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Consultation Response:

## GC20/3 Guidance for firms on the fair treatment of vulnerable consumers

Response by the Money Advice Trust

Date: September 2020

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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 2019, our National Debtline and Business Debtline advisers provided help to more than 199,400 people by phone and webchat, with 1.97 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 2019 we delivered this free training to over 981 organisations.

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.

Find out more at [www.moneyadvicetrust.org](http://www.moneyadvicetrust.org)

## Public disclosure

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

# Introductory comment

We welcome the opportunity to comment on the second draft of the FCA's proposed vulnerability Guidance. This continues to be a crucial agenda for financial services and beyond, particularly in light of the impact of Covid-19, and the FCA is right to place a continued high priority on improving outcomes for vulnerable consumers.

As well as providing debt advice through National Debtline and Business Debtline, the Money Advice Trust also provides a training and consultancy service to help creditor organisations improve their identification and support of customers in vulnerable circumstances. Through this, we have worked with more than 300 firms and over 28,000 staff – largely in financial services. In partnership with UK Finance, we run the Vulnerability Academy, which provides a training programme for senior managers, with a focus on embedding fair treatment of vulnerable customers within the specific circumstances and context of each organisation.

In our response to this consultation, we therefore draw on our expertise of engaging with firms on the vulnerability agenda, including through a dedicated live webinar with creditor firms, which had almost 270 attendees, to discuss the updated Guidance, as well as our own perspective as an FCA-regulated debt advice provider.

# Executive summary

Overall, we welcome the updated draft Guidance, and the changes the FCA have made in some areas in response to our – and others’ – feedback on the first draft. We are pleased to see, for example, that there is greater detail on product and service design, and some additional information around how the Guidance will be used in supervision and enforcement, as well as greater focus on the common harms that consumers may be vulnerable to. The addition of examples of management information firms should consider collecting is also useful.

## Ensuring the final Guidance is as effective as possible

However, to make sure the Guidance is as clear and effective as possible, we have identified some final changes we believe the FCA should make. These changes can be categorised under five key areas of focus:

### Strengthen the understanding of vulnerability

As we have said previously, the Guidance is a welcome step forward in deepening firms’ understanding of vulnerability and how to respond to this through their products and services. To ensure this is as useful as possible, the FCA should update the final Guidance to:

- Explicitly encourage firms to ask the critical question: ‘what are our customers vulnerable to?’
- Add the behaviour of firms and markets to the key drivers of vulnerability (currently shown as health, life events, financial capability, and financial resilience), in line with the message already given in other sections of the Guidance.
- Improve the Guidance’s explanation of the spectrum of vulnerability, to avoid causing confusion amongst firms.

### Update the Guidance to clarify key points and avoid misinterpretation

- The FCA should ensure key information, which can help firms understand the nature of vulnerability and their obligations under the Guidance, is included in the actual Guidance document – as it stands, some of this is currently included in the context section and Feedback Statement and therefore risks being lost.
- The section on ‘proactive identification’ should be amended to avoid firms wrongly misinterpreting the point in the Feedback Statement that the Guidance ‘*does not place obligations on firms to proactively identify individual vulnerable consumers*’. We do not believe this is the FCA’s intention and the Guidance needs to make clear that staff *are* required to follow-up on ‘cues’ that a customer might be vulnerable to harm.

- The final Guidance would also benefit from a dedicated section clearly explaining – in one place – what outcomes ‘must’ and ‘could’ be measured by firms in relation to vulnerable customers, to make this as clear as possible.

### **Emphasise the importance of inclusive design**

- The additional detail on inclusive design within this version of the Guidance is welcome, but further guidance is likely to be needed by firms to embed this approach fully – something with which we hope new guides from the Money Advice Trust and Fair By Design (being published later this year) will assist firms.
- We would encourage the FCA to consider how they too can take an inclusive design approach to their own work, to ensure they fully understand the diversity of consumer needs and experiences and develop regulatory solutions that work for all consumers.
- As one example of how this can be put into practice, we would encourage the FCA to recommend that all new debit and credit card products are developed with the inclusion of consumer spending controls as standard, to help prevent harm, particularly to consumers experiencing difficulty with gambling.

