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Consultation response: FCA Guidance for firms on the fair treatment of vulnerable customers

Response by the Money Advice Trust

Date: October 2019

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Introduction

About the Money Advice Trust

The Money Advice Trust is a charity founded in 1991 to help people across the UK tackle their debts and manage their money with confidence.

The Trust's main activities are giving advice, supporting advisers and improving the UK's money and debt environment.

In 2018, our National Debtline and Business Debtline advisers provided help to more than 204,000 people by phone and webchat, with 1.7 million visits to our advice websites.

In addition to these frontline services, our Wiseradviser service provides training to free-to-client advice organisations across the UK and in 2018 we delivered this free training to over 820 organisations. Furthermore, Money Advice Trust Training and Consultancy services have worked with over 224 commercial organisations to identify and support their customers in vulnerable circumstances.

We use the intelligence and insight gained from these activities to improve the UK's money and debt environment by contributing to policy developments and public debate around these issues.

Public disclosure

Please note that we consent to public disclosure of this response.

Introductory comment

We welcome the opportunity to comment on the FCA's proposed vulnerability guidance for firms, and the regulator's continued focus on this crucial agenda in financial services.

In addition to providing debt advice through National Debtline and Business Debtline, the Money Advice Trust provides a training and consultancy service to help creditor organisations identify and support customers in vulnerable circumstances. We have now trained more than 19,000 staff in more than 200 creditor organisations – the vast majority of which have been financial services firms – and the income generated from this work is re-invested into our frontline debt advice services.

We have therefore responded to this consultation primarily based on this expertise of engaging with firms on the vulnerability agenda, in addition to our own perspective as an FCA-regulated debt advice provider.

Since the launch of the consultation we have also engaged with many of the firms we have worked with through our work on vulnerability to help shape this response, through our own programme of engagement around the FCA's proposed guidance. This included:

- ✓ A Money Advice Trust roundtable event attended by senior representatives from large financial services firms we have worked with on vulnerability;
- ✓ A live webinar, as part of our Vulnerability Matters series of webinars and podcasts, attended by more than 150 creditor staff working in vulnerability-related roles;
- ✓ A discussion with senior decision makers held as part of our joint Vulnerability Academy with UK Finance.

Executive summary

The proposed vulnerability guidance represents a helpful step in bringing together information from the FCA principles, aspects of the FCA Handbook and wider ongoing work programmes that relate to vulnerability. In addition to the various changes to the Guidance we propose in this response, we would welcome the bringing together of all the relevant details from the Handbook on vulnerability into one document as an aid for firms.

We would also welcome greater clarity on the impact of the final guidance on the regulator's supervisory/enforcement arrangements – and how it will be accounted for in the Senior Managers and Certification Regime.

High-level aims

We welcome the broad aims of the FCA's proposed guidance, but would recommend that:

- ✓ the proposed focus on “doing the right thing” should go beyond FCA rules and guidance to include wider legislation, including firms' requirements under the Equality Act;
- ✓ outcomes and ‘outcome measures’ should be more clearly defined;
- ✓ to achieve consistency, the guidance should provide greater clarity on what is practically expected from firms in terms of behaviours and outcomes.

We recommend the inclusion of an additional high-level aim of ensuring that *“firms should always work to identify, understand, and respond to what detriment consumers are ‘vulnerable to’”*. This should be accompanied by a clear schema to help firms move beyond thinking about ‘common causes’ of vulnerability to a broader consideration of ‘common harms’ that customers could experience.

Actual and potential vulnerability

We are concerned that the proposed distinction of ‘actual’ and ‘potential’ vulnerability risks introducing confusion for firms, with varying interpretations of ‘potential’ vulnerability already causing wide variations in policies and practices – and given that this attempted distinction fails to capture more complex circumstances in which consumers can fall into both categories. We instead recommend a distinction is drawn between ‘currently experiencing harm’ and ‘at greater risk of future harm’.

Staff skills and capabilities

The FCA is right to highlight training as fundamental in ensuring that staff have the skills and capabilities necessary to enable firms to comply with the proposed guidance. We would welcome a strong steer from the regulator that generic ‘awareness’ training on specific vulnerable circumstances is not sufficient – and that firms should implement training that is practical, operationally-focused, and aware of the challenges and demands that staff face when attempting to identify, engage, understand, and support vulnerable consumers.

Product and service design

We welcome the guidance's focus on product and service design, and note that a common understanding of 'universal design' is needed to progress this agenda. The proposed guidance on communications is welcome but must more comprehensively cover mental capacity considerations – and we would recommend the inclusion of specific guidance on customer lending and product/service sales, as this is a notable omission.

Guidance on GDPR and vulnerability

We strongly recommend that the regulator addresses various misinterpretations of GDPR regulations in relation to vulnerability that have recently become evident, and we have outlined these concerns in detail in our response. The Money Advice Trust and Money Advice Liaison Group is currently producing guidance on GDPR and vulnerability for publication in early 2020, but we recommend that a strong and urgent steer from the regulator is required to address these challenges.

Proposed cost-benefit analysis

We are concerned by various aspects of the proposed cost-benefit analysis, and in particular the transparency of this exercise and the need to accurately define 'benefits' and 'costs' based on all perspectives (and not just those of firms) given that 'customer benefits' are likely to incur 'firm costs'. We welcome clarity on plans for this exercise, and for the FCA to engage charities and consumer organisations widely in the development of its model.

