Estate Planning and Consumer Duty

Compliance briefing for IFA firms wanting to avoid customer detriment and poor outcomes

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Executive summary

This paper sets out how Consumer Duty obligations apply to estate planning, and what we recommend IFA firms embed in their processes to evidence compliance. It's written for compliance teams, business owners, and advisers who want a technical explanation.

Three regulatory developments have converged to create a clear obligation for regulated advice firms to spot and act on estate planning needs:

- **The FCA's Consumer Duty (PRIN 2A)** requires firms to act in good faith, avoid foreseeable harm, and enable customers to pursue their financial objectives - including across the distribution chain and outside the regulatory perimeter.
- **CMA guidance, updated 30 January 2026,** sets the consumer-law minimum for unregulated Will-writing, backed by DMCC Act 2024; even so, the CMA's own review acknowledged that "issues remain" across the sector. Consumer Duty requires the IFA to apply a higher bar when choosing a referral partner, making that partner's quality an assessable element of the firm's own conduct.
- **Fact-find rigour expectations have risen.** In various areas - e.g. the FCA's IAAT (June 2025 investment advice tool) - the requirements are becoming explicit.

The risk is long-tail and the FOS has no current longstop. Estate planning failures crystallise on death, often decades after the advice. Although court tort claims are bounded by a 15-year longstop (s.14B Limitation Act 1980), there is no equivalent restriction on the Financial Ombudsman's *three-year-from-knowledge* rule. With standard PI run-off of six years, it's the contemporaneous record that protects the firm.

Scrutiny is increasing. In May 2026 the FCA launched a multi-firm review into bereavement handling by investment firms - including advisers - confirming these are now board-level conduct tests.

What we recommend compliance teams consider embedding:

- Three standard questions covering Wills and LPAs at fact-find and annual review
- A Will-review pathway with a qualified partner, for clients with existing Wills
- A life-events trigger checklist at annual review
- Internal tracking that you're asking the right questions, and recording/referring
- A documented partner selection process for any onward referral
- The Kinherit Academy for adviser training - CPD-credited, no charge to partner firms

This paper sets out the basis for each.

A note on this paper. *This paper is published by Kinherit, a STEP Platinum Employer Partner and Consumer Duty Alliance Affiliate. We work with around 4,000 IFA introducers - helping them address estate planning needs of their client base. The analysis in this paper attempts to be a fair reading of the regulatory framework, but if there are better interpretations we welcome discussion.*

1. The Consumer Duty obligations

The cross-cutting rules

The Consumer Duty is set out in **PRIN 2A** of the FCA Handbook, supplemented by Finalised Guidance **FG22/5**. Three cross-cutting obligations sit at the centre:

- **PRIN 2A.2.1R - Act in good faith toward retail customers.** Honesty, fair dealing, behaviour consistent with reasonable customer expectations.
- **PRIN 2A.2.8R - Avoid causing foreseeable harm to retail customers.** Firms must take proactive steps to identify and address harm risks, including those arising from products, services, or information the firm provides or distributes. PRIN 2A.2.9R clarifies that foreseeable harm may be caused by both act and omission, in a firm's direct relationship or through its role in the distribution chain.
- **PRIN 2A.2.14R - Enable and support retail customers to pursue their financial objectives.** Firms must not place unreasonable barriers in the way of customers achieving outcomes they reasonably want.

These apply alongside the more specific outcome-focused rules on products and services, price and value, consumer understanding, and consumer support.

Why estate planning is firmly in scope

Consumer Duty applies to the firm's conduct toward retail customers, including where the firm's actions affect outcomes in the distribution chain or where a foreseeable harm is identifiable - regardless of whether the activity is regulated.

The relevance to estate planning is twofold:

First, an IFA's fact-find typically captures the client's broader financial situation and objectives (COBS 9.2.1R, 9.2.2R). Where it surfaces an estate planning gap - no Will, an out-of-date Will, blended family without clear succession, business assets without tax planning - acting on that information is consistent with PRIN 2A.2.8R (foreseeable harm) and PRIN 2A.2.14R (enable objectives).

Second, where an IFA refers a client onward to an estate planning provider, the FCA's distribution chain principle places the IFA on the hook for the outcome. FG22/5 makes clear firms must consider how customers are treated by third parties to whom they refer, particularly where the third party operates outside the regulatory perimeter.

