Signs are that many dealers are complying with FCA's Consumer Duty rules

But they cannot afford to "coast", experts say, as the annual board report looms and historic commissions fall under spotlight.
Alex Wright reports

ISTOCKPHOTO.COM/ALASHI

The Consumer Duty from the Financial Conduct Authority (FCA) has hugely improved the way financial products and services are sold by the motor finance industry.

That's according to industry experts, who say that, despite the many challenges the Consumer Duty has presented since it came into force on 31 July 2023, the benefits it has brought have been multitudinal.

The Consumer Duty has three key parts: a new consumer principle, cross-cutting rules requiring retailers to act in good faith, avoid foreseeable harm and to help consumers achieve their financial objectives. It also covers four main consumer outcomes: consumer understanding, price and value, products and services, and consumer support.

Adam Edwards, partner and head of financial services at Freeths, says: "The Consumer Duty has had a significant impact on the automotive industry since its introduction, particularly on the finance and insurance aspects of the businesses of dealers, OEMs and finance houses.

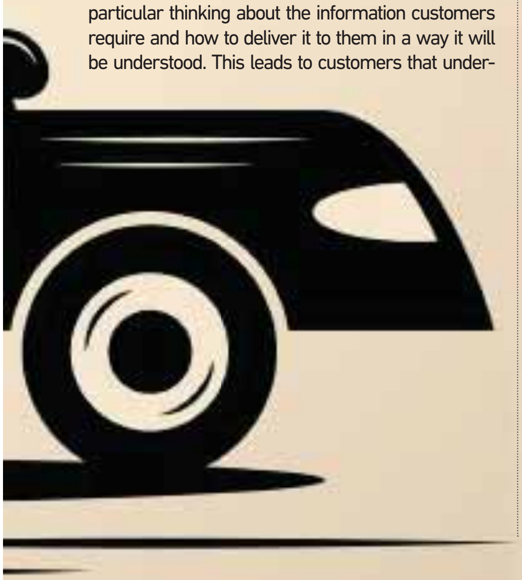
"The Consumer Duty set a much higher standard than the old Treating Customers Fairly regime, with not only a higher standard set in the new Principle 12, but also higher standards set across FCA-regulated businesses in the cross-cutting rules and four outcomes. This has taken significant work to implement and maintain, and has led to changes in process across the industry."

Edwards says the Consumer Duty has given businesses the opportunity to review their products and make sure they are meeting consumers' needs. This, he says, has encouraged the industry to remove any assumptions from their processes and reduce practices that only exist because "that is the way things have always been done".

"With a focus on a customer-centric approach, the Consumer Duty should be seen as an opportunity for automotive firms to build loyalty and drive profitability," says Edwards. "Most businesses we work with see it as a core part of their business model for customers to achieve good outcomes.

"In particular, we have seen automotive businesses we advise embracing consumer understanding, in particular thinking about the information customers require and how to deliver it to them in a way it will be understood. This leads to customers that understand the finance and insurance products they have bought and fewer complaints down the line."

> **"THE CONSUMER DUTY SHOULD BE SEEN AS AN OPPORTUNITY FOR AUTOMOTIVE FIRMS TO BUILD LOYALTY AND DRIVE PROFITABILITY**
>
> **ADAM EDWARDS, FREETHS**



As well as rules and guidance on products and services, and price and value, the Consumer Duty also covers consumer understanding and support. To further increase standards in this respect, lenders have agreed to only deal with intermediary staff who have completed Specialist Automotive Finance training or an equivalent course to deliver on consumer understanding.

James Tew, CEO of iVendi, says: "The Consumer Duty is very much focused on improving customer outcomes. It has caused lenders and motor retailers to look at their processes with regards to finance and insurance and see how they can improve them for the customer. And be more transparent."

NEW SET OF CHALLENGES

Despite the clear benefits that it has brought, however, implementation of the Consumer Duty hasn't been without its problems. Chiefly, the short adoption period required.

"Having to put into place cultural and process change quickly means that implementation was generally imperfect," says Edwards. "Now, the challenge is making sure the whole organisation recognises the continuous improvement aspect of the Consumer Duty, involving constant monitoring, review, root cause analysis and changes to the business.

"After such an intense implementation period, it is understandable that businesses may have been tempted to take their foot off the accelerator and coast after 31 July 2023.

"However, the annual board report (due by 31 July 31 2024) will be an opportunity to bring attention to the Consumer Duty again at a senior level within the business."

Another key issue was that the Consumer Duty required a significant amount of time and cost to implement. It also added to the host of other challenges the industry was facing in the wake of the COVID-19 pandemic, not least supply chain disruption, market liquidity pressures, changes in consumer behaviour, the move to online selling, the cost of living crisis and rising costs.

So far, there haven't been any well-publicised cases of motor retailers falling foul of the new rules. However, Edwards says the FCA and the Financial Ombudsman Service (FOS) have referred to the Consumer Duty in a range of their decisions and letters to businesses that Freeths advises in the industry, clearly showing they will be using it as an enforcement and supervisory tool moving forward.

DISCRETIONARY COMMISSIONS

Edwards says that the FCA's recently announced review into complaints relating to motor finance discretionary commission arrangements is just one example where the Consumer Duty may be used by the regulator. That's why, he says, firms affected by the review should be aware that their handling of complaints since 31 July last year has been subject to the Consumer Duty, even though the reason for the complaint may have occurred before then.

Sue Robinson, chief executive of the National Franchised Dealers Association (NFDA), says the NFDA continues to provide support and guidance to its members about any developments with the Consumer Duty, reiterating that the implementation deadline for closed products or services is 31 July 2024. However, of greater immediate concern, she says, is the FCA's recent announcement that it will be undertaking work in the motor finance market on discretionary commission agreements.

"NFDA will support its members and monitor any further developments from the FCA and FOS on its work in the motor finance market," says Robinson. "The FCA has already engaged with the NFDA and agreed to maintain an ongoing dialogue."

Other more general challenges range from defining and monitoring good customer outcomes and accountability to scrutiny over subjective judgements and supporting and empowering customers. That means creating a framework for monitoring customer outcomes based on the appropriate data and management information, as well as embedding the right governance to review data, identify and action concerns, and to avoid foreseeable harm to the customer.

Firms also need to consider the impact of the rules on their staff and on how their senior managers perform their duties and fulfil their obligations. That requires being prepared to deliver tailored training, embed the changes in governance and accountability structures, and ensure customer interests are central to their culture and purpose.

Additionally, companies must define key concepts such as foreseeable harm and fair value, tailored to their businesses and products and services. While the outcomes-based nature of the rules gives them greater flexibility in how they interpret the changes required, the lack of prescriptive guidance can, however, also present some difficulties.

Firms will also need to evaluate how they support customers through their financial journeys and enable them to make decisions in their best interests and to pursue their financial objectives. Central to this is clear and timely communication.

Another issue is how the Consumer Duty works alongside other existing pieces of legislation and regulation. Chief among them, for lenders, is the Consumer Credit Act.

"The Consumer Duty is outcomes-focused, but, since the 1970s, the provision of consumer credit has been subject to the requirements in the Consumer Credit Act, a rigidly prescriptive piece of legislation, which is of its time and incompatible with the Consumer Duty," says Adrian Dally, director of motor finance at the Finance and Leasing Association. "Until the Consumer Credit Act is reformed, this mismatch of regulatory approaches will be a challenge."