Guidance Consultation and Feedback Statement on FCA guidance for firms on the fair treatment of vulnerable customers

Money and Pensions Service response

Introduction

The Money and Pensions Service (MaPS) welcomes the opportunity to respond to the FCA's consultation on proposed new guidance for financial services firms on the fair treatment of vulnerable customers. We agree with the FCA that firms need to go further to ensure that customers in vulnerable circumstances achieve similar outcomes to others, and that they are treated fairly in relation to purchasing and managing products and services. As such, we strongly support the FCA's work to support firms to do more.

MaPS has a statutory obligation to ensure that information, guidance and advice is available to those most in need of it, paying particular regard to the needs of people in vulnerable circumstances. We therefore have an informed understanding of the issues raised in this Guidance, stemming from our role as a services provider as well as a policy respondent.[1] Our response encompasses perspectives dealing with a wide range of financial services and related issues, and are drawn from insights based on both policy and service delivery, reflecting views from across the four UK nations.

The alignment between financial wellbeing and the vulnerability agenda

The outcomes that an effective approach to supporting vulnerable customers seeks to achieve complement the aims of the UK Strategy for Financial Wellbeing that MaPS published in January 2020. This aims to address one of the key drivers of vulnerability identified by the FCA, by improving the capability of consumers, enhancing their knowledge, enabling them to develop greater confidence in managing their money and supporting them to assume greater control over their lives and feel secure in the choices they make.

A truly 'vulnerability-smart' financial services sector will acknowledge that any one of us can become vulnerable at any time, and will seek to create the market conditions in which better informed, more financially confident consumers can transact, secure in the expectation that if they need help in managing their finances, firms will have the capability to support them.

The work of MaPS and others aims to help consumers develop the skills and confidence to effectively interact with financial services so as to enhance their financial and wider wellbeing. In order to help ensure that customers can take greater control over their financial lives, firms must meet their customers halfway, by designing, marketing, explaining and managing products and services in ways that are easy to understand and engage with and are tailored to individual consumers' needs.

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[1] It should also be noted that under the Act, we have a duty to 'notify the FCA where…[we] become aware of practices carried out by FCA-regulated persons, which…[we] consider to be detrimental to consumers' (Financial Guidance and Claims Act 2018, Section 3(7)(a).

About Us

The Money and Pensions Service (MaPS) exists to help people make the most of their money and pensions. We were created by the Financial Guidance and Claims Act 2018, bringing together the Money Advice Service, the Pensions Advisory Service, and Pension Wise, under one body.

The Money and Pensions Service is an Arms-Length Body, sponsored by the Department for Work and Pensions, with a vision of 'Everyone making the most of their money and pensions' by ensuring that people throughout the UK have guidance and access to the information they need to make effective financial decisions over their lifetime. We deliver this by means of:

- Pensions guidance - to provide information to the public on matters relating to workplace and personal pensions.
- Money guidance - to provide information designed to enhance people's understanding and knowledge of financial matters and day-to-day money management skills.
- Debt advice - to provide people in England with information and advice on debt.
- Consumer protection - enabling us to work with Government and the Financial Conduct Authority (FCA) in protecting consumers.
- Strategy - work with the financial services industry, devolved authorities and the public and voluntary sectors to develop and coordinate a national strategy to improve people's financial capability, help them manage debt and provide financial education for children and young people.

Executive Summary

An opportunity to support lasting change

The Guidance is a significant and welcome achievement, and we are encouraged by the commitment that it demonstrates to supporting firms to improve their treatment of customers in vulnerable circumstances. We regard the discussion generated by the Guidance as the potential catalyst for a process of continuous sectoral improvement, which must be supported by active monitoring and oversight in order to ensure that positive, measurable outcomes are both achieved and sustained over the long term.

We are gratified that the Guidance acknowledges the growing recognition that financial services are essential services in the same way that housing, energy and telecommunications are. This acknowledgment highlights the need to ensure equality of access and the application of fair treatment for all financial services consumers, and for the need to pay particular regard to those experiencing vulnerability.

We urge the FCA to formally evaluate the impact of the Guidance after a period of 6-12 months, and thereafter on an annual cycle (bearing in mind the evolving longer-term impacts of coronavirus), to assess whether it has had the desired impact or whether more prescriptive regulatory approaches are required.