### **Ensure firms’ responsibilities are as clear as possible**

We think there are a number of areas where small updates could be made to the final Guidance, which would make a big difference in clarifying firms’ responsibilities. This includes:

- Reminding firms that they should be using data analytics to routinely and proactively identify vulnerability during digital interactions (namely online applications for products and services), so that there is no confusion about their digital responsibilities under CONC – particularly in relation to mental capacity.
- Separating ‘sales’ from ‘customer service’ in the final Guidance, to reflect the specific issues that relate to the sale of products or services.
- We also think the final Guidance would benefit from specific clarifications in certain areas, such as the law on translating materials and that Contracts for Difference include ‘spread betting’, which can cause particular harm to vulnerable consumers.

### **Help firms to embed the Guidance in practice**

The success of the Guidance will be determined by how well firms embed the Guidance, and how closely this is monitored through FCA supervision and enforcement activities. To assist with this, we would encourage the FCA to:

- Publish a new practitioners’ toolkit alongside the Guidance, as was done with the 2015 Occasional Paper No.8.

- Provide more detail on what firms should consider when introducing ‘Vulnerability Champions’ – including how these will work over time, be supported in their efforts and their impact evaluated.
- Encourage firms to publish their vulnerability research and learning to ensure an efficient, open and effective approach to understanding vulnerability across the market.
- Work with the Equality and Human Rights Commission (EHRC) to produce more specific, more detailed, and more practical guidance which helps financial service firms to comply with the Equality Act 2010.

As well as reviewing the Guidance document itself, we welcome the opportunity to comment on the FCA’s plans for monitoring the impact of the Guidance, as well as on the cost benefit analysis.

### Monitoring firms’ treatment of vulnerable consumers

We recognise that the FCA has attempted to address some of the concerns aired in response to the previous consultation about supervision and enforcement, by providing some more detail on how firms will be assessed against the Guidance. While this is welcome, we still think the FCA could go further – including by:

- Providing more detail on the on how the Guidance will be accounted for in the Senior Managers and Certification Regime.
- Committing to collect frontline staff experiences as part of monitoring activity.
- Updating the Financial Lives Survey to capture more information on consumers’ engagement with firms (and any harm experienced).

### Cost benefit analysis

We welcome the opportunity to comment on the cost benefit analysis. We would encourage the FCA to:

- Reconsider the assumption that design costs for vulnerability represent a ‘one-off’, as this contradicts the expectation set out in the Guidance that vulnerability is considered with each design cycle.
- Clarify whether debt advice agencies’ costs have been included in the analysis and recognise the importance of additional vulnerability costs being accounted for by funders of debt advice.
- Provide more detail on why the analysis currently assumes that the increased monitoring and supervision of vulnerability activity within a firm will **not** incur any

significant extra costs to the FCA, given the significance of this to the success of the Guidance.

## Covid-19 and vulnerability

As the FCA has itself acknowledged, the impact of the Covid-19 outbreak only increases the imperative for firms to respond appropriately to consumers in vulnerable circumstances. The impact of the virus means many customers may be newly experiencing vulnerability, or find that existing vulnerable circumstances have been exacerbated. It is therefore welcome that the most recent of the FCA's Coronavirus Guidance publications – the finalised mortgage additional Guidance and proposed Consumer Credit additional Guidance – contained specific sections on supporting consumers in vulnerable circumstances. Given the interaction between Covid-19 and vulnerability, we would urge the FCA to progress with the final version of the vulnerability Guidance as soon as possible and to ensure firms put supporting vulnerable consumers at the heart of their response to coronavirus.



# Responses to individual questions

## Question 1: Do you have any comments on our assessment of equality and diversity considerations of our proposed Guidance?

We would question the FCA's assessment on page 19 (paragraph 2.22) of the consultation document, which states that:

*"We remain of the view that the proposed Guidance will not adversely affect any of the groups with protected characteristics".*

We are of the view that this is not fully the case, for two main reasons.