We also note that as the guidance will apply to all FCA-regulated firms, including debt advice agencies, the FCA and organisations that fund debt advice, including the Money and Pensions Service, will need to consider the impact on debt advice capacity of the additional costs that debt advice agencies will incur as a result.

Responses to individual questions

Question 1: Do you have any comments on the aims of the draft Guidance?

We welcome the FCA's broad aim of ensuring consistency of outcomes for vulnerable consumers irrespective of the sector they are dealing with and the firm they are dealing with.

As articulated on page 15, the aims of the draft guidance appear to be three-fold:

- a) *“doing the right thing for vulnerable consumers”* being deeply embedded in the culture of firms;
- b) the act of “doing the right thing” resulting in *“outcomes experienced by vulnerable consumers [that] are at least as good as those of other consumers”*; and
- c) *“greater consistency across firms so vulnerable consumers are treated fairly in whatever financial service or product they buy”*.

These aims are both reasonable and welcome.

While we offer detailed commentary below on how successful we believe the draft guidance currently is in meeting these aims, we would like to offer three observations on each of the aims, while recommending **an additional over-arching aim** that we believe should feature as part of the revised guidance when this is published later in 2019/early 2020.

‘Doing the right thing’ goes beyond FCA guidance and rules

Firstly, “doing the right thing” is clearly not only about following existing FCA guidance and rules, but also wider UK legislation. While we note the FCA wishes to be explicit and concise about its perceived regulatory responsibilities in relation to the Equality Act 2010 (as seen on page 21), we believe that this had led to the guidance in Appendix 1 not providing the practical detail that some firms require.

To be more specific, in the 200+ firms that we have worked with on vulnerability, *we only rarely* encounter staff, organisational policies, or frontline policies which meet the anticipatory and responsive duties are required of them under the Equality Act 2010. Too often, firms are neither clear on how they need to think ahead about meeting the needs of consumers with visible and hidden disabilities, or how they should meet these legal duties when a customer makes a firm aware of their disability, or there are reasonable grounds to believe that a firm knows that such a disability exists.

While the FCA understandably does not wish to be responsible for overseeing the Equality Act 2010 in relation to financial services, we believe it does need to ensure, as a regulator, that the guidance it issues on vulnerable consumers does more to explicitly direct firms on how to meet the requirements of the Act. This is essential given that (to our knowledge) no dedicated, published or authoritative guidance exists on the Equality Act for financial service providers (with the exception of a brief webpage provided by the Equality and Human Rights Commission, which could be built upon).

‘Outcomes’ and outcome measures should be defined

Secondly, the words ‘outcome’ and ‘outcomes’ are key to the draft guidance’s aims, and are mentioned 65 times throughout the text. Consequently, we recommend that the final guidance:

- a) defines how the FCA are using/seeing the term ‘outcome’ (as multiple interpretations exist among the firms that we have contact with, including the term meaning the same as ‘customer satisfaction’, being equivalent to an ‘output’ or other ‘consumer metric’, or another interpretation). This is a problem, as it means that some firms are seeing consumer outcomes in very different ways, so it would be helpful for the FCA to explain their definition/parameters to this.
- b) states more clearly throughout the document which types of outcome measure firms should consider using. From our experience, firms are not at all clear on what data they should be collecting about consumers in vulnerable situations, nor how they should be using these data to establish whether they are achieving the ‘same outcomes’ as non-vulnerable consumers. An opportunity exists for the FCA to provide some much-needed initial clarity and guidance in this area. Given that ‘outcome’ is used 65 times in the guidance across a range of different areas for action, it is clear that the FCA do have a clear sense of what they want firms to achieve and embed within their culture. However, while evident through the main body of the text, this is not currently highlighted or made explicit. In making this more apparent, the FCA may wish to consider the use, presentation and tracking of outcome measures in other guidance/strategy documents, such as The Five Year Forward View for Mental Health (NHS England, 2016),¹ or Achieving World-Class Cancer Outcomes: A Strategy for England 2015-2020 Progress Report 2016-17.²

Ensuring consistency requires greater clarity on what is expected from firms

Thirdly, in relation to the aim of ‘greater consistency’ in the way in which vulnerable consumers are treated, we believe that this can only be achieved if the FCA are clearer about what is expected of firms in their final guidance in terms of behaviour and outcomes.

As it stands, we believe the draft guidance does cover broadly the right range of issues – however in its current form, without the right level of clarity. For a vulnerable consumer to truly experience the same level of treatment across the financial services sector, it is not going to be enough to gently point towards general actions or outcomes that firms might consider. This is because, through the engagement events and discussions we had with staff in firms who have a responsibility for translating FCA guidance into practical action (as opposed to staff in policy roles), there was a hope and expectation among firms that GC19/3 would provide standards for firms to align with. As it stands, this is not the case.

While the FCA may take the view that publishing minimum standards is not the right step to take, the majority of firms that we have spoken to about GC 19/3 have articulated a desire for a much clearer

¹ <https://www.england.nhs.uk/wp-content/uploads/2016/02/Mental-Health-Taskforce-FYFV-final.pdf>

² <https://www.england.nhs.uk/cancer/strategy/achieving-world-class-cancer-outcomes-progress-report-2016-2020/>

sense of what the regulator will be taken into account during authorisation, supervisory, and enforcement activity.

An additional aim covering a key question for firms – what are consumers ‘vulnerable to’?

Finally, we recommend that the final guidance should include an additional aim of ensuring that *“firms should always work to identify, understand, and respond to what detriment consumers are ‘vulnerable to’”*.