We suggest that evaluation findings should be published in the FCA's thematic review format, and that such work should be carried out on a market-by-market basis, prioritising markets where current or emerging data indicates higher volumes of customers at risk of vulnerability, or where the risk of detriment is greatest for those in vulnerable circumstances.

Focus of our response

The Guidance addresses the key areas on which firms should focus to better meet the needs of customers in vulnerable circumstances. In our response, we discuss those parts of the Guidance that we believe could be enriched in order to deliver better outcomes for consumers and more effective guidance for regulated firms, namely:

- Equalities and the requirements of the Equality Act
- Early identification of customer vulnerability
- Referrals for third-party support
- Point of sale
- Product design and marketing
- Governance and culture
- Staff skills
- Prioritisation of support

We have also included a brief consideration of Treating Customers Fairly (Principle 6) in terms of the extent to which it provides sufficient protection for vulnerable (and other) consumers and the potential value of introducing a duty of care for financial services.

Detailed responses to questions

Q1 Do you have any comments on our assessment of equality and diversity considerations of our proposed Guidance?

The FCA's statement of intent regarding the needs of consumers who are protected by the Equality Act makes no reference to the FCA's duty to ensure that its overall regulatory framework meets its Public Sector Equality Duty (PSED). EHRC guidance is unequivocal that public bodies must actively consider equality issues as a central feature of their policy design process, and that these should be accorded equal priority with other considerations:

'Compliance with the general equality duty involves a conscious approach and state of mind. General regard to the issue of equality is not enough to comply…The duty places equality considerations, where they arise, at the centre of policy formulation, side by side with all other pressing circumstances, however important these might be.'[2]

Although the FCA does not have a direct responsibility to enforce compliance with the Equality Act, our interpretation is that the FCA's PSED does require it to specifically direct firms to ensure that their practices comply with the statutory duties incumbent on any organisation that provide services to the public. As such, we urge the FCA to make these requirements clear to firms in this Guidance.

In assessing the extent to which firms are complying with their equality duties, we also strongly recommend that the FCA takes full account of the impact of coronavirus on protected groups identified as being at greater exposure to vulnerability as a result of the pandemic, such as members of BAME communities, women, younger people, older people and disabled people and their carers.[3]

Regarding the FCA's approach to applying equality impact assessments of its own work, this should be a process that is carried out on a cyclical/ongoing basis, rather than conducted as a one-off exercise prior to the launch of new guidance or regulation.

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[2] EHRC's Essential Guide to the Public Sector Equality Duty, available at https://bit.ly/32stuw5. Also, please refer to Equality & Human Rights Commission (2014) Meeting the Equality Duty in Policy and Decision-Making, available at https://bit.ly/2HjaNPD.

[3] For example, the FCA's own data, which highlights the disproportionate numbers of BAME consumers whose financial resilience has been impacted as a result of the pandemic.

We acknowledge that consumers protected under the Equality Act should not be regarded as being vulnerable simply by virtue of their protected status. Nonetheless, both in the current environment and longer-term, there will be protected groups whose members are more likely overall to be susceptible to vulnerability.

Q2 Do you have any feedback on the updated draft Guidance?

Sector progress so far

The FCA's programme of work, initiated by the publication of its 2015 Occasional Paper on Consumer Vulnerability, has clearly been influential in enhancing firms' understanding of the needs of particular vulnerable customer groups[4] and escalating the priority of meeting the needs of these consumers these in firms' business agendas.

However, there has been little independent research that could provide an objective picture of industry performance sector-wide[5]. This gap highlights the need to introduce robust performance measures that will support the enhancement of the quality and consistency of firms' approaches across all markets.