Firstly, in this consultation (GC20/3) the FCA state that one of the primary reasons for the consultation document is that the FCA:

*"want vulnerable consumers to experience outcomes as good as those for other consumers and receive consistently fair treatment across the firms and sectors we regulate" - (page 3, paragraph 1.2).*

However, this is different from what was stated in the previous consultation (GC19/3), where the statement was phrased as followed (our emphasis in bold):

*"we want...firms to be more focused on ensuring that the outcomes experienced by vulnerable consumers are **at least as good as** those of other consumers" - (page 15, paragraph 3.1, GC19/03)*

While this may seem like a small change in language, it has significant implications in terms of the aims of the guidance, and the requirements on firms. **We would therefore like to see the FCA reverting to the phrasing used in GC19/3.** This is because the Equality Act 2020:

- legally permits disabled people to be treated more favourably than non-disabled people<sup>1</sup>
- requires firms to anticipate the needs of disabled people and make reasonable adjustments.

<sup>1</sup> <https://www.equalityhumanrights.com/en/advice-and-guidance/disability-discrimination#lawful>

The FCA should therefore avoid sending the signal to firms that they should aim for equally good outcomes between vulnerable disabled customers and non-vulnerable customers. This could lead to firms incorrectly believing they cannot treat disabled customers more favourably. In our experience, there is already confusion among many FCA regulated firms about their responsibilities under the Equality Act, and the FCA should always work to clarify rather than compound this.

Consequently, the FCA should not send a signal to firms that could result in disabled customers not receiving the additional support, reasonable adjustments, or treatment they are legally entitled to.

Furthermore, when considering the FCA's assessment of equality and diversity considerations in this guidance, we would highlight the ongoing lack of specific guidance on complying with the Equality Act 2010 – something we highlighted in our response to the previous consultation on the first draft of the guidance.

In this version (GC20/3), the FCA repeatedly state that firms should consider the requirements of the Equality Act 2010. However, to our knowledge, *specific practical guidance* on complying with the EA2010 for FCA regulated firms is not freely and publicly available.

While the Equality and Human Rights Commission (EHRC) do have a relevant section on their website<sup>2</sup> - the advice given is limited and practically challenging to implement<sup>3</sup>.

We welcome the FCA informing/working with the EHRC where a firm is breaching the EA2010. However, it is not enough for this to take place on a firm-by-firm supervisory basis as issues arise. Instead, all FCA regulated firms need practical guidance as soon as possible to meet their duties.

We therefore **recommend the FCA fund the EHRC to produce more specific, more detailed, and more practical guidance which helps financial service firms to comply with the EA2010.** This should be developed between the EHRC and financial service, consumer, and other relevant bodies.

We are also concerned by the statement in the Guidance that a breach of the Equality Act *may* also be a breach of the Principles. Our view would be that any breach of a firm's legal responsibilities under the Equality Act would be a breach of the principle of Treating Customers Fairly.

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<sup>2</sup> <https://www.equalityhumanrights.com/en/advice-and-guidance/equality-law-banks-and-other-financial-services-providers>

<sup>3</sup> On one level, the EHRC guidance does not cover central questions that financial service firms often ask about, such as whether they are legally obliged to translate English materials into other languages where a customer requests this. On another level, the guidance given needs to be more practically attuned to the context of financial services. One example is given of a transsexual woman who is often asked extra security questions because “the pitch of her voice is law”, with the advice being given that “a better approach would be for the bank to train its staff not to make judgments about the identity of customers based on what they sound like”. We understand the perspective this voice is coming from, but there are other ways to address this, given the advice is probably unlikely to be in alignment with anti-fraud or scams training for staff. Guidance is therefore required that reflects the contexts and parameters under which firms work in, and the solutions that can be tailored to recognise this, while still complying with the EA2010.

## Question 2: Do you have any feedback on the updated draft Guidance?

We welcome the updated draft Guidance, and the changes the FCA have made in some areas in response to our – and others’ – feedback on the first draft. We are pleased to see, for example, that greater detail on product and service design is included, setting out more clearly how firms should consider the needs of vulnerable customers at each of the different stages of design, development and testing. The addition of examples of management information firms should consider collecting is also useful, as is the greater focus on the common harms that consumers may be vulnerable to.

As we have previously highlighted, overall we think the Guidance is a welcome step in clarifying expectations on firms. If implemented effectively by firms, we would expect it to lead to improvements in outcomes for vulnerable consumers and fairer, more consistent treatment across regulated firms.