What this does and does not require

Consumer Duty does not require IFAs to advise on estate planning - that sits outside the regulatory perimeter and outside most adviser firms' permissions.

What it does require:

- The firm is alert and able to identify estate planning needs surfacing in client engagement
- Where a need is identified, the firm acts on it - raising the issue with the client and, where appropriate, referring to a qualified specialist
- The firm has oversight of any referral partner, sufficient to be reasonably satisfied of good outcomes
- The firm's process generates a contemporaneous record that the obligation has been discharged

The bar is not technical estate planning expertise; it is process and documentation.

In plain terms, Consumer Duty applies three tests to the firm: did you spot the harm before it happened, did you record what you did about it, and did you check that anyone you passed the client to was up to the job? Estate planning sits squarely inside all three.

2. The unregulated Will-writing market and the CMA

Market context

Will-writing is unregulated in England and Wales. Most Will-writers do not hold a formal legal qualification, and trade body memberships (Society of Will Writers, Institute of Professional Will Writers) do not in themselves equate to professional accreditation.

The SRA's December 2024 report and earlier Legal Ombudsman reviews have both flagged consumer detriment in Will-writing, and Will-writing and probate are consistently among the most-complained-about practice areas in Legal Ombudsman data. SRA regulation provides procedural protections where solicitors are involved, but a substantial portion of UK Will-writing sits outside that framework.

STEP qualification

The recognised qualification body for estate planners is STEP (formerly the Society of Trust and Estate Practitioners). Ensure the individual delivering Will advice is STEP-qualified at Affiliate, Associate or TEP level - the best indicator the client is getting proper advice.

The CMA's intervention

In October 2024 the CMA published consumer protection law guidance for providers of unregulated legal services, addressing price transparency, service description, qualifications disclosure, complaints handling, and contract terms.

In April 2025 the **Digital Markets, Competition and Consumers Act 2024** gave the CMA direct enforcement powers - it can now determine consumer law breaches without going to court and impose penalties.

In January 2026 the CMA updated its guidance to reflect the now-active fining powers under the DMCC Act 2024, and in concluding its review acknowledged that "issues remain". The IFA's own distribution-chain obligation under Consumer Duty is broader than the CMA's position and not bounded by it - it applies whether or not the CMA acts.

What this means for referring IFAs

The quality of an IFA firm's referral partner is now an assessable element of the firm's own conduct. An adviser referring a client to a Will-writer who lacks formal qualification, prices opaquely, uses unfair terms, or handles complaints poorly is exposed under PRIN 2A.2.8R to a foreseeable harm argument: the firm chose the partner whose conduct created the risk. The fact that the Will-writer is not FCA-regulated does not displace the distribution-chain obligation.

The practical implication: **partner due diligence and a documented basis for the choice are now part of the Consumer Duty file**.

3. Risk scenarios for IFA firms

What happens when estate planning fails illustrates the firm-level risk.

Scenario 1: Client dies intestate

Around half of UK adults have no Will (Money and Pensions Service). On intestacy, assets pass under statutory rules - often damaging for unmarried partners, blended families, and clients with adult children from a previous relationship.

Compliance question: Did the firm identify, raise, and refer?

Scenario 2: Client dies with an out-of-date or contested Will

Will disputes have risen sharply - around 10,000 people are currently disputing Wills, roughly twice the level of five years ago. Blended families, second marriages, and increasingly complex estates (business assets, pensions) drive the rise. In Kinherit's own service, around 30% of existing Wills we review contain major issues, with around 50% containing some kind of issue worth addressing.

Compliance question: Did the firm prompt periodic review? Law Society guidance recommends every five years or after a major life event.

Scenario 3: Client loses capacity without an LPA

Only 17% of UK over-40s have an LPA in place (Canada Life, August 2025). Without one, the family must apply for a Court of Protection deputyship - costly, slow, and with far narrower powers than an Attorney would have had. A deputy can meet the client's own needs, but applying the client's funds to support a spouse - or to continue the financial support the couple had arranged between them - is constrained and can require court approval, so a plan that assumed the client's assets would provide for both may no longer hold.

