

**Consumer  
Scotland**

Luchd-Cleachdaidh Alba

# **How to meet the consumer duty: guidance for senior decision makers (draft)**

April 2023

# Guidance for senior decision makers

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- 1.1 This guidance is aimed at ‘senior decision makers’<sup>1</sup> of a relevant public authority. As a senior decision maker you are responsible for governance of a relevant public authority and therefore you have responsibility for ensuring that your body meets the consumer duty.
- 1.2 This guidance explains the purpose of the consumer duty and your role in meeting it. More information on the duty and how to meet it can be found in Consumer Scotland’s core guidance document ‘How to meet the consumer duty: guidance for public authorities (draft)’<sup>2</sup>.

## What is the consumer duty?

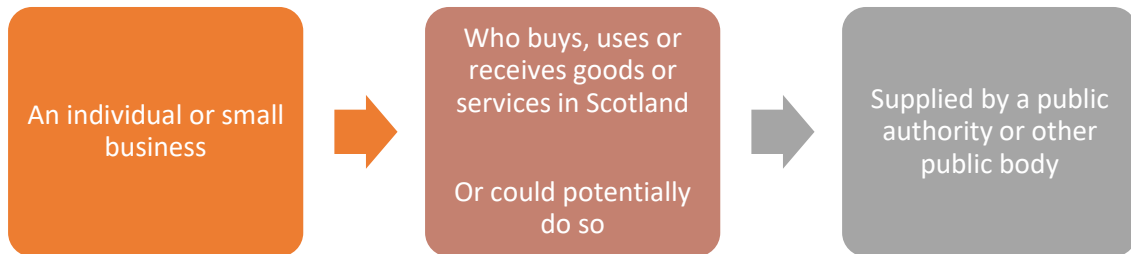
- 1.3 The consumer duty aims to put consumer interests at the heart of strategic decision-making across the public sector to deliver better policy outcomes for Scotland. This person-centred approach should result in better quality services and outcomes for consumers as users of public services.
- 1.4 It is a statutory duty introduced by the Consumer Scotland Act 2020 (‘the 2020 Act’) that places a duty on ‘relevant public authorities’<sup>3</sup> in Scotland, when making decisions of a strategic nature through the exercise of their functions, to have regard to:
  - a) the impact of those decisions on consumers in Scotland, and
  - b) the desirability of reducing harm to consumers in Scotland

## Who is a consumer?

- 1.5 The 2020 Act includes a broad definition of a consumer including individuals, small businesses and future consumers. Crucially for public authorities, the definition of a business is broad enough to cover users of public services:

*“business” includes a profession, a not for profit enterprise (within the meaning of section 252(1F) of the Town and Country Planning (Scotland) Act 1997) and the activities of any government department, local or public authority or other public body<sup>4</sup>*

- 1.6 A consumer therefore includes individuals or businesses who meet the definition below:



- 1.7 Public service users who may not have been traditionally thought of as ‘consumers’ will therefore meet the definition of a consumer, regardless of whether or not they pay directly for that service. For example, this could include the provision of statutory services by a public authority where no alternative service provider exists, such as waste and recycling services provided by a local authority.

## What is a strategic decision?

- 1.8 It will be for each individual public authority to determine if a decision is of a strategic nature. However, it is expected that this type of decision will be made at an executive or board level rather than operational day-to-day decision making. It is important to note that the duty also applies to any changes to, or reviews of, these decisions.
- 1.9 They will be decisions that affect how the public authority fulfils its intended purpose, often over a significant time period. Strategic decisions can also however be made over the short or medium-term, particularly when responding to urgent emerging circumstances.

## Benefits to public authorities

1.10 Meeting the requirements of the duty will not only improve outcomes for consumers. It will also provide value to the public authorities within the scope of the duty and improve the services they provide. Benefits to public authorities could include:

- Helping public authorities to make improved strategic decisions and design better policies at every stage of the policy-making process
- Identifying potential consumer detriment, understanding consumers' behaviour and perspectives, and ensuring that policies and strategic decisions are designed around these should lead to improved policies that better meet consumers' needs
- Helping the public and enabling consumers and service users to relate more to public sector policies
- Over time, inspiring greater levels of trust and confidence in public authorities
- Potentially lead to lower levels of consumer dissatisfaction and complaints about the services public authorities provide

## What do I need to do?

1.11 Responsibility for meeting the four requirements of the duty lies with an organisation's relevant leadership group such as a board or elected representatives of a local authority.

1.12 Exercising the functions of a senior decision maker effectively will involve holding the senior management team to account as to how the organisation has met the statutory consumer duty requirements.