This is critical as although the draft guidance offers description and diagrams on some of the drivers of vulnerability (e.g. pages 7, 8, 29), the scale of vulnerability in the UK (e.g. page 7), and the definition of vulnerability (page 23), the fundamental importance of a firm working to establish what types of detriment a consumer is actually ‘vulnerable to’, is not raised in the document. We believe this is an important omission, and needs to be an explicit aim for every firm to follow.

One reason for this is that it is impossible to understand an individual consumer’s needs (or work to meet these) unless a firm is able to establish what detriment they may be experiencing/likely to experience. Equally, when thinking about the actions that a firm can take to anticipate and prevent harm from occurring in the first place (which would constitute an important element of the design cycle, as well as other activities), firms need to move beyond thinking about the *common causes* of detriment, and begin to consider what the *common harms* are that consumers can experience. Only by taking this step will firms be able to address these common harms.

Furthermore, thinking about broader types of common consumer harm can help firms prepare themselves and their staff to help a much larger number of consumers than by focusing on a single condition or driver of vulnerability (e.g. thinking about the common harms of ‘difficulties with decision-making’ rather than focusing on ‘consumers with mental illness’ can help a firm to take action which will not only help people with mental health problems, but also those who might be experiencing such decision-making difficulties due to the side-effects of treatment for kidney failure, or where there are language or numeracy barriers to decision-making, or where a consumer has communication issues due to a stroke).

To be clear, we do not believe that the FCA should be recommending that firms no longer think about particular groups of consumers known to be at a higher risk of detriment. However, we are aware that some of these groups of consumers do get more attention in the thinking and work of firms than others (due to very important and successful work by organisations representing those with, for example, dementia, cancer, and mental health problems). Taking an approach where firms apply the lens of ‘common harms’ to their work on vulnerability would help to counter-balance this, and potentially bring the benefit of firms’ work on vulnerable to a much wider audience.

To achieve this, it may therefore be helpful if the FCA could bring together some of these common harms/detriment into a single table or figure (providing the ‘common harms’ equivalent of the ‘common drivers’ on page 29, or the ‘flower diagram’ of common drivers on page 8). Importantly, many of these common harms are already listed in the FCA draft document (e.g. page 9, point 2.14 contains a partial list), but we believe it would be useful and powerful if these were brought together into a clear schema for firms to consider, in addition to the inclusion of *“firms should always work to identify, understand, and respond to what detriment consumers are ‘vulnerable to’”* as an additional high-level aim.

Question 2: Do you have any comments on the application of the Guidance or its status as non-Handbook guidance?

The draft guidance represents a helpful step in bringing together information from (a) the FCA principles and outcomes, (b) from some other aspects of the Handbook, and (c) also the wider ongoing work programmes at the FCA that relate to vulnerable consumers.

It would be helpful – as mentioned in the consultation document itself on page 19 – if the guidance could bring together all the relevant detail from the Handbook on vulnerability into one document, as this would create a ‘one-stop’ resource/reference guide.

Although the guidance states that “*firms do not need to follow it in order to achieve compliance with the Principles*”, our experience of working with firms on vulnerability is that in practice, as with Occasional Paper 8, many firms will attempt to follow the guidance ‘to the letter’. In many respects, this is to be welcomed – however this approach presents two challenges:

- ✓ Firstly, as it stands, the guidance is not clear enough about the outcomes that firms should be seeking to achieve in relation to vulnerability (as noted in our answer to Question 1) – we believe this represents a missed opportunity to really help firms focus on what is important.
- ✓ Secondly, the guidance should emphasise more strongly the important role that innovation has already played in firms’ responses to consumer vulnerability, and that the FCA expect that such innovation should continue. This is particularly important to avoid firms not ‘settling’ for the boundaries described within the guidance, and seeking to go beyond what might be expected in the fair and supportive treatment of vulnerable consumers.

Question 3: Do you have any comments on the distinction between actual and potential vulnerability (Annex 1, Section 1)?

In its consultation on Consumer Approach, the FCA proposed a new definition for ‘vulnerability’ which the Money Advice Trust and other organisations argued would have had the effect of weakening this agenda in the industry. We were pleased that the FCA listened to these concerns and retained its original 2015 definition – which firms know, are familiar with, and understand.

We believe we are now in comparable situation, where this draft piece of FCA guidance attempts to make a distinction between ‘actual’ and ‘potential’ vulnerability. While this distinction is important for firms to understand, we believe that firms are likely to be confused by the terms that are being used to make this. There are four issues that follow from this.

The term ‘potential vulnerability’ is causing confusion

Based on our engagement with firms, we believe the term ‘potential vulnerability’ is already causing some confusion. This is because some firms are understanding this to mean every person in the UK is potentially vulnerable to detriment to vulnerability (after all, anyone can become unwell, suffer an income shock, or some other form of experience) – while other firms believe that the term actually refers to not to every person in the UK, but only those with certain characteristics (such as

consumers who are disabled) who are at a higher-risk of harm, loss, or disadvantage. Other firms consider that consumers using particularly complex financial products may be potentially vulnerable, primarily due to the arrangements involved. This range of understanding (sometimes also within the same firm) means that policies/strategies to address vulnerability can vary immensely.

Consumers can be both ‘actually’ and ‘potentially’ vulnerable

Secondly, the current distinction between ‘actual’ and ‘potential’ vulnerability seems to suggest that a consumer is either actually vulnerable or potentially vulnerable – however, in reality consumers can be both at the same time. For example, a person living with not only the impact of a recent stroke (which has affected their decision-making and makes them – under the FCA categorisation – ‘actually’ vulnerable), but also unpredictable employment and income circumstances (but where they are currently going through a stable period, where no harm is being experienced, and which makes them ‘potentially vulnerable’).