Compliance question: Did the firm identify the LPA gap, especially in clients approaching or in retirement?

Commercial question: What happens to the firm's ongoing fees if the client loses capacity and there is no Attorney able to give instruction?

Scenario 4: Tax planning fails because the Will doesn't deliver

A client with £2.6m of qualifying business assets in a £4m estate has a Will leaving £1m to their spouse and the rest to their children, but no Business Clause. On death the Business Relief is apportioned across the whole estate under s39A IHTA 1984 rather than directed to the chargeable share, producing an IHT charge of around £305,000 against roughly £50,000 with a correct clause - some £255,000 of avoidable tax. The IFA had advised on the business assets but did not refer the client to update the Will. The exposure does not even require that the firm advised on the business: under PRIN 2A.2.8R, simply knowing from the fact-find that the client holds one puts the Will question on the table.

Compliance question: Did the firm identify that the tax planning depended on the Will, and refer accordingly?

These scenarios share a common feature: the harm is foreseeable, identifiable in advance, and avoidable through a referral. They sit squarely within PRIN 2A.2.8R territory.

4. The Will-review: a new requirement in the IFA toolkit

The volume implication

There's a broad consensus that Wills should be reviewed at least every five years, or sooner on a major life event. This is the public guidance of numerous bodies, both within the legal profession (the Law Society, Solicitors for the Elderly, STEP) and more broadly (Age UK, MoneyHelper, Unbiased). Until Consumer Duty, that recommendation sat at the edge of the IFA's responsibility.

Consumer Duty changes that. PRIN 2A.2.8R requires firms to take proactive steps to avoid causing foreseeable harm. A Will whose age means the client's circumstances may have changed since drafting can constitute foreseeable harm under this rule once a firm has fact-find evidence of it - and the firm has to take reasonable action.

What "reasonable action" looks like. The firm asks the client whether their Will is still up to date and whether anything has changed since it was drafted. The client's response is recorded. If the client confirms changes, is uncertain, or wants a structured review, the firm refers for a Will-review. If the client confirms nothing has changed and they are content with the Will as it stands, recording that response on the compliance file is itself reasonable action. The firm has identified, asked, and recorded - which is what the rule requires.

What this means in practice

Around 70% of advised clients have a Will (vs ~50% of UK adults generally). Applying the five-year industry standard, and considering clients without a Will, it's reasonable to assume 10-20% of an IFA's client base need some level of meaningful estate planning discussion every year. This is a big step-up vs historic practice - which is why we have built a streamlined Will-review pathway.

We recognise this conclusion fundamentally changes how advisory firms need to look at Wills and Will-reviews, and welcome discussion if there are other ways to look at it.

What a Kinherit Will-review is

A Will-review is a structured review of an existing Will by a STEP-qualified estate planner, producing a documented written opinion: either *"fit for purpose"* with rationale, or *"requiring attention"* with detail and a suggested path forward. The output is a date-stamped opinion the client and the IFA can rely on.

The Kinherit Will-review was created to help IFAs deal with the obligations Consumer Duty has created, and is provided on a complimentary basis to clients of introducing IFAs. Other STEP-qualified providers offering equivalent structured reviews can meet the same need - the presence of a Will-review pathway is the compliance point, not the provider.

5. The long-tail risk

Why estate planning is different to other risks

Most regulated advice creates time-bound exposures - loss surfaces within months or years of the advice, within typical PI run-off. Estate planning failures behave differently: the harm crystallises on death, often years or decades later. By then the IFA may have retired, the file may be archived, and standard six-year PI run-off may have expired.

The FOS tail

Different limitation rules apply across contract, tort, and FOS - detail in Appendix A. The single most important point:

The Financial Ombudsman's three-year-from-knowledge rule has no current longstop.

A claim brought thirty years after the original advice remains in scope, provided the family complains within three years of discovering the loss. The court tort longstop (15 years, s.14B Limitation Act 1980) does not apply to FOS. An HMT consultation in March 2026 proposed a 10-year FOS longstop, though with possible exceptions for long-term products - where estate planning could plausibly fall. No legislation is yet in force in any event. **Until enacted (and subject to any exceptions), historical exposure is open-ended.** The FOS award cap is £455,000 per complaint for claims referred from April 2026, and the FOS applies Consumer Duty directly under its "fair and reasonable" jurisdiction.