Our experience in delivering money guidance and debt commissioning directly to the public has been that inconsistency of approach continues to impair customers' confidence that the positive treatment they have received from one provider will be replicated by another. Consumers report struggles arising from issues such as:

- The de-skilling of bank staff and firms' increasing reliance on remote access channels have had a negative effect on the quality of customer care
- Conversations with customers have become increasingly transactional rather than personal, which creates an obstacle to identifying vulnerability
- The treatment of bereaved customers in particular varies significantly from one firm to another

In terms of trying to achieve better consistency and a 'levelling up' to the performance of the best, a general reluctance to share business information, based on commercial confidentiality concerns, creates obstacles to collegiate discussion between firms about good vulnerability practice. We suggest that firms should weigh the perceived risks of information sharing against the benefits of a more collaborative approach, which already exists in 'safe spaces' such as the Money Advice Trust-UK Finance Vulnerability Academy. There are particular areas where the sharing of good practice to overcome common challenges might be particularly useful, such as methods for identifying patterns of vulnerability across customer bases and devising GDPR-compliant methods of logging individual customer vulnerability data.[6]

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[4] In particular, people with mental health problems, but also older people, people with cancer and victims of financial abuse. Much good work has also taken place and is continuing to evolve in relation to access to services for people with sensory disabilities.

[5] With the exception of the Lending Standards Board/Vulnerability Taskforce report, which assesses firms' performance 'across the customer and product journey in consumer credit, transactional banking, savings, and mortgages'.

[6] With regard to the latter, we recommend that the FCA actively promotes the forthcoming Money Advice Liaison Group guidance on GDPR and vulnerability data. As well as providing vital technical advice, the guidance encourages an explicitly joined up approach between data compliance and vulnerability policy teams.

The impact of coronavirus

Coronavirus has had profound impact on the economy, and will have both resulted in more consumers becoming vulnerable, and created new drivers of vulnerability. The FCA has taken robust action to ensure firms support customers impacted by the crisis, and has carefully considered the dimension of vulnerability, but firms must not assume that complying with such measures fulfils their responsibilities in full. This Guidance is a timely reminder that firms must continue to improve their services for customers in vulnerable circumstances even while their resources and operating models are under stress.

Coronavirus has had a direct impact on the liquidity of financial markets. The FCA should therefore be alive to the risk of potential deterioration in conduct in some parts of the market such as, for example, more aggressive marketing to increase customer volumes in order to offset the impact of higher delinquency rates.

Status of the Guidance

We welcome the additional clarity provided in this iteration of the Guidance regarding the role that its implementation will play in the supervisory context, and the potential influence it may have on enforcement decisions. In our view, the insertion of guidance into the Handbooks at appropriate points would enhance its impact on firms' practices. This would provide a useful steer to firms and promote a greater consistency of approach. Appropriately worded, this addition would also clarify both the relationship between Principles and Guidance and how guidance can assist firms to comply with rules.

Minimum standards and implementation frameworks

On balance, we favour the specification of minimum standards, despite the acknowledged potential risk of firms adopting a tickbox approach. Traditionally, firms' culture, business practices and relationship with the FCA have been framed within a compliance-orientated, 'must do' mindset. The influence of this, in terms of a habituation to adopting a clearly-structured approach to meeting FCA expectations, has been expressed in informal comments made by firms along the lines of 'We want to be able to better support vulnerable customers. but we need clear direction about how to do this'.

In calling for minimum standards, we are not, however, advocating for a set of new rules to be added to Sourcebooks. That would run counter to the aspiration, which we share with the FCA, that firms should strengthen their support for vulnerable customers because it is the culturally and ethically right thing to do rather than it simply being a compliance-based duty. However, we believe that specifying minimum standards, perhaps by further emphasising the areas of the guidance presented as 'must or 'should' actions for firms, would assist the embedding of good practice and support greater consistency of approach. This could be supported by implementation frameworks acting as a **checklist** rather than a tick box.

A minimum standards-based approach would also be consistent with the position adopted by the Competition and Markets Authority (CMA) in its 'Consumer vulnerability: challenges and potential solutions' paper. Trade bodies and self-regulatory bodies, such as UK Finance and the Lending Standards Board, could have a role in designing implementation frameworks, as appropriate. These might include an incremental (bronze/silver/gold = adequate/good/excellent) model, which would encourage the development of cultures of continuous improvement.[7]

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[7] There may be aspects of such standards that would have to reflect particular product or product type features, such as an enhanced expectation of regular product management review in the case of products of longer lifespan or those involving known 'customer journey touchpoints', for example, pensions.

Over time, it might be necessary to strengthen minimum standards in areas, identified by customer consultation and supervisory oversight, where a more prescribed approach is likely to be needed. For instance, where the FCA's monitoring shows areas of weaker practice, rules or other mechanisms may need to be deployed where guidance has not been sufficient to effect the necessary degree of change.

