



The Consumer Duty will change the rules of financial advertising

A briefing from Contact State

The [FCA Consumer Duty](#) is a watershed moment for financial advertising and the *consumer principle* will challenge every aspect of financial advertising, in every product line. From an increased focus on firms that compete vigorously online for new business (clicks, leads and online sales) through to a heightened level of mandatory 3rd party due diligence, the regulator is strengthening its rulebook.

The narrative is moderate but compelling:

Consumers deserve a higher level of regulatory protection when they are investigating, seeking advice and buying products that shape their financial lives. The FCA argues that the process of buying a mortgage, insurance policy or an investment product has been transformed by digital media, but the regulatory guiderails haven't kept pace.

In this Contact State feature on the **Consumer Duty**, we'll take you through the key bits of changing policy that are relevant for firms that generate or buy financial leads.

What is the Consumer Duty?

The consumer duty is a new set of regulatory rules and principles, set out over two documents, [CP21/13](#) and the consultation document [CP21/36](#) - It's useful also to read the 22/23 FCA business plan [here](#), for strategic context. The FCA ultimately believes that all firms should do more to consider the needs of individual consumers and will now require firms to evidence these considerations and evidence their action.

The Consumer duty comprises of a new **Consumer Principle** that puts the onus of good conduct (rather than just good outcomes) onto regulated firms, a series of '**overarching cross cutting rules**' that ask firms to more deeply consider their role in the sales journey and '**four outcomes**' that all firms in the chain need to achieve and evidence.

The Consumer Duty can be viewed as the financial regulators attempt to close their own knowledge and enforcement gap, in one leap. The FCA has been damaged by the London Capital and Finance bond [scandal](#) and ultimately seeks to compel firms into better practice and oversight with a combination of self-policing, threats and enforcement.



"We will make the Consumer Duty an integral part of our regulatory approach and mindset - including authorisation, supervision and enforcement priorities and processes." (FCA business plan 2022/23)

When will it be introduced?

The FCA have been consulting about the Consumer Duty since they released the first paper in May 2021 and the final document is due for publication on July 31st 2022.

Regulated firms will have until [April 2023](#) to implement the new rules.

What are the key takeaways for financial lead generation:

1. The whole customer journey is now in focus

"Consumers are transacting in an increasingly digital, fast-moving environment which can provide them with greater choice, but can also increase complexity and risks. This has an impact on consumers' ability to make effective decisions, with the potential to be exploited". (CP21/13)

The FCA's understanding of the whole customer journey has been historically weak and Contact State has [argued](#) for some time that the regulator has failed to consider some of the most basic and prolific examples and purveyors of misleading advertising.

The idea that regulatory oversight begins only when a regulated firm starts to communicate directly with a consumer was proved disastrously naïve by the LCF bond scandal; these consumers were ultimately encouraged into financial ruin by misleading online adverts

We think for lead generation, the Consumer Duty will require firms to evidence how they have full oversight over the whole customer journey, *"at every stage of the product or service lifecycle, from marketing, to sale, and post-sale service"* (CP21/13), not just the name and number of their preferred lead provider.

2. Remove 'sludge design'

"Sludge can be found in the design of websites or mobile apps, eg user interfaces that are designed to push consumers into choices that may not be in their interests" (CP21/13).



One of the more ambitious areas of reform that the FCA has considered in the Consumer Duty is the role that 'sludge design' plays in misleading consumers. By 'sludge design' the FCA specifically means websites that trick consumers into handing over personal details or applying online for a product unsuitable for their needs.

We think the targeting of 'sludge design' is very specifically aimed at lead generation websites and the Consumer Duty specifically calls out *"online sales journeys where information is presented in a way that exploits consumers' behavioral biases"* (CP21/36). Lead generation 'calculators' that promise a 'quote' but in reality, just capture personal data will come sharply into focus

The rules around 'sludge design' should be viewed in the context of the overall consumer principle. Selling a consumer a regulated product that has *some* benefit will not undo the damage of misleading the consumer with a 'sludge design' customer journey. It's hard for example, to see how the role of 'hot keys generated from survey data' has any place in the post Consumer Duty environment.

3. A regulatory audit requirement for all sellers and buyers

"Firms will need to develop a strategy to gather the relevant information and data to inform their assessment of whether they are delivering good outcomes for consumers and to meet their governance obligations" (CP21/13).

The strongest shift in FCA policy and direction is the focus the regulator is placing on data-led governance. The tone and direction of the consumer duty urges firms to not only consider what's best for the consumer but also be able to show evidence of a firm's compliance thought process, that led to a sales conversation or indeed a sale.

The financial services lead generation industry has [suffered](#) from short term, misleading advertising tactics and lead buying firms have often complained that they have no [way](#) of knowing whether a lead generator is legitimate or not. The FCA is not uncaring but it's certainly uncompromising:

Where authorised firms outsource activities to unauthorised third parties, the firm would need to consider the risks involved and ensure they are appropriately addressed and managed. The authorised firm remains fully responsible for compliance with our rules in this scenario (CP21/13).

Some of the ways we expect the FCA to enforce this section of the consumer duty will be to require lead buyer regulated firms to evidence how they review a lead generator's adverts, how they spot check terms and conditions and privacy policies and how they challenge lead generators to change misleading adverts.



Where next for financial services lead generation?

If you buy or sell leads for regulated financial products, the consumer duty should become compulsory bedtime reading; the Consumer Duty will change how financial services lead generation works as the increased rules and audit requirements kick into effect.

Given the nature of third-party due diligence that lead buyers will now be required to do on lead sellers, all lead generators are soon going to be hearing the words "how have you considered the Consumer Duty?".

If you buy leads, you're going to need to be able to evidence how you challenge lead generation partners and demonstrate how you have oversight of all aspects of lead gen customer journeys and provide further evidence of how you keep on top of this audit process.

If you're a lead generation firm directly authorised by the FCA, the impact of the Consumer Duty is arguably much more serious for you because of the way that you now need to evidence how you've considered that each of your adverts and landing pages consider the needs of the consumer.

If you're an '**unregulated lead generation firm**', generating regulated financial leads, the net is going to be pulled much tighter around you. In black and white, the FCA is '*proposing that the Consumer Duty would apply to unregulated activities which are ancillary to regulated activity*' (CP21/13). A lead buyer becomes directly liable for unregulated lead generators which really is a game changer.

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About Contact State:

The Contact State platform monitors, streamlines and optimises all aspects of the lead generation funnel - we are the quality mark for lead generation in the UK. Our clients improve their lead to sales rate by using Contact State technology, built to bring transparency and intelligence to the lead generation industry.

We help our clients differentiate between high performing lead generation partners and those lead sellers who fail to provide engaged, quality prospects.

Increase your sales return from lead generation.