However, as we set out here, to ensure that is the case, it is vital that the Guidance is as clear as possible, and easy for firms to implement as the FCA intends. To achieve this, we believe there are some final changes the FCA needs to make to the final Guidance – largely to provide clarity for consumers and firms and ensure there is no risk of misinterpretation. These changes can be categorised under five key areas of focus we think the FCA should adopt as they make the final amendments to the Guidance:

- Strengthen the understanding of vulnerability
- Update the Guidance to clarify key points and avoid misinterpretation
- Emphasise the importance of inclusive design
- Ensure firms’ responsibilities are as clear as possible
- Help firms to embed the Guidance in practice

## Strengthen the understanding of vulnerability

### a) Clarify a missing component of ‘what is vulnerability?’

We welcome the Guidance’s continued focus on attempting to explain – in clear language ‘what is vulnerability?’. In particular, the ‘plain English’ change in the central definition from the previous Guidance to this version, where ‘harm’ replaces ‘detriment’, is also a welcome update:

*“someone who, due to their personal circumstances, is especially susceptible to **harm**, particularly when a firm is not acting with appropriate levels of care.”*

Overall, we also think – with one exception (see section on including firms and markets as drivers of vulnerability) – that the FCA introduce some of the drivers of vulnerability in a clear and accessible way.

However, while GC20/3 helps firms to consider *most of* ‘what is vulnerability’, it is not complete. This is because the text does not explicitly point firms to consider the fundamental question of ‘what are our customers **vulnerable to?**’

We believe the FCA should include this question in their revised guidance for two reasons.

Firstly, **if a firm does not know or establish what harm, detriment or disadvantage a customer is vulnerable to, then supporting that customer to overcome this will be difficult.**

Firms therefore need to ensure their customer-facing staff can capture this information. This means training staff to hold conversations which ‘focus-in’ on the most relevant information with which to help a customer. Taking this step can also help firms to meet their GDPR duty of collecting the absolute minimum of the most relevant information to achieve their purpose for processing.

However, it is not only customer-facing staff that need to consider what individual customers are vulnerable to. If design teams, for example, in firms do not establish what their customer base are vulnerable to (via desk research or customer-involvement testing), then they may design products that these customers cannot access, use, or benefit from.

Similarly, if a firm’s IT team does not consider the ‘to what?’ question, then a new database might have multiple ‘account flags’ describing the causes of vulnerability. However, it may have none indicating a customer’s practical difficulties or support needs.

Secondly, **if a firm only focuses on the drivers or causes of vulnerability, then they may overlook their consequences and effects.** Cause is not the same as effect and what makes a customer vulnerable is therefore not the same as what they are

vulnerable to. In our experience, knowing what harm a customer is vulnerable to is absolutely key.

In our work with firms – where we’ve collaborated with more than 300 firms and over 28,000 staff – we find that some firms start to think about vulnerability in two ways:

- (i) They begin by thinking about ‘groups’ of vulnerable customers they want to target (such as those with cancer, or a disability, or a mental health problem).
- (ii) They can then go on to make the assumption that customers in the same ‘group’ will have the same needs for support and assistance.

This is an understandable line of reasoning. However, what makes a customer vulnerable is not the same as what they are vulnerable to. It does not follow that two (or two hundred) customers with the same underlying cause to their vulnerable situation will experience the same difficulties.

We are therefore concerned that the absence of continued emphasis on the question of ‘vulnerable to what?’ firms will not fully develop their understanding of vulnerability and vulnerable customers may continue to experience poor outcomes.

Just as firms have been helped to consider the definition of vulnerability, or to examine what causes vulnerability, **the final Guidance should explicitly encourage firms to ask the equally critical question: what are our customers *vulnerable to*?**

## **b) The drivers of consumer vulnerability need to include ‘firms’ and ‘markets’**

As we have previously advocated, we believe the final 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’ that ‘may increase the risk of consumer vulnerability’. However, we believe that this also needs to include ‘firms’ and ‘markets’.

The FCA themselves recognise the role of firms as a driver of harm in their own definition of vulnerability:

*“someone who, due to their personal circumstances, is especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care.”*

Similarly, on page 18 (paragraph 2.17) and page 63 (paragraph 1.21), the FCA also note that firms can be a driver of consumer harm in their own right, when they explain that they place a focus on “business models and culture as the key drivers of harm in firms”. In terms of markets, it is also noted on page 42 that “*market failures drive the harms we have identified, for example vulnerable consumers paying higher than efficient prices*” and an example is given of a recent FCA intervention into the travel

insurance market relating to consumer with existing health conditions, in terms of how markets can constrain vulnerable customers access to services and products.