PI cover and the records that matter

PI insurance responds to genuine professional negligence, and most long-dated estate planning claims would be assessed on standard negligence principles. But the strength of any defence is determined by what was documented at the time. PI policies generally exclude deliberate or knowing breaches of duty; a one-off failure is plainly negligence, but a documented pattern of advisers ignoring Consumer Duty obligations is harder to characterise. And because the adviser relationship is typically ongoing and fee-charging, the duty is refreshed at every annual review - so a file that shows the same estate planning gap year after year looks less like an isolated slip than a pattern.

A claim defended ten, twenty, or thirty years after the event will turn on what the firm asked, recorded, told the client, and referred. A firm with thin records is harder to defend regardless of whether cover responds.

The cheapest insurance against long-tail estate planning exposure is a robust contemporaneous process with good documentation. It is a process question, not a product question.

6. What “good” looks like in firm process

The practical embeds we recommend. Each is designed to be lifted into existing fact-find, annual review, and oversight processes, without requiring estate planning expertise from the adviser.

6.1 Fact-find capture: the Three Questions

Embed three standard questions in the fact-find, asked at onboarding and every annual review:

- **Q1.** Do you have a Will?
- **Q2.** If so, has it been reviewed in the last five years, or since any major life changes?
- **Q3.** Do you have a Lasting Power of Attorney in place?

These do not require the adviser to assess technical adequacy. A “no” to Q1 triggers a Will conversation and, where appropriate, a new-Will referral. A “no” or “not sure” to Q2 is the natural prompt for a Will-review (section 4). A “no” to Q3 triggers an LPA referral.

The LPA exposure. ~982,000 people in the UK live with dementia (Alzheimer’s Society), and around 1 in 3 people born today will develop it in their lifetime; dementia is now the leading cause of death in England and Wales (ONS). With capacity loss from stroke and other causes on top, incapacity is not an edge case for an older-skewed client book. Without a valid LPA, the firm has no counterparty to instruct - making continued asset management fees harder to defend. The firm’s commercial interest aligns with the client’s protection.

6.2 Life-events trigger checklist at annual review

Annual reviews should include a brief check for the following:

- Marriage, civil partnership, divorce, or separation
- Birth or adoption of a child or grandchild
- Death of a beneficiary, executor, or trustee
- Major asset acquisition or disposal (property, business, inheritance)
- Sale or major change to a business interest
- Significant change in financial circumstances
- Move overseas or change of domicile
- Diagnosis of a condition that may affect capacity
- Significant change in family relationships
- More than five years since the last Will review

Any trigger should be flagged and a Will-review or LPA referral prompted. The trigger, response, and onward action should be recorded.

6.3 Referral process

For each referral, capture: date, partner, reason (which trigger), type (new Will / Will-review / LPA / broader EP), whether the client engaged, and the outcome at the next review.

Three referral types should appear in the MI: new Will/EP advice (Q1 = no), Will-review (Q2 = no/not sure), LPA (Q3 = no). Where the client declines, that should be recorded - the firm has discharged its obligation by identifying and signposting; the client retains the choice.

6.4 Partner selection

Partners should be selected on a documented basis covering:

- **Individual STEP qualification** at adviser-by-adviser level (not a paralegal whose work is later "reviewed" by a STEP holder)
- **Service coverage** - all three onward types (new Wills, Will-reviews, LPAs)
- **CMA-aligned conduct** - clear pricing, fair terms, transparent description, proper complaints handling
- **Audit trail** - structured reporting back on referred-client outcomes
- **Regulatory oversight where applicable** - SRA regulation adds procedural protection but does not guarantee technical quality

The choice should be recorded and reviewed periodically. Expanded commentary in Appendix B.

6.5 Management information

For larger firms, tracking estate planning discussions provides credible oversight:

- **Capture rate** - clients with Will and LPA status checked at fact-find or annual review
- **Trigger response rate** - life events met with a Will-review or LPA conversation
- **Referral rate** - identified needs converted to a referral (or recorded as declined)
- **Partner outcomes** - referrals where the client engaged and action was completed

Value is in surfacing process gaps before they surface as claims.