Implementation frameworks have the benefits of:

- Supporting the identification of patterns of vulnerability across customer groups
- Enhancing accountability to the FCA, customers and the general public

The use of implementation frameworks could also minimise the professional expectations placed on FCA supervisors. Supervisors are relationship managers (as well as compliance monitors) rather than vulnerability experts. Requiring them to individually determine benchmarks for how well firms are performing in this area might lead to inconsistency of both expectations and conduct across the market. Equally, firms should be expected to understand how best to meet their own consumers' needs to a greater extent than the FCA could, given their inside understanding of their own customer bases and business models.

Identifying vulnerability: general points

The identification of different drivers of vulnerability is useful, and the need to understand the specific needs generated by individual vulnerabilities is critical. However, it is worth pointing out that there are commonalities of need that run across many individual vulnerabilities relating to emotional and psychological impacts on comprehension, engagement and communication.

Recognising such commonalities may help firms avoid a siloed approach to addressing the needs of specific groups of vulnerable consumers as being entirely distinct from each other, and would assist in identifying approaches that are applicable across the wider overall segment of consumers experiencing vulnerability.

In terms of more accurate identification and prioritisation of need from across the spectrum of vulnerability, we suggest that non-financial vulnerability data could be filtered through information that firms hold on the financial resilience of their customer base (e.g., from income and expenditure information). This would enable a more nuanced approach, which would recognise the intersecting impacts of financial and non-financial vulnerability drivers.[8]

Proactive identification

Banks in particular have access to unique insights into the financial circumstances and behaviours of their customers, and providers routinely apply market segmentation models to support marketing and sales strategies. As such, approaches and operational frameworks already exist that could be adapted to identify and target support towards customers at risk of harm. In particular, we believe that firms offering credit facilities and products could and should make more proactive use of transactional data to support customers showing signs of diminished financial resilience, not only at the point when payments have already been missed but also beforehand.

[8] We have made a similar proposal to Ofgem in relation to self-disconnecting and self-rationing energy customers, and would be happy to share our thinking on this point in more detail with the FCA if that would be useful.

While some scenarios are already covered by regulation[9], firms should also adopt a voluntary and proactive approach to identifying and contacting customers at risk of financial difficulty. 'Cusp of harm' indicators that are potentially identifiable from firms' data, and which could act as intervention points, might include:

- fluctuations in income levels
- cancellation of direct debits
- patterns of unauthorised overdraft use
- requests for incremental increases of overdraft limits and/or credit card limits
- growing levels of credit card borrowing
- repeat use of high cost lending from other providers

Available UK research[10] indicates that many consumers would welcome proactive contact from lenders where they were identified as being 'continually in overdraft', or in 'increasing debt' (i.e., increasing credit commitment rather than default). Vulnerable customers who had previous positive interaction with their bank were more likely to favour this type of intervention, and survey respondents felt that such an approach could be strengthened by banks providing specific examples of how such data use provides customer benefits.

We are, however, aware that customer views on the appropriateness of early intervention are mixed. As such, a balance needs to be struck between taking pre-emptive rather than remedial approaches on the one hand, and the possibility of customers perceiving these as intrusive, unnecessary or even inappropriate on the other. This is particularly relevant in situations where customers may be keeping their head just above water as a conscious strategy, while also trying to juggle other non-financial life pressures.

While we recognise the challenge that firms face in this arena, the FCA's research points to the importance of a sympathetic, assumption-free tone of communications and the empowerment of front line staff to adjust their communication approach to meet different needs. Firms adopting such approaches are more likely to be successful in meeting the needs of customers in vulnerable circumstances.

We recognise that it may be difficult for a given firm to gain a full picture of a customer's financial circumstances unless the customer holds multiple products with them or provides consent to seek a wider range of transactional data via Open Banking routes.. However, an initial identification of problems based on an individual firm's own data, supported by pre-emptive use of the MaPS-curated Standard Financial Statement or equivalent, could act as a gateway to a more holistic discussion in situations where it is clear that financial difficulties exist.

As a minimum, firms should be encouraged to signpost to the Money and Pensions Service website or Contact Centre, which offer money guidance to assist customers both before they get into serious financial difficulties and after.

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[9] Such as, e.g., PD36 and CONC 5D.

