, in line with PRIN 2A.2.9R, in COCON 2.4.7R:

- (a) foreseeable harm may be caused by both act and omission;
- (b) if the relationship of the firm for which the relevant member of its conduct rules staff works with a retail customer is through its role in a distribution chain, foreseeable harm may be caused even where another firm in that chain also contributes to the harm; and
- (c) foreseeable harm may be caused even where another person working for the firm is also responsible for or contributes to the harm.

- 4.1.21 G The outcomes rules in PRIN 2A.3 to PRIN 2A.6 are also useful in defining what is required by Rule 6. However, the outcomes rules do not exhaust Principle 12 and PRIN 2A.2 and so those rules are not a comprehensive guide to Rule 6.

- 4.1.22 G A reasonableness requirement applies to *Rule 6* (see *COCON 2.4.9R*). The *guidance* in *PRIN 2A.7 (General)* on the corresponding *PRIN rule* will also be helpful in interpreting *COCON 2.4.9R*.
- 4.1.23 G *PRIN 2A* applies to the whole of the *firm*. Particularly for junior staff, this may mean that it sometimes imposes requirements or sets out expectations that are beyond the scope of the job of a member of a *firm's conduct rules staff*, thereby limiting its use as a guide to what is required under *Rule 6*. However, even when that is the case, it may still be useful as a guide to what a member of a *firm's conduct rules staff* should try to help their *firm* achieve within the scope of their job.

Rule 6: You must act to deliver good outcomes for retail customers: Relationship with Rule 4

- 4.1.24 G In general terms, *Rule 6* imposes a higher and more exacting standard of conduct in relation to a *firm's retail market business* relative to what *Rule 4* in *COCON 2.1* (You must pay due regard to the interests of customers and treat them fairly) would have otherwise required. *Rule 6* also has a broader application in relation to a *firm's retail market business* relative to *Rule 4*, 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.
- 4.1.25 G While the *guidance* on *Rule 4* in *COCON 2.1* will remain relevant to someone in considering their obligations under *Rule 6*, a *person* should also take due account of the inherent limits of *guidance* on *Rule 4* in light of the factors in *COCON 4.1.24G*.
- 4.1.26 G To the extent that the *guidance* on *Rule 4* in *COCON 2.1* says that behaviour would amount to a breach of *Rule 4* in the event that *Rule 4* had applied, that behaviour is likely to amount to a breach of *Rule 6*.
- 4.1.27 G Where a *person* is acting in accordance with *guidance* on *Rule 4*, that should not be relied on alone in considering how to comply with *Rule 6*. A *person* also needs to consider all their obligations not only under *COCON*, but under any other applicable law.

Rule 6: You must act to deliver good outcomes for retail customers: Scope

- 4.1.28 G *Rule 6* applies to all *conduct rules staff*, regardless of whether the *person* has direct contact or dealings with *retail customers*. *Persons* subject to the *rules* in *COCON* should consider how their actions (or their failure to act) can affect the interests of *retail customers* or result in *retail customers* not obtaining a good outcome.

Rule 6: You must act to deliver good outcomes for retail customers: Reasonable application

- 4.1.29 G *COCON 2.4.9R* says that *Rule 6* must be interpreted in accordance with the standard that could reasonably be expected of a prudent member of a *firm's*

conduct rules staff. Factors relevant to this standard (in addition to the factors referred to in the material referred to in COCON 4.1.22G) include:

- (1) their seniority;
- (2) the scope of their job and in particular the degree to which the responsibilities of the job are able to affect the outcomes experienced by retail customers;
- (3) their level of expertise and experience;
- (4) the expertise and experience that their firm reasonably expects them to have;
- (5) the expertise and experience that their firm should (under the regulatory system) ensure they have; and
- (6) the degree of discretion and judgment the person has in their job, including, for example, whether they are bound to a script or process when dealing with retail customers and how much discretion and judgment any such script or process leaves to them.