In many respects, this person is both potentially and actually vulnerable. While this is clearly a possible state, this is not recognised in the current text, as this states that “*some consumers will be actually vulnerable*” and “*other consumers may be potentially vulnerable*”. This needs to be addressed, as firms basing a treatment strategy on segmenting consumers into ‘actual’ and ‘potential’ vulnerability will soon run into difficulties.

Suggested alternative wording based around ‘harm’

Thirdly, there are alternative terms that could be used to make the same distinction more clearly – in conversations with firms, we have heard some not only misunderstand the terms ‘actual’ and ‘potential’, but also use these interchangeably. Consequently, we recommend that alternative terms which are more clearly distinguished from one another should be used.

For example:

- ✓ ‘potential’ vulnerability could be replaced by ‘at greater risk of future harm’;
- ✓ ‘actual’ vulnerability could be replaced by ‘currently experiencing harm’.

In relation to the suggested alternative term for ‘potential’ vulnerability, our proposed wording is deliberate and careful – aiming to distinguish between individuals who are at greater risk of future harm who fall into certain groups (such as disabled consumers) compared to the wider public (who, technically, cannot be entirely risk-free from harm). Similarly, our suggested term for ‘actual’ vulnerability only applies to consumers who are experiencing harm now.

In addition, if we refer back to our proposed additional high-level aim on the need to always ask ‘vulnerable to what?’ (see our response to Question 1), then it becomes easier to talk about consumers who are ‘*currently experiencing harm X*’, and at the same time ‘*at greater risk of future harm of Y*’. Under this, our earlier example becomes a ‘consumer who is currently experiencing difficulties in decision-making due to their stroke’, while at the same time being ‘at greater risk of lower income in the future due to their employment circumstances’. These represent more accurate and specific descriptions of the consumer’s circumstances, which is key in providing relevant help and support.

Question 4: Do you have any comments on our view of what firms should do to understand the needs of vulnerable consumers (Annex 1, Section 2)?

Firstly, we would again note that firms need to understand the common harms that vulnerable consumers can experience – without knowing and understanding these common harms, it will be more difficult for firms to anticipate and prevent these harms from occurring. Consequently, we would argue the final FCA guidance requires an equivalent figure/ table to those presented on page 29, which sets out the common harms consumers are vulnerable to, and considers these alongside the scale and drivers of vulnerability (see our responses to Questions 1 and 2).

Secondly, we note that understanding the needs of vulnerable consumers is predicated upon *relevant information* being obtained by staff. It is possible for staff to collect a host of information about a consumer, but effective action can only be informed by *relevant* information. There are a range of tools in existence that staff can use to do this – in the same way that the draft guidance makes reference to programmes and schemes such as Money and Mental Health’s accessibility standards, or the work of UKRN on outcomes, it might be useful to make reference to these tools too.

Our work at the Money Advice Trust has helped to develop a number of these resources. If a ‘practitioner’s toolkit’ was developed to sit alongside the final guidance (as employed with Occasional Paper 8), this could incorporate tools and resources from a number of organisations.

Finally, on page 32, the guidance makes reference to conducting market research to help better understand the needs of vulnerable consumers. It would be helpful if the FCA could encourage firms to publish a summary of this market research (without publishing commercially sensitive information). This is because it makes no sense for firms to duplicate research on the same issues (with publication making it possible to avoid this, as well as identifying gaps for new research).

Furthermore, charities are often asked by market research firms to assist with such research, often without appropriate remuneration, and this can avoid strain being placed on these voluntary sector agencies. In addition, smaller firms will often not be able to invest in market research, and therefore can use published research summaries to inform their own activity in a more evidence-based manner. The publication of market and other research on vulnerability by financial services firms is not unknown (both Monzo and Barclays have done this recently, and Lloyds and Nationwide before them). However, this welcome trend needs to be encouraged and nurtured, as it is not yet a common behaviour.

Question 5: Do you have any comments on our view of what firms should do to ensure staff have the necessary skills and capabilities when engaging with vulnerable consumers (Annex 1, Section 3)?

Firstly, it is correct that customer needs cannot be identified and met unless creditor staff have the necessary skills, knowledge and confidence. The Money Advice Trust has now trained more than 19,000 staff in more than 200 firms, and we have provided comments in response to this question based on this experience.

Generic ‘awareness’ training is not enough

While training plays a key part in creating the necessary skills and insight, the type of training selected and delivered is critical. Across the sector, we are aware that many firms often *initially* opt for ‘generic’ awareness training on specific vulnerability subjects (e.g. a mental health awareness course, or a dementia session, where participants are taught about the broad meaning and prevalence of the condition or situation). However, these courses only build generic awareness, and do not take into account the contexts in which staff are encountering customers in vulnerable situations, the routine tasks that staff have to accomplish with these customers, and the outcomes that firms and the regulator alike wish to meet.

Consequently, staff undertaking such generic courses are often ‘aware’, but unable to act, as much of the high-level information they’ve been given still needs to be translated into practical actions for the frontline. We would therefore recommend that the FCA emphasise the importance of training which:

- ✓ embeds knowledge and develop skills about vulnerability through showing how this relates to the everyday situations, contexts, and tasks that mainstream and specialist staff actually undertake;
- ✓ brings together the different parts of an organisation that have to work together to ensure that customers in vulnerable situations are treated fairly and legally, and in line with commercial objectives (rather than conducting often ‘silo training’);
- ✓ recognise that some staff will need e-learning packages which can be completed in a single sitting, while other staff will need more in-depth specialist skills-based training, and strategic staff will require ‘action learning’ sets completed over several settings (as evidenced in our joint Vulnerability Academy programme with UK Finance).