[10] Barclays (2018): Consumer Attitudes to identifying vulnerability through the use of data. Available at https://home.barclays/content/dam/home-barclays/documents/citizenship/our-reporting-and-policy-positions/Consumer-attitudes-to-identifying-vulnerability-through-the-use-of-data.pdf

Referrals for third-party support

Many consumers prefer not to discuss their concerns about financial issues with providers in the first instance. As such, the need to ensure that firms adopt robust outward signposting and referral mechanisms to help customers access support to deal with money management, debts or non-financial stressors should be balanced by clear inward referral routes from trusted third parties to firms. Firms should therefore be encouraged to develop relationships and clear lines of communication with charities supporting people experiencing particular vulnerabilities.[11] However, firms should also recognise that their referrals will consume often-stretched resources in these organisations, and consider whether and how they could provide support to help cope with this increased demand.[12]

In some situations, it might be appropriate for firms and charities to develop an effectively co-managed approach to the resolution of a customer's financial problem, to facilitate the free flow of communication between both parties. Such relationships could also provide the opportunity for firms to monitor their own effectiveness in supporting customers' wider wellbeing by maintaining dialogue with third-party support services.

For customers experiencing financial difficulty and/or needing general guidance on a range of money matters, including budgeting, we recommend that firms be encouraged to signpost to the MaPS website or call our Contact Centre, and that they embed a link to the website in all relevant online and hard copy communications.

Point of sale

The Guidance does not discuss point of sale in detail, beyond suggesting that firms consider instances when it might be appropriate to suggest that customers buy products on an advised basis or make use of cooling-off periods. In our view, this stage in the customer relationship is a crucial touchpoint at which vulnerability issues should be uppermost in firms' thinking. We are not convinced that the Principle 9 injunction to 'take reasonable care to ensure the suitability of…advice' is either sufficiently strong or directive enough to ensure that a proactive approach is taken at this point.[13]

Point of sale provides an opportunity for firms to act with pre-emption, identify possible vulnerability (particularly in relation to low levels of financial capability) and minimise the risk of detriment in the course of the subsequent product relationship. While we appreciate that determining customer understanding of product terms is sensitive in terms of the customers potentially feeling patronised, we feel that the benefits of early identification of vulnerability outweigh the risks.

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[11] The UK Finance Financial Abuse Code of Practice includes a consideration of good practice in working with third parties that support vulnerable customers. Available at https://www.ukfinance.org.uk/system/files/Financial-Abuse-Code-of-Practice.pdf.

[12] They should, however, also consider that their referrals will generate additional demand for other organisations' services, which might have limited capacity. The Energy UK Vulnerability Commission for Customers in Vulnerable Circumstances recommends that the energy industry should adopt 'an approach of joint funding by suppliers with the aim of identifying proven, effective initiatives that will create efficiencies and provide secure long-term funding for the services provided by these organisations.' This is a model the FCA might consider adding to this Guidance.

[13] In some markets, customers are likely to make an initial commitment to purchase in response to advertising. We suggest that the FCA should direct its attention to marketing approaches that emphasise a friction-free customer journey from promotion to purchase, which might run counter to Principle 6 and/or fail to meet consumers' specific information needs (Principle 7).

As a suggested approach, firms could be encouraged to use a standard set of diagnostic questions, e.g., 'Do you know how much x credit product will cost you if you only make minimum payments?', to gauge customers' understanding of product terms. These questions could be presented in such a way that it is clear to customers that these probes are universally applied, in order to avoid the risk of any perception of paternalism. The course of subsequent discussion or action, e.g., either sale or further explanation, could then be tailored according to how the customer responds to these initial questions.

We also suggest that, at the point of sale, all customers should be provided with an 'If Things Go Wrong' leaflet, with guidance covering potential scenarios where (a) customers' material circumstances might change for the worse (e.g., job loss) (b) firms might become insolvent or be closed down and (c) technical issues affecting the firm could cause detriment to the customer[14]. This leaflet could provide the details of relevant support services such as the Money and Pensions Service,[15] the Financial Services Compensation Scheme, the Financial Ombudsman Services and others.