For reasons of consistency and transparency, **we therefore recommend that the FCA should (a) recognise that two additional key drivers of vulnerability in certain circumstances is the behaviour of firms, and activities of markets; and (b) place this alongside health, life events, resilience, and capability.**

Doing this would not introduce any new material into the Guidance, but would simply place a message that the FCA are already communicated into a critical section that most firms will follow.

Finally, we would also make the recommendation that the Financial Lives Survey – in its next iteration – contains some expanded measures of the types of common harms that consumers report experiencing that are accountable to firm behaviour, and possibly also to market operation too. This would then complement the four basic drivers (measured at the individual level) in terms of giving them an empirical basis and foundation.

### **c) Explain how the ‘spectrum of vulnerability’ works in relation to customer outcomes**

In our response to the consultation on the previous version of the Guidance, we highlighted our concerns that the proposed distinction of proposed distinction of ‘actual’ and ‘potential’ vulnerability risked introducing confusion for firms, with varying interpretations of ‘potential’ vulnerability already causing wide variations in policies and practices. We recommended instead that a distinction be drawn between ‘currently experiencing harm’ and ‘at greater risk of future harm’.

We therefore welcome the recognition in the Feedback Statement that the ‘potential’ and ‘actual’ vulnerability distinction did not necessarily achieve the FCA’s original intention.

Instead, the new Guidance introduces the ‘spectrum of risk’ or ‘spectrum of vulnerability’. This encourages firms to:

recognise that “all consumers sit on the spectrum of vulnerability” - (page 74, paragraph 2.10)

and to “act early to prevent risk of harm growing” - (page 74, paragraph 2.11).

However, placing all consumers on a spectrum of vulnerability introduces a difficulty in meeting what the FCA describe as a fundamental reason for their overall consultation and guidance – that vulnerable consumers will ‘experience outcomes as good as those for other consumers and receive consistently fair treatment across the firms and sectors we regulate’.

The logical difference here is that, to measure/compare whether vulnerable consumers’ outcomes *are* as good as other consumers, it is necessary to divide consumers into

‘vulnerable’ and ‘non-vulnerable’ groups. However, if every consumer is on a vulnerability spectrum, then this would be interpreted to mean that there are no ‘non-vulnerable’ customers.

Consequently, we believe clarification is needed in the section on the vulnerability spectrum to explain how firms should overcome this difficulty. As we explore further later on in our response, the FCA could help with this by bringing together in one place the outcomes that ‘must’ and ‘could’ be measured.

#### **d) Small incorporated businesses should be recognised as vulnerable**

We welcome the clarification that the Guidance applies to non-incorporated businesses, and that vulnerability may equally impact an individual’s personal and business accounts. We also understand the FCA’s rationale that the Guidance does not apply to incorporated businesses, due to the fact these are companies, and therefore not a natural person.

However, in explaining this distinction, we believe the FCA should acknowledge that small incorporated businesses (which are often a person who is both ‘employee’ and ‘director’, or where a businesses is run by a very small number of people) can be vulnerable to harm.

For these small businesses, a change in personal circumstances of an individual can have exactly the same detrimental effects as those of an unincorporated business, or even retail consumer. In a survey of Business Debtline clients, the majority (69%) said they considered themselves as being in a vulnerable situation when they contacted Business Debtline for advice.<sup>4</sup> This was often due to financial difficulties, mental health conditions such as depression or anxiety, or due to a life event – such as bereavement. Many of those who described themselves as vulnerable said that, as a result of their vulnerable situation, they struggled to trade.

Furthermore, research by the Money Advice Trust and Lending Standards Board found that there is often a direct link between a business’ financial difficulties and the person running the business experiencing some form of vulnerable circumstance, such as a serious illness or mental health problem.<sup>5</sup> As part of this work, we made a number of recommendations in this area, including that firms should develop specific, practical frameworks for identifying and supporting business customers in vulnerable situations, and ensure that business and commercial banking teams receive appropriate vulnerability training.