In short, such training should start by aiming to equip staff ‘for the job’ at hand, rather than starting from the perspective of the organisation or charity often involved in delivering such training. This means a much closer working relationship is required between those receiving training, and those delivering the training to ensure that it is practical, operationally-focused, and aware of the challenges and demands that staff face when attempting to identify, engage, understand, and support vulnerable consumers. Awareness alone is simply not enough.

Greater clarity is needed on support and referrals

We believe that the FCA draft guidance needs to be clearer on what is required from firms in terms of training staff to support vulnerable customers, and make effective referrals. As it stands, the draft guidance could be clearer on the fact that while much support to vulnerable consumers can be provided as a ‘one-off’ (to overcome a specific problem or issue at that point in time), a significant amount of support to vulnerable consumers is ongoing and longer-term in nature. This requires staff to be trained in the support options that are available for any customer which would work (‘business as usual’), the support options that require reasonable adjustments or going the extra mile (‘business as usual *plus*’), and the support that can only be offered by an external organisation (‘business in partnership’) via referral.

Referral procedures (internal and external) also need improvement, based on the work we have undertaken with many firms to improve their processes, and training should also address this. Often internal staff can be unsure which part of the organisation they can refer vulnerable consumers to (and what the range of ‘vulnerability teams’ can actually do), while staff can be equally unsure about the best way to refer a customer to an external organisation (particularly where staff either do not know what many external support organisations do, or how best to continue working with a customer who is seeking support from such an external organisation while continuing to receive other types of support from the firm itself).

Specific guidance and training is required on data and GDPR

Finally, we believe that firms and staff need more explicit guidance and training on striking the right balance between treating customers fairly/knowing the customer, and wider GDPR requirements on the recording of data related to vulnerability. We outline our concerns in more detail in our response to Question 9, but this primarily involves some firms moving towards a model where they only record the support needs of vulnerable consumers (sometimes without seeking explicit consent due to a possible misreading of GDPR guidance), and as a consequence fail to record sufficient detail about the actual situation in which vulnerable consumers find themselves. The consequences of this is that firms then have a record of what support needs that consumer has at that particular point in time, but little understanding or insight into what is driving those support needs, how they might change or fluctuate over time, or how different factors in a consumer’s life are linked to specific support needs.

Furthermore, this trend towards only recording support needs may also (inadvertently) mean that a consumer has to repeatedly disclose their vulnerable situation to a firm, which goes against previous FCA recommendations on minimising the need for repeated disclosures.

Question 6: Do you have any comments on our view of what firms should do to translate their understanding of the needs of vulnerable consumers into practical action on product and service design, good customer service and communications?

Firstly, we welcome the inclusion of design guidance within the draft document. Having dealt with the importance of design in both our series of Vulnerability Matter podcasts³ as well as in our joint Vulnerability Academy with UK Finance, we are aware of the interest of firms in building vulnerability into the design cycle.

A common understanding of ‘universal design’ is needed

However, what is clear from our work with firms on this issue, is that while there are many conversations under way on ‘universal design’ across the sector, there is often not a clear, common understanding of what ‘universal design’ means in terms of practical process.

One consequence of this is that firms can often see ‘universal design’ as a silver-bullet that will ensure a single product or process meets the needs of every type of customer. For example, in relation to digital design, using bright contrast is often advised for people with some types of visual

³ For our Vulnerability Matters podcasts see www.moneyadvicetrust.org/vulnerability

impairment, but such design schemes may not actually be welcomed by customers with autism. This simple example shows that ‘good design’ is both understanding the detriment that consumers can face, and providing not just one ‘universal design’ but potentially a larger range of options.

Therefore, it would be helpful for the FCA to direct firms towards good practice in designing products, journeys, and services for consumers – for example, the accessibility in government programme⁴ may be a good starting point for many firms.

We also believe that good design should help to encourage consumers to disclose their vulnerable situation with greater confidence and ease – the Money Advice Trust will shortly publish a paper on creating such ‘disclosure environments’ and we would be happy to share a pre-publication copy with the FCA.

Communications guidance should include mental capacity considerations

Secondly, the draft guidance on communications is also welcome. We would, however, note that ensuring that all communications are clear and easily written is only the first step (customers may be vulnerable in other ways, and require information in other formats). Furthermore, firms can sometimes fall into the trap of thinking that providing (more and more) information is the key to ensuring customers can make effective decisions. However, as both CONC and the various mental capacity legislative acts remind us, when it comes to decision-making, firms also need procedures in place to identify those customers who are having difficulties with the individual components of **understanding** the information they have been given, **recalling** parts of this information during decision-making (as well as remembering information about their personal circumstances), **weighing-up** the consequences of any options they can take, and **communicating** a final decision. Firms therefore need to bear this in mind, as we believe this important consideration is under-played in the current draft guidance.

Consumer lending and product/service sales should be included

Finally while we welcome the inclusion of design, good customer service and communication within the guidance, we believe that a significant omission has been made in not providing similar direction on good practice in consumer lending and product/service sales. This is an area where we feel some of the largest gains can be made in identifying vulnerability to detriment/harm at the *earliest possible point* in a customer’s relationship with a firm.