Product design

As the Guidance acknowledges, some products may contain features, such as charges for rollovers, that could be considered intrinsically harmful. As such, any consideration of product design must take account of the role of regulation in seeking to minimise detriment 'at source', as a requirement rather than in the form of guidance. Critically, products that are targeted at consumer cohorts most likely to have low levels of financial resilience must not incorporate features that are designed to profit from this form of vulnerability.

Regarding guidance, it is crucial to ensure that staff who design products, services and customer journeys fully understand the challenges and needs of more vulnerable consumers, as the design function is key to shaping consumer experiences and outcomes. The design process must prioritise the use of features that can be communicated as simply and clearly as possible, particularly for consumers experiencing cognitive barriers, while allowing for the necessary constraints imposed by the function and purpose of particular product types.

Identifying and meeting the product design needs of vulnerable customers must be based on research involving consumer consultation both before and throughout the design process. This process should be guided by principles of co-creation and accessibility by design, which move the design approach beyond a general endorsement of 'inclusivity' and enable the needs generated by specific forms of vulnerability to be understood and fully addressed. It should also be noted that a key feature of an accessible by design approach is that in addressing the needs of one group of consumers it is likely to enhance accessibility and usability for all.

Product design should be informed by findings from complaints data and other customer experience feedback, to help identify the problems that consumers have experienced in not being able to use the product in the way they had been led to expect they could. This in turn creates a further expectation that customer satisfaction feedback mechanisms should be more detailed than the default 'Would you recommend?' approach.

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[14] As in the recent case of Pockit and Wirecard.

[15] In addition to offering money guidance, the MaPS website also provides access to a debt advice locator tool and will in due course be integrated with our pensions guidance information services.

Product design must incorporate a flexibility that provides for the changing needs and circumstances of consumers over the product lifespan. While this is a particular consideration in relation to longer-lifespan products, such as pensions and mortgages, many causes of vulnerability are unpredictable and can happen at any time. As such, the need for flexibility is one that applies across all markets.

As an example of taking a proactive approach to making customers aware of product and service features that can be adapted to meet changing needs, firms could consider introducing regular communications highlighting options to, for example:

- switch on, switch off or re-set spending blockers
- change direct debit payment dates to better fit current income cycles
- sign up for telephone banking services to enable direct 'live human' communication

Incorporating flexibility into product design will also help firms make the commercial case for embedding vulnerability requirements into business models, as it will reduce the need to repeatedly retrofit products to take account of previously unidentified customer needs.

The design/marketing nexus

We welcome the acknowledgment that some products are intrinsically more complex than others. This recognition confers a greater responsibility on firms to take particular care in ensuring that customers whose vulnerability is expressed in the form of cognitive challenges should be provided with sufficient information in a format that corresponds to their level of understanding.

Firms may plausibly argue that the information they are required to provide to consumers is tightly prescribed, either in legislation or FCA rules, and the FCA has published guidance to support firms in more fully meeting these requirements. We suggest that the Vulnerability Guidance could be strengthened by reference to this earlier work. Equally, firms should be encouraged to actively consider how they can ensure that all consumers are provided with information about product features and sources of redress that is appropriate to and sufficient to meet individuals' differing levels of understanding.

In terms of deciding where the clarity benchmark should be set, it is important to recognise that average population-wide levels of understanding of even basic financial terms are extremely low. As such, the problem of 'information asymmetry' is one affecting many consumers who might not regard themselves as vulnerable, but are nonetheless at risk of financial detriment in contracting for products whose terms or features they don't understand.[16][17] There is particular risk associated with customers' lack of understanding of the potential long-term costs of some forms of consumer credit. This risk can be exacerbated by sales techniques that focus on short-term (month-by-month) affordability rather than total cost of credit.[18]

This is a critical point at which the financial capability and consumer vulnerability agendas intersect. Consumers can only engage with products in a way that reflects their current level of skills and confidence. While the work of MaPS and others seeks to help consumers develop these capabilities, firms have a responsibility to meet their customers halfway, by designing products that are easy to

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[16] See for example the results of a survey by Credit Connect gauging consumer understanding of a range of common financial terms and concepts.

[17] In line with the HMT-commissioned Sergeant Review of Simple Financial Products, we advocate that 'straightforward, standardised and consistent language should be developed and used across all literature and product names' wherever possible.