6.6 Training: the Kinherit Academy

The Kinherit Academy provides CPD-credited training designed around the obligations in this paper: two foundation sessions (Consumer Duty requirements; life events and the triggers checklist), five electives (Business Relief incl. April 2026 changes, property protection, sideways disinheritance, problem Wills, vulnerable clients), and one capstone on the Kinvault handover platform. Online, no charge to partner firms.

Booking: kinherit.co.uk/academy

7. Conclusion and recommended actions

Spotting and acting on estate planning needs has moved from optional adjacency to a Consumer Duty obligation: where an estate planning harm is foreseeable from a client's circumstances, the firm must identify it, act on it, and record what it did - whether or not the client raises it.

The CMA's January 2026 guidance sets the consumer-law minimum for unregulated Will-writing; Consumer Duty requires the IFA to apply a higher bar. The firm-level exposure is long-tail, the FOS three-year-from-knowledge rule has no current longstop, and the contemporaneous record is what protects the firm decades later.

For compliance teams, six practical embeds materially strengthen the firm's position:

- **Embed the Three Questions** (Will, last review, LPA) in fact-find and annual review.
- **Establish a Will-review pathway** with a qualified partner. Expect a meaningful step-up in fact-find conversations and onward referrals as the Three Questions become standard.
- **Adopt a life-events trigger checklist** at annual review.
- **Document the referral process and partner selection**. Cover Wills, Will-reviews, and LPAs.
- **Build estate planning into Consumer Duty MI**. Capture, trigger response, referrals, partner outcomes.
- **Adopt the Kinherit Academy** as the firm's standard training input. CPD-credited, no charge to partner firms.

None of these requires estate planning technical expertise from the adviser. Each is a process control. Together, they give the firm a defensible position under Consumer Duty, robust evidence in the long-tail, and meaningful improvement in client outcomes.

We are happy to discuss adoption, provide CPD records and attendance MI for Academy completers, and share partner-side outcomes data where that supports a firm's Consumer Duty oversight.

Appendix A: Source materials and limitation detail

- **PRIN 2A** - Consumer Duty cross-cutting rules and outcome-focused rules. FCA Handbook. PRIN 2A.2.1R (act in good faith); PRIN 2A.2.8R (avoid foreseeable harm, with PRIN 2A.2.9R clarifying that harm may arise from act or omission, including via the distribution chain); PRIN 2A.2.14R (enable and support financial objectives).
- **PS22/9** - Policy Statement publishing the Consumer Duty rules (July 2022).
- **FG22/5** - Finalised Guidance on the Consumer Duty (July 2022). See chapters on cross-cutting rules, foreseeable harm, distribution chain, vulnerable customers.
- **COBS 9.2** - Suitability rules underpinning the fact-find requirement.
- **DISP 2.8.2R** - FOS time limits.
- **CMA guidance for unregulated legal services** - Original 9 October 2024; updated 30 January 2026.
- **DMCC Act 2024** - CMA direct enforcement powers in force 6 April 2025.
- **Investment Advice Assessment Tool (IAAT)** - FCA, 11 June 2025. The FCA's internal assessment template for personal investment advice files. Referenced as illustrative of the standard of evidenced rigour now expected. RIAAT is the retirement-income equivalent (March 2024).
- **FCA bereavement multi-firm review** - FCA press release, 12 May 2026; firms contacted from May 2026, findings expected later in 2026.
- **HMT consultation on FOS** - March 2026. Proposes a 10-year longstop, with envisaged FCA exceptions for long-term products. Not in force.
- **Will review frequency** - The Law Society public guidance recommends reviewing a Will every five years and on major life events; consistent positions from Age UK ("every 5 years or after a major change in your life"), MoneyHelper / Money and Pensions Service ("every couple of years"), Solicitors for the Elderly, STEP, and Unbiased.
- **Money and Pensions Service / Will Aid** - ~50% of UK adults have no Will.
- **Kinherit Academy data** - ~70% of advised clients have a Will (typical IFA client base).
- **Canada Life / IFA Magazine (August 2025)** - 17% of UK adults over 40 have an LPA.
- **Dunton Gregory** - ~10,000 people currently disputing Wills, roughly twice five years ago.
- **Alzheimer's Society** - Alzheimer's Society - ~982,000 people in the UK living with dementia; ~1 in 3 people born in the UK today will develop dementia in their lifetime. ONS - dementia and Alzheimer's disease the leading cause of death in England and Wales (death registration statistics).
- **STEP** - The recognised qualification body for estate practitioners. Qualifications from Affiliate (entry) through Associate to TEP (full).