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<sup>4</sup> Money Advice Trust (2018) *Taking Care of Business: Eight key challenges facing small business owners*

<sup>5</sup> Lending Standards Board and Money Advice Trust (July 2018) *Supporting business customers in vulnerable circumstances*, Available:

<http://www.moneyadvicetrust.org/researchpolicy/research/Documents/Supporting%20business%20customers%20in%20vulnerable%20circumstances%20July%202018.pdf>

## Update the Guidance to clarify key points and avoid misinterpretation

### a) Ensure key information is included in the final Guidance itself

We note that the Guidance is only one part of the full GC20/3 document, which also includes a section on the vulnerability context, the Feedback Statement and the Cost Benefit Analysis. Indeed, while GC20/3 is 109 pages in length, the draft Guidance starts on page 58.

This means that key information – including the types of harm to be reduced, how the guidance will be monitored and enforced, and the cost-benefit analysis – fall outside the draft Guidance section.

This information is useful, and from our interaction with firms, we know that it can help firms develop their understanding of vulnerability. It also provides some important context for the draft Guidance itself.

We would therefore welcome knowing how this material will be presented / incorporated in the final published Guidance. The risk exists that, in a ‘standalone piece’ of Guidance – this may be lost.

### b) Avoid misinterpretation of what is meant by ‘proactive identification’

We were concerned by the explanation on page 28 that:

*“...the Guidance does not place obligations on firms to proactively identify individual vulnerable consumers through staff interactions or the use of data analytics.”*

While we understand the intention of this statement, we believe it could be misinterpreted and that firms could wrongly conclude that – in relation to front-line staff interactions – that staff *are no longer* required to follow-up on ‘cues’ that a customer might be vulnerable to harm.

This is clearly not the FCA’s intention. Indeed the FCA state elsewhere in GC20/3:

*“if a consumer displays a characteristic of vulnerability, staff should be positively following up on this”* - (page 28, paragraph 3.62)

*“Firms should recognise vulnerability and respond to individual consumer needs where the consumer has shared a need or where there are clear indicators of vulnerability”* - (page 87, paragraph 4.33).

Consequently, it would seem the FCA *do* want firms to proactively look for indicators of vulnerability (in spoken conversations, written exchanges, and other channels), and do want staff to probe and ask questions where there are indicators. **We therefore would**



**suggest caution should be exercised around the statement on page 28, to ensure this does not lead to misinterpretation on this issue.**

### **c) Avoid misinterpretation about the different uses of the term ‘disclosure’ in the document**

In this version of the Guidance, the FCA uses ‘disclosure’ in two different ways – which we are concerned could lead to misinterpretation.

Firstly, it uses ‘disclosure’ in the sense of a consumer telling a firm about a vulnerable situation (e.g. page 51, bullet point 5, where it is used in the Macmillan Cancer Support example).

Secondly, it then uses ‘disclosure’ in the responsibilities placed on a firm to inform a consumer about certain aspects of its operation, its registration, or products and services (e.g. p95, paragraph 4.69 where the FCA make reference to firms complying “with mandatory disclosure requirements”).

Given that the FCA guidance is likely to be accessed by firms and consumers alike, **it is important that when the same term is used in two quite different ways, the FCA make it clear how they are using it.**

### **d) Clearly explain – in one section – what outcomes ‘must’ and ‘could’ be measured**

We welcome the emphasis on outcome measurement in the FCA guidance.

However, we believe the FCA should make two improvements to the current Guidance that would help firms:

- (i) It could be clearer about what ‘core’ outcomes firms are expected to measure, and;**
- (ii) All the potential outcome measures (core and otherwise) could be brought into a *single section*.**

For example:

- In the ‘Outcome we are seeking’ (p8, paragraph 1.32), the FCA remind firms about the six outcomes first brought into play in 2006 (repeated later on page 60, paragraph 1.9). These are clearly central to the FCA mission. We would therefore consider these as ‘core’.
- However, in the Cost Benefit Analysis, the FCA describe three outcomes under “how we expect this Guidance to improve outcomes for vulnerable customers” - (Figure 1, page 43).<sup>6</sup>

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<sup>6</sup> These outcomes are “Customers are able to engage with firms through appropriate channels and make better informed decisions”, “Firms create products with flexible features, which adapt to different needs and can be matched

- Meanwhile, immediately before this section, reference is made to common harms (including purchasing unsuitable products, being more at risk of debt, and being excluded from financial markets), which could also constitute outcomes - (page 41, paragraph 5).
- And elsewhere in the document (e.g. pages 15 and 16) there are other common harms which could be used to formulate outcome measures.