[18] Opacity of product features and how they are presented can also create obstacles to customers being able to make meaningful comparisons between different product types that could meet the same consumer need (e.g., car financing).

understand and use and ensuring that consumers are not rendered vulnerable to harm by complex, opaque or inflexible product features.[19]

Governance and culture

We fully support the aim of the Guidance to change the culture of organisations so that they are better able to meet the needs of vulnerable customers. Culture change must be initiated from the top, and we believe that there is insufficient emphasis or detail on this in the current version of Guidance. Unless there is an understanding at Board and Senior Executive level of the ways in which poor conduct by firms can contribute to customer vulnerability, and the importance of addressing this, then significant change and continuous improvement are unlikely.

A commitment at senior level is crucial to ensuring that effective approaches to supporting vulnerable customers are embedded across an organisation and can be demonstrated at all levels of seniority and across all functions. Comparable good practice in other fields, such as disability-inclusive employment practices, points to the impact of appointing a Board Member, CEO or member of an executive leadership team to act as the champion, sponsor or senior lead on vulnerability issues.

A strong direction and challenge from senior leaders will help avoid a scenario where, irrespective of corporate declarations of intent, proper integration of vulnerability requirements fails, because an individual or team without the authority to secure effective engagement is made responsible for acting as a change agent across individual departments.

It is equally important that firms take a strategic approach based on a long-term commitment, rather than rely on tactical, short-term and reactive responses to ‘hot topic’ issues generated by public attention.

In order to embed good practice across staff teams, we suggest that a clearer steer should be provided to firms regarding the use of performance incentives. As well as adopting a negative approach of discouraging incentive schemes solely based on sales or customer throughput volumes, firms should be positively encouraged to reward staff who demonstrate good practice in supporting vulnerable customers.

Staff skills

Sales staff and customer service agents are typically the first point of contact for customers with low levels of digital engagement. Many customers who fall into this group might be regarded as vulnerable, on the basis that they are more likely to be on low incomes, lack technical/literacy/numeracy skills, be of an older age cohort or be subject to any combination of these factors.[20]

Firms deploying vulnerability support teams risk treating these colleagues as the ‘default specialists’, liberating other colleagues from a responsibility to identify customers’ vulnerability at the first point of contact. However, if frontline staff cannot do this, then access to the right help is blocked from the outset, particularly in cases where specialist team contact information is poorly promoted to the public.

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[19] In particular, consumer confusion can easily arise in the case of new product types. For example, there is anecdotal evidence that purchasers of buy-now-pay-later products do not realise that they will incur costs if they don’t make payments at the specified time.

[20] This group of consumers is also disadvantaged by the overall composition of the market, in having access to a more limited range of products.

It is therefore crucial that all customer-facing staff, whether in-house or outsourced, are provided with training to enable them to identify indicators of vulnerability. We recommend that such training takes account of the BRUCE tool, designed by the University of Bristol's Personal Finance Research Centre to support lending staff at credit application stage, whose principles are applicable at any stage of the customer relationship.

Promoting support services

The FCA's case study report, which accompanies the current Guidance, indicates that consumers in vulnerable circumstances are often not aware of the support offered by firms. In our experience, firms often poorly promote the services they offer vulnerable customers, such as specialist support teams. This deficit not only creates obstacles to customer access to appropriate assistance but also risks firms underplaying the positive work that they carry out in the vulnerability space.

We therefore recommend that firms are encouraged to make stronger efforts to publicise the ways in which they can support vulnerable customers, and frame such services in terms of the real-life circumstances in which customers find themselves. As a topical example of such an approach, firms might, for example, design landing page guidance explicitly targeted at customers facing redundancy or other income shocks resulting from the coronavirus pandemic. Equally, it would be helpful for firms to provide or link to existing guidance for customers whose credit applications have been declined.[21]

Q4 Do you have feedback on what we should prioritise when monitoring firms' treatment of vulnerable consumers?

Competition and Markets Authority research into the challenges and potential solutions associated with consumer vulnerability sets out five principles that firms across a range of sectors should apply as their focus when working with vulnerable consumers, which we use as guide in responding to this question. The principles are:

(i) finding out what works
(ii) using inclusive design
(iii) making good use of data and intermediaries
(iv) changing business practices'
(v) regulating outcomes directly

In the relevant sections above, we have dealt specifically with inclusive design, good use of data (to enhance identification of 'early' financial vulnerability) and working with intermediaries. In relation to the general issue of what works, the Guidance itself, and in particular the case studies it includes, provide a useful steer.[22]

As we advise elsewhere, there is more that firms can do to share good practice on a collegiate basis. Regarding changing organisational approaches and business practices in the round, our overall response is intended to support this principle, and we would once again stress the importance of senior level engagement as the prerequisite for transforming culture and practice.