Furthermore, the on-boarding process can also provide customers with a ‘well-timed’ opportunity to disclose any additional support needs (with these being ‘well-timed’ because they come after a decision to award a customer a product or service, rather than being part of the application process which could deter such disclosures). Taken together, such action can result in the prevention of borrowing and lending due to difficulties with decision-making/mental capacity limitations that result in ‘later downstream’ financial difficulty and problem debt, as well as a better understanding of customer support needs.

⁴ <https://accessibility.blog.gov.uk/>

Question 7: Do you have any other comments on the draft Guidance?

We have included below specific comments on Section 5 of the draft guidance on Monitoring and Evaluation, in addition to comments relating to guidance on GDPR and vulnerability.

Monitoring and evaluation

From our work in the 'Vulnerability Academy', run by UK Finance in partnership with the Money Advice Trust, we are acutely aware of the importance of collecting relevant data on customers' vulnerable situations that provides (a) an accurate individual picture of their circumstances and outcomes and (b) an aggregate picture of vulnerability across the entire customer-base.

From this, we would offer the following suggestions for what should be included in the guidance on 'Monitoring and Evaluation'.

Firstly, data and management information on vulnerability are often split and scattered across the different departments of a firm. This means there is no one definitive description of customer vulnerability in a firm, that data are collected but not used for customer benefit, and that gaining that 'overall picture' is often more difficult than it should be. Following extensive discussions in the Vulnerability Academy, we would therefore recommend that there is a single named and responsible person in each firm for data on vulnerability. This would allow firms to know basic information about their vulnerable customers, as well as the outcomes experienced.

Secondly, there is huge variation in the management information collected on vulnerability, and the 'flag systems' used by firms to mark, monitor and evaluate vulnerable consumers' treatment and progress. It would be helpful therefore if the FCA could provide guidance on the core principles of designing an effective MI and flag set. We would be happy to assist with this based on our experience of engaging with firms in this area.

Thirdly, we feel that quality assurance has a potentially larger role to play in the final guidance than the bullet-point it is given on page 57. Traditionally, as part of an organisation's lines of defence (including management controls and internal audit), quality assurance involves the monitoring of routine staff interactions with customers. This allows for assessment of staff behaviour, knowledge, and technique, as well as feedback and coaching to raise staff performance. Critically, such quality assurance can include the focused scoring of interactions using a 'tick list' or 'score-card' (to establish if certain actions or behaviours are present), as well as broader assessments of the overall quality of the call (including its 'flow', level of customer rapport, and eventual outcome).

However, regardless of the method of quality assurance, our work with over 200 firms has repeatedly highlighted common challenges in relation to vulnerability and quality assurance that we believe the FCA should address:

- a) to date, one concern has been an understandable, but comparatively narrow, focus on regulatory compliance. In terms of vulnerability, this has meant that 'regulatory issues' such as explicit consent have been routinely monitored, but other key – but 'non-regulatory' – practices and behaviours have not. This raises the challenge of adequately addressing

vulnerability through existing quality ‘score-cards’. It would be helpful therefore if the FCA could issue guidance on the principles for developing such score-cards.

- b) another critical issue has been call selection – in many firms it has often been difficult to select the right type and number of calls to assess staff practice on vulnerability. Often a technical issue, this has meant that staff cannot be assessed on, for example, their handling of common events (such as customer disclosure of a specific vulnerability) or rarer occurrences (such as suicidal calls). Identifying the right calls for assessment is a vital issue to address, and this point should be echoed by the FCA’s final draft guidance.
- c) finally, the ability of staff in quality assurance roles to not only identify difficulties, but to also coach and provide feedback to colleagues on working with customers who are vulnerable has been highlighted. Addressing this skills and knowledge gap is critical. Organisations need to take action on these systems issues – in short, investment in training alone is not enough.

GDPR and vulnerability

We recommend that the FCA’s final guidance should contain further detail on the steps that firms should be taking in relation to **vulnerability and GDPR**. This is critical as we are aware that some firms are now moving towards an operational model where they are rightly seeking to minimise the amount of sensitive personal data/special category data held about individuals in vulnerable situations, but are taking this to three unhelpful conclusions.

1. Minimal data being recorded on underlying conditions or situations

Firstly, some firms are now only recording the support need with minimal (if any) data being recorded on the condition or situation that underlies these support needs. This means that staff in these firms may not understand why they need to provide such support (which can make discussions with consumers about changes to those support needs - including heighten the level of support or forbearance being given – more difficult than should be necessary, including requiring consumers to repeatedly disclose the nature of their situation).

Taking this step can also make it more difficult for firms to use information about a customer having a greater likelihood of being vulnerable in the future but with no support needs at the moment (what the FCA currently refers to as ‘potential vulnerability’), in order to then put these support needs into place at the right point in time (what the FCA refer to as ‘actual vulnerability’). For example, if a customer has received a diagnosis of a condition that may worsen over time, they may not have a support need of any sort at Time-Point 1. However, as time progresses, and unfortunately their condition worsens, it is important that firms know about the original condition in order to trigger a support need at Time-Point 2, Time-Point 3, and so on.

2. Some firms are recording only customer support needs

Secondly, some firms in seeking to only record consumer support needs, are working under the often mistaken belief that this precludes them from having to obtain explicit consent as the grounds for processing these data. It is therefore helpful that the draft FCA guidance reminds such firms that they need an additional basis on which to process special category data. We are aware, however, that some firms also feel that they do not need to obtain explicit consent, as they can use the

‘substantial public interest’ element of Article 9 in the GDPR framework in combination with the ‘Economic Well-Being’ element (paragraph 19) of the DPA 2018 as the basis for such processing.