Limitation framework (referenced in section 5)

- **Limitation Act 1980, s.5** - Contract claims must be brought within six years of breach. No discovery extension.
- **Limitation Act 1980, s.2 / s.14A / s.14B** - Tort/negligence claims: six years from damage first suffered (s.2), extended to three years from the claimant's date of knowledge (s.14A), with a 15-year longstop from the negligent act (s.14B). When "damage" first occurs in financial advice cases is contested - see Forster v Outred [1982] 1 WLR 86, Nykredit Mortgage Bank v Edward Erdman Group (No 2) [1997] 1 WLR 1627, Law Society v Sephton & Co [2006] UKHL 22, Haward v Fawcetts [2006] UKHL 9. For estate planning failures, reasonable arguments can be run either way - Forster v Outred (immediate loss at the date of advice) or Sephton (contingent loss only on death). For the most defensive position, firms should assume Sephton applies; this is fact-sensitive.
- **FSMA 2000, s.138D** - Private right of action for breach of FCA rules. Applies to Handbook rules but not to the Principles for Businesses (PRIN), which is why Consumer Duty (PRIN 2A) is not itself privately actionable in court. Indirect routes remain: negligence/contract claims (where Consumer Duty informs the standard of care under the Bolam test), specific COBS rule breaches (e.g. COBS 2.1.1 is privately actionable), and FOS complaints (where Consumer Duty applies directly).

Rule numbers are accurate to the FCA Handbook as currently published. FG22/5 paragraph references should be verified against the published guidance before any external use.

Appendix B: Checklist for selecting a referral partner

The criteria summarised at section 6.4, with commentary on why each matters.

STEP qualification is the recognised certification for estate practitioners (CPD requirements, Code of Conduct, technical standards). STEP standard provisions are the common reference framework for UK Wills.

The individual adviser must be the STEP-qualified person. Common market gap: senior estate planner holds qualification, client-facing intake is unqualified, the STEP holder "reviews" at the end. Review of someone else's work is not the same as STEP involvement in the advice. Ask the qualification question at adviser-by-adviser level.

Trade body membership is not qualification. Society of Will Writers and Institute of Professional Will Writers are trade associations; their members may or may not hold formal qualifications. Check the individual.

SRA regulation adds procedural protection (Compensation Fund, Legal Ombudsman) but is a small minority of the market. Will-writing and probate are consistently among the most-complained-about practice areas in Legal Ombudsman data - SRA status does not guarantee technical quality. Many SRA-regulated firms operate unregulated Will-writing arms outside SRA protection; the regulatory status of the contracting entity is what matters.

CMA conduct standards: clear pricing, fair contract terms, accurate service description, proper complaints handling. These apply to all providers, regulated or not.

Audit trail capability: partners able to share structured outcome data back to the referring firm make Consumer Duty oversight materially easier.

Full service coverage: the partner should deliver all three onward types - new Wills, Will-reviews, LPAs. A partner offering only new Wills cannot meet the Will-review volumes Consumer Duty creates.

A documented basis for partner choice, reviewed periodically, is the compliance record.

About Kinherit

Kinherit is a UK estate planning firm and a STEP Platinum Employer Partner - the highest UK accreditation. **Every Kinherit estate planner is STEP-qualified.**

Kinherit is the only Will-writing firm that is an Affiliate Member of the Consumer Duty Alliance, an independent body supporting the FCA's Consumer Duty standards.

Over 4,000 UK financial advisers refer clients to Kinherit. Our service includes Will-reviews, estate planning, LPAs, and the Kinvault secure handover platform that supports a smoother probate process for the family.

The Kinherit Academy provides CPD-credited training to partner firms - eight sessions (two foundation, five elective, one capstone). Adoption at no charge.

For compliance teams considering this paper as a basis for internal process changes, our Adviser Partnerships team is available.

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