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[21] For example, Experian's 'Refused Credit?' guidance.

[22] We would also refer back to the Practitioners' Pack that supports the FCA's Occasional Paper 8. Although some of the content is out of date, it provides some useful practical resources.

Managers’ responsibilities in overseeing appropriate customer interactions

Firms should be required to create a document illustrating their organisational structure, showing lines of responsibility and hand-off points for management engagement to support customer-facing staff working with vulnerable customers. In terms of disseminating good practice across the sector, this is an area where inter-firm sharing of sample organisational charts might support a more consistent approach to demonstrating how staff are supported to engage with vulnerable customers.[23] These documents would also be of use to the FCA in establishing how effective senior managers are in embedding of good practice, in line with their responsibilities under the Senior Managers & Certification Regime.

Q5 What types of information do you envisage it would be necessary for firms to collect, to assess the effectiveness of their policies and processes in respect of vulnerable consumers?

We suggest that in addition to analysing data that identifies customer cohorts particularly susceptible to vulnerability, firms should cross-reference this with customer outcomes data. This would help identify the extent to which design features, sales processes and staff interactions meet the needs of vulnerable customers and reduce the risk of detriment to them.

For example, in the case of time-limited credit products, the percentage of contracts that reach completion without payment default could be used as a metric. We appreciate that customer behaviour is a potential contributory factor to this measure, but would argue that persistent and high levels of default on the part of vulnerable customers might also indicate poor alignment by firms of product to customer need.

Q6 Do you have any other feedback on our proposals?

The need for outcomes to be assessed in terms of customers’ own experiences

Our overall concern with the broader framework that underpins this Guidance, namely the Principle 6 outcomes, is that the measures prescribed to indicate firms’ relative success in treating customers fairly are not based on an evaluation of consumer experience. Without customer-based metrics, the desired outcomes are merely descriptions of means by which firms should self-assess their level of achievement, lacking reference to the end user.

Ensuring effective regulation of how well firms’ market identification, product design, and overall business practices meet the needs of vulnerable customers is critical. However, this can only be achieved by evaluating consumer outcomes with direct reference to insights solicited directly from customers themselves.

The role of a duty of care

As we proposed in our response both to the 2019 version of this Guidance and to a separate consultation on the issue, we believe that the principle of treating customers fairly would be better served by the introduction of a duty of care. We are aware that further consultation on a duty of care is in the pipeline, and will make a full response to that in due course.

In our view, the issues raised in this present consultation are pertinent to the wider issue of a duty of care, which we believe would act as a means of ensuring that firms take a pre-emptive

[23] With the proviso that individual firms need to design structures that fit their own business and customer base. As such, any shared examples need to be critically appraised and adapted as appropriate.

approach to meeting the needs of all customers at any given time, whether vulnerable at any particular moment or not.

Designing, advising on, supplying and managing products and services based on an understanding and anticipation of the full potential range of customer needs, and factoring in flexibility, a tailored responsiveness to individual circumstances and emphasising customer care as the default, would help ensure that consumer outcomes are of a consistently higher quality.[24]

In our view, a duty of care would bring greater fairness to all financial markets, ensure better consistency of practice and customer experience, afford stronger protections and effect the fundamental culture change that the FCA reports that it is seeking.

An anticipatory approach would also help erase the false separation between 'vulnerable' and 'non-vulnerable' consumers, in recognising that all customers are entitled to and should be able to confidently expect that, irrespective of individual circumstances and unforeseen events, they will be provided with a service that meets their needs.[25]

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September 30 2020

[24] Firms should also be expected to build duty of care requirements into contract specifications for sub-contracted services, notably debt collection functions.

[25] In our view, in taking an anticipatory approach to minimising the risk of poor customer outcomes, meeting a duty of care would also be likely to reduce levels and expressions of customer dissatisfaction, including the use of litigation.