4.1.30 G Someone in a management position is likely to have a greater ability to influence the outcomes experienced by retail customers than someone who is not. As described in COCON 4.1.4G to COCON 4.1.8G (Acting with due skill, etc as a manager (rule 2)) and, in the case of an SMF manager, COCON 4.2 (Specific guidance on senior manager conduct rules), someone in a management position has a wide duty to understand, manage, control and oversee the business for which they are responsible. A manager should perform those duties with a view to ensuring that retail customers receive good outcomes.

4.1.31 G The ability of a manager of a business area to achieve good outcomes for retail customers is likely to reflect the ability of their business area to do so. So for example the head of a business area dealing with retail customers will have a correspondingly significant responsibility to ensure that those retail customers get good outcomes.

4.1.32 G Seniority may be relevant to the extent to which it is reasonable for a member of a firm's conduct rules staff to be expected to:

- (1) analyse how their area of responsibilities fits into the overall systems and processes of the firm for ensuring good outcomes for retail customers;
- (2) analyse the policies and procedures about retail customers the firm imposes on the person and on the part of the business in which they work; and
- (3) make suggestions for changes to those things.

- 4.1.33 G Seniority may also be relevant to the extent to which it is reasonable to expect a member of a *firm's conduct rules staff* to be concerned with policies and procedures about *retail customers* on a *firm-wide* basis and not just for their area of direct responsibility. This is particularly the case for *SMF managers* who are members of their *firm's governing body* or other senior management forums and for other members of a *firm's governing body*.
- 4.1.34 G On the other hand, the scope of the job of a junior staff member carrying out a back office function may not give much of an opportunity to take steps to ensure good outcomes for a *retail customer* on the sale of a *product*.
- 4.1.35 G A salesperson or a member of the customer support staff is likely to have a significant influence on the outcomes that a *retail customer* receives. This is the case even if they are junior or subject to a detailed set of procedures.

4.2 Specific guidance on senior manager conduct rules

...

SC4: You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice

...

4.2.30 G ...

4.2.31 G The fact that the *firm* for which an *SMF manager* works is under an obligation to report something to the *FCA* is relevant to the *SMF manager's* duties under SC4. So for example if the *firm* for which an *SMF manager* works is obliged by *PRIN 2A.9.17R* to notify the *FCA* that another *firm* is not or may not be complying with *Principle 12* or *PRIN 2A*, the *SMF manager* should:

- (1) ensure that the *firm* reports that to the *FCA* (or do so themselves) if the matter is within the scope of the *SMF manager's* responsibilities;
or
- (2) check whether the *firm* has notified the matter if the matter is outside the responsibilities of the *SMF manager* but the *SMF manager* is unable to assume that the *firm* has notified it.

...

Annex D

Amendments to the General Provisions (GEN)

In this Annex, underlining indicates new text.

2 Interpreting the Handbook

...

2.2 Interpreting the Handbook

...

Guidance applying while a firm has temporary permission

...

2.2.35A G A *TP firm* should refer to the provisions listed below, which identify the *rules* and *guidance* in their sourcebooks that came into force after *IP completion day* and in respect of which special provision has been made to apply them to *TP firms*.

PRIN 3.1.13R,

COBS 1.1.1CR,

...

...

Annex E

Amendments to the Product Intervention and Product Governance sourcebook (PROD)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Product Intervention and Product Governance Sourcebook (PROD)

...

1.3 Application of PROD 3

...

Other firms manufacturing or distributing financial instruments or structured deposits

- 1.3.2 R (1) Subject to (2) ~~Other~~ other firms which manufacture or distribute financial instruments or structured deposits should take account of PROD 3 as if it were guidance on the Principles and other relevant rules and as if “should” appeared in PROD 3 rules instead of “must”.
- (2) Paragraph (1) does not apply to a firm to the extent that it is required to comply with Principle 12 (Consumer Duty) and PRIN 2A in relation to a product.