1.13 **Remember that although these are the statutory requirements of the duty, the focus should be on improving outcomes for consumers:**

- **When making decisions of a strategic nature, have regard to the impact those decisions have on consumers**
- **When making decisions of a strategic nature, have regard to the desirability of reducing harm to consumers**
- **Publication of information about the steps taken to meet the duty**
- **Having regard to this guidance**

1.14 The most appropriate approach to meeting the duty will be for individual organisations to decide, however the guidance document<sup>5</sup> does make various recommendations including:

- Adopting an outcomes-based approach to meeting the duty to improve consumer outcomes
- Completing an impact assessment
- Engaging with consumers throughout the process
- Applying Consumer Scotland's consumer principles to strategic decision making to improve consumer outcomes and consider how to reduce harm to consumers
- Appointing a consumer duty champion. This person should be tasked with ensuring that meeting the duty is embedded within the strategic decision-making process and not treated as a tick-box exercise

1.15 You might find it useful to consider the extent to which your organisation has followed the recommendations of the guidance. The recommendations are not a one size fits all approach for all organisations, but you may want to establish the extent to which meeting the duty is improving outcomes for consumers if the guidance recommendations are not being followed.

1.16 **Annex A** includes a brief summary of the recommended impact assessment approach and **Annex B**, provides a list of reference questions that might help scrutinise the approach to meeting the consumer duty. The questions have been broken down according to the five stages of the impact assessment process to help identify relevant questions that will support the improvement of outcomes for consumers.

# Annex A – The impact assessment

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- 2.1 Public authorities should adopt an outcomes-based approach to meeting the duty. They should engage with consumers throughout the process and apply the consumer principles to strategic decision making to improve outcomes and consider how to reduce harm to consumers.
- 2.2 The Consumer Scotland guidance on how to meet the consumer duty recommends undertaking a five stage impact assessment to achieve these outcomes:



- 2.3 Considering how to meet the duty should begin at the start of the decision-making process; the planning stage and appropriate consumer engagement should be undertaken throughout the process.

# Annex B – Example scrutiny questions

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- 3.1 This annex includes some example questions to help senior decision makers scrutinise attempts to meet the duty.
- 3.2 The questions have been broken down according to the five stages of the impact assessment process to help identify relevant questions that will support the improvement of outcomes for consumers.

Scrutiny questions	
Planning stage questions	<p>Do you consider this to be a ‘strategic decision’ in line with the consumer duty guidance? (if not, why not?)</p> <p>Is this decision likely to have an impact on consumers?</p> <p>Have you considered/reviewed the consumer duty guidance before planning this proposal?</p> <p>Has an outcomes-based approach been taken to planning this project?</p> <p>Have you considered how this proposal meets the consumer duty requirements?</p> <p>How do you plan to meet the consumer duty with respect to this project/proposal/plan?</p> <p>What plans are in place to ensure that the three requirements of the consumer duty are met?</p> <p>What consumer engagement plans have been made?</p>

	<p>What plans do you have for ensuring appropriate consumer engagement is undertaken throughout the entire process?</p> <p>What approach are you taking to ensure we meet the requirements of the consumer duty? E.g., impact assessment?</p>
Evidence gathering stage questions	<p>Has sufficient evidence been gathered to evaluate the outcomes of this project and meet the consumer duty?</p> <p>What consumer engagement has been undertaken?</p> <p>Have any evidence gaps been identified? Could these be filled with further consumer engagement?</p>
Assessment and improvement of proposal questions	<p>Have you assessed the impact of the proposal on consumers?</p> <p>Have you identified alternative options that would improve outcomes for consumers?</p>
Decision stage questions	<p>How does the final decision impact on consumers?</p> <p>Why were alternative options not chosen and what would have been the outcomes for consumers in these scenarios?</p> <p>Was the best option for consumers chosen? If not, why not?</p>
Publication stage questions	<p>How will you publish the steps taken to meet the duty?</p>
Evaluation of the approach taken to meet the duty	<p>Did you meet the four statutory duty requirements of the consumer duty?</p> <p>Did your approach to meeting the duty help improve outcomes for consumers? If not, how could this be improved in future?</p> <p>Is there anything that could be changed to improve the approach to meeting the duty in future?</p>

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<sup>1</sup> The person(s) or organisation(s) with responsibility for overseeing the strategic direction of the



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entity and obligations related to the accountability of the entity. Those charged with governance may include management personnel, for example, executive members of a governance board, or elected members e.g. of a local authority.

<sup>2</sup> <https://consumer.scot/publications/how-to-meet-the-consumer-duty-guidance-for-public-authorities-draft-html/>

<sup>3</sup> <https://www.legislation.gov.uk/sdsi/2024/9780111058961/data.htm>

<sup>4</sup> Section 25 of the 2020 Act:

[https://www.legislation.gov.uk/asp/2020/11/pdfs/asp\\_20200011\\_en.pdf](https://www.legislation.gov.uk/asp/2020/11/pdfs/asp_20200011_en.pdf)

<sup>5</sup> <https://consumer.scot/publications/how-to-meet-the-consumer-duty-guidance-for-public-authorities-draft-html/>