However, from our understanding and consultation with GDPR specialists, this would only be applicable where (a) the customer cannot give consent, or (b) where the controller cannot be able to obtain consent, or (c) where obtaining consent would prejudice the provision of protection to that customer, and where (d) a customer at ‘economic risk’ is defined in relation to individuals who cannot protect their economic well-being due to their physical or mental injury, illness or disability. Consequently, this may mean that firms cannot state ‘substantial public interest’ as the basis for their processing of this data (under GDPR), or even use a combination of ‘substantial public interest’ (GDPR) and ‘Economic Well-Being’ (DPA 2018), for the consent-related reason given above.

For these reasons, we continue to stress the importance of collecting contextual information about a consumer’s situation (and not just support needs), as well as maintaining our previously articulated belief that explicit consent is the most transparent, fairest, most respectful, expected, and most effective way of processing data from a vulnerable consumer.

3. Behaviours are being driven by concerns over the ‘right to forget’

Finally we are also aware that some firms are also seeking to record only the support needs of consumers due to concerns about being able to delete this information if requested to (e.g. where a consumer withdraws this request). This means in these firms that important contextual information about that vulnerable situation may not be recorded, and important insights lost that could help the consumer. Given that in Occasional Paper 8, the FCA cited the Information Commissioner’s Office as saying that “*in the right circumstances, and for the right reasons, data protection should not act as a barrier to the recording of information, when this recording would lead to a fair outcome for the customer*” (page 67, FCA, Occasional Paper 8, 2015). Consequently, it would be helpful if the FCA were to further reinforce the importance of acting in the best interests of the customer in relation to the data held about them.

The Money Advice Trust and Money Advice Liaison Group are currently producing guidance on vulnerability and GDPR for publication in early 2020, which we hope will clarify some of these issues for firms. **However, a firm steer from the FCA is required to address the problems that are currently being caused by these interpretations of GDPR.**

Question 8: Do you have any comments on how firms are expected to use and apply the Guidance?

We believe the guidance should explicitly recognise the detriment that can be caused by firms by either their ‘action’ or ‘inaction’ in relation to consumer vulnerability. As it stands, the diagrams and figures on the common drivers of vulnerability point towards ‘health’, ‘life events’, ‘financial capability’, and ‘financial resilience’ as *the* causes of vulnerability.

However, it is clear that firm action/inaction can also be a key driver, and should be included alongside these. This is not to seek to blame or criticise firms, but to simply reflect wider documents (such as the case-studies contained within the Vulnerability Taskforce report from 2016) which recognise that without deliberate strategy and consideration, firms can be the source of consumer detriment, as well as the resolvers of this.

Question 9: Do you have any views on the extent to which the Guidance will enable firms to comply with their obligations under the Principles and achieve better outcomes for vulnerable consumers?

We refer to our earlier comment on outcomes. We would like the FCA to be clearer on their definition of an “outcome”, and also more clearly present what outcome measures firms could consider using. Without this clarity, it is difficult to see how firms can comply with the fundamental aims of the FCA guidance as it stands.

Question 10: To inform our cost-benefit analysis, do you have any comments on what costs firms may incur as a result of this Guidance?

We have included below our concerns about (a) the way in which the cost-benefit analysis is being undertaken by the FCA, (b) the potential lack of engagement with consumer organisations about how both the ‘costs’ and ‘benefits’ of this exercise are being defined, and (c) how firms may interpret and respond to the cost-benefit analysis when it is published.

We have also provided comments on the likely costs incurred by debt advice organisations.

Transparency is key

Firstly, we do not believe, based on the information we have, that the cost-benefit analysis is being undertaken with a sufficient degree of transparency given the potential importance and influence this may have on future discussion on the responsibilities and role of firms in relation to vulnerability. The parameters and methodology for this cost-benefit analysis have not been published or shared, which makes it difficult to comment on what the FCA are aiming to achieve, the way in which firms are invited to participate (and their representativeness – or lack of it – in relation to the wider make-up of the financial services sector), what aspects of the consumer/firm interaction the analysis will examine (and the data-sources and assumptions it will use to do this), and the subsequent robustness of any analysis that is produced. Having been involved in cost-benefit analysis work previously, we know that this hinges on the objectives, definitions and data that are used in such analysis, and as it stands it is difficult to comment on this aspect of the guidance.

Consumer ‘benefits’ incur firm ‘costs’

Secondly, it is clear that ‘consumer benefits’ are likely to incur ‘firm costs’. Again, going back to our comments on the need for a clearer articulation of what outcomes firms need to achieve for vulnerable consumers, we would encourage the FCA to engage with consumer organisations to get a clearer sense of what this sector feels is important in terms of defining the ‘costs’ and ‘benefits’ used in any model. Speaking only to the financial services sector about the parameters for this exercise, is likely to produce an economic model that reflects the perceptions and assumptions of firms, and minimises the contribution of organisations and sectors representing consumers.

Status on publication

Thirdly, we are not clear what status the cost-benefit analysis will have when published. A concern exists that a cost-benefit analysis that struggles to accurately model, in a representative way, the costs that firms may encounter in responding effectively to consumer vulnerability, may produce estimates which unfairly deter firms from engaging in certain aspects of this work.

In short, a model which is limited by a lack of data, subsequently shaped by assumptions which others outside of financial services may not share, and which puts a cost on working with vulnerable customers which is prohibitive, could be unhelpful.

Furthermore, we are very much aware that economic models which seek to estimate a return on investment (in the ‘for every £1 spent on vulnerability’ mould) are often difficult to execute and require examining both cross-sectional and longitudinal data sources, and are also sometimes ‘correct’ for one particular type of vulnerable situation, but not for another.

For this reason, and those already given above, we believe that the FCA should exercise caution when publishing these models, as they will need to be both examined and questioned.

Costs to the debt advice sector

We have sought to provide some illustrative examples, below, from the Money Advice Trust’s perspective as the charity that runs National Debtline and Business Debtline which may help the FCA to recognise the range of costs that the debt advice sector might incur. We cannot comment on the costs of changes that other firms will need to implement to the new guidance. However, we have considered in broad terms the costs that our sector would be likely to incur, and costs that our organisation has already incurred in developing our services to meet the needs of consumers in vulnerable circumstances.

- ✓ Development and set up costs for specialist teams dealing with vulnerability.
- ✓ Extra training requirements for specialist teams and advisers in generalist teams with sourcing and delivery costs.
- ✓ Staff time to deliver and receive specialist training.
- ✓ Additional costs for Insight monitoring and upgrades to CRM systems.
- ✓ Additional costs for further developing quality assurance teams.
- ✓ Costs of employee assistance programmes.
- ✓ Costs of user-testing any changes made to supporting clients.

Impact on debt advice capacity

Any additional costs incurred by debt advice agencies updating our processes to comply with this new Guidance will of course have an impact on the number of people in debt we are able to serve, given our current context of demand for debt advice outstripping supply and constrained resources across the sector. These additional costs will have to be taken into account by funders of debt advice, including the Money and Pensions Service and the FCA in determining the debt advice levy.

Question 11: Do you have any examples of activities or processes that are in place, or could be established, to ensure the fair treatment of vulnerable consumers?

As part of our work with firms on vulnerability we have collected various resources in our Vulnerability Resources Hub at www.moneyadvicetrust.org/vulnerability.

We would specifically direct the FCA to the tools and guidance contained in the following documents:

- ✓ Fitch, C., Evans, J., Trend, C. Vulnerability: a guide for debt collection. 21 questions, 21 steps. University of Bristol, Finance & Leasing Association: Bristol. 2017. [Available at: www.pfrc.bris.ac.uk].
- ✓ Fitch C, Evans J, Trend C, Farmer T. Vulnerability: a guide for lending. Personal Finance Research Centre: Bristol. 2017. [Available at: www.pfrc.bris.ac.uk].

Question 12: Do you have any analysis you could share with us of the positive outcomes for vulnerable customers resulting from the implementation of activities or processes in place aimed at achieving better outcomes for vulnerable consumers?

In addition to the resources referenced in our response to Question 11, we would direct the FCA to the following:

- ✓ Evans J, Fitch C, Collard S & Henderson C (2018): Mental health and debt collection: a story of progress? Exploring changes in debt collectors' attitudes and practices when working with customers with mental health problems, 2010–2016, Journal of Mental Health, DOI: 10.1080/09638237.2018.1466040.

Question 13: Do you have any comments on the role of the Guidance in holding firms to account about how they comply with their obligations under the Principles in treating vulnerable consumers fairly?

We are concerned that it is not clear from the information published around the guidance how the FCA will supervise and enforce the content of this document, particularly as the FCA do not require firms to follow the contents. We would welcome clarity on this point.

If the FCA does produce final guidance/accompanying guidance that brings together all elements of the Handbook that relate to vulnerability, as we have proposed in our responses to previous questions, then it may become clearer both what is expected of firms, and how this is then supervised.

Question 14: Do you have any comments on our intention to monitor the effectiveness of the Guidance?

We welcome both the setting out in one document of all relevant existing requirements in the Handbook in relation to vulnerability, and also developing Handbook guidance under these high-level obligations to improve firms' understanding.

We would welcome greater clarity on the impact of the final guidance on the regulator's supervisory/enforcement arrangements – and how it will be accounted for in the Senior Managers and Certification Regime.

We welcome the regulator's commitment to assess the impact of the Guidance on how firms change the way they treat vulnerable consumers. We agree with the FCA that firms should explicitly embed the fair treatment of vulnerable consumers in to their culture.

We would urge the FCA to carry out an early review of the effectiveness of the guidance to ensure that the aims have been achieved. It is important that the monitoring that the FCA carries out is properly resourced. The FCA needs to be able to take robust action against firms where firms are failing to improve outcomes for vulnerable consumers.

Question 15: Do you have any comments on the potential additional policy options?

We would like to see the FCA setting out all the relevant existing requirements on firms and how they treat vulnerable consumers in the Handbook into one document. This would be a useful additional tool for firms to use to help them ensure compliance.

We would also welcome future consideration of sector-specific guidance to help deal with any sector-specific risks in particular sectors that may emerge through the supervision regime. Where a risk of harm is identified, then this needs to be addressed, and this may, in the future, require sector-specific interventions. This would complement the aims of the FCA to ensure a fundamental change in culture within firms.

We would welcome clarity on how vulnerability and this new guidance will be accounted for in the FCA's supervisory/enforcement arrangements, and in the Senior Managers and Certification Regime. We recommend that firms should be required to designate a named senior manager as responsible for vulnerability.

Further questions

See our responses to earlier questions above.

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