We believe it would help readers (and firms) if the FCA could explicitly explain which outcome measurements are considered to be core (most likely the 'big six'), to give examples of which outcome measures could be helpful, and to bring these into one section.

If this change is not made to the Guidance, firms may fail to understand what is expected of them, as well as how they may build on this core expectation.

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to the customer as appropriate", and "Customers feel able to disclose their needs. Staff understand vulnerable customers' needs and respond appropriately" (Figure 1, page 43).

## Emphasise the importance of inclusive design

### a) Embed inclusive design in both firms' and the FCA's approach

The continued emphasis within the Guidance on the design of products, services, and journeys that take vulnerability into account, is very welcome. We are pleased to see additional detail on how firms can put an inclusive design approach into practice, as this is critical to improving outcomes for vulnerable consumers and for embedding vulnerability into all areas of a firm's activities. We know that understanding of the concept of design continues to vary across financial services and feedback from firms suggests more support is needed to help them implement inclusive design practices.

In short, an inclusive design approach means designing a product or service so that it is accessible to everyone – which means the needs of the most vulnerable must be fully understood and taken into account – usually leading to a better product all round. Using an inclusive design approach can also mean actively considering how a product or service could cause harm or exclusion (from a diverse range of perspectives) and designing in such a way as to avoid this from happening.

We think the updated Guidance will go some way to helping firms understand more about inclusive design. However, we would encourage the FCA to include a clearer definition of inclusive design in the final guidance, further emphasise the importance of an inclusive design approach in the final Guidance, rather than just encouraging firms to consider using it, as well as providing additional information to firms on how this can be put into practice. We appreciate that the understanding and use of inclusive design methodologies is developing all the time, and will evolve over time as firms adopt it. As this happens, we would encourage the FCA to consider how they can showcase good practice examples and provide additional information to firms even outside of the formal Guidance document.

As part of our continued efforts to support firms to improve their product and service design, the Money Advice Trust has developed training content on vulnerability and product design, to help firms understand how they can ensure that the needs of vulnerable consumers are considered throughout the product and service design process. Furthermore, in partnership with Fair By Design, we have been developing practical guidance on inclusive design – including a specific guide for essential services firms – as part of our Inclusive Design in Essential Services programme.<sup>7</sup> This will be released later this year and will complement the FCA's focus on design within the Guidance.

In our view, a critical part of inclusive design is for firms – particular designers – to have a wider, more inclusive view, of the needs of people. Within financial services, we have seen that products and services have often been designed with an 'ideal' or 'typical' consumer in mind, when in reality such a person rarely exists and, as the FCA have rightly highlighted, life events, health conditions and other characteristics mean many

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<sup>7</sup> More information on the programme can be found [here](#).

consumers are or will become vulnerable at some point in their lives. An inclusive design approach can tackle the biases we all hold, by involving people with direct and diverse experience of particular issues in the process of identifying and designing solutions.

In this respect, just as the FCA has rightly highlighted that inclusive design is key to firms achieving positive outcomes for vulnerable consumers, so too is it critical in achieving regulators' aims and responsibilities. We do not think it is enough for regulators to direct others to utilise inclusive design; they must also embrace it in their own work and culture too.

We would expect this to have a number of positive benefits for the FCA, including helping to meet the obligations under the Public Sector Equality Duty. An inclusive design approach can help the FCA to fully understand the diversity of consumer need and experience and to develop regulatory solutions that work for this diverse population. This will in turn support improved outcomes for vulnerable customers, as well as reducing the number of customers who are made vulnerable because of poor product and service design, or other factors in the market.

As part of the Money Advice Trust's joint programme with Fair By Design, we will also be producing a report focusing on how essential services regulators can adopt an inclusive design approach and increase the involvement of experts by experience in their work. **We hope the FCA will commit to adopting these principles in their own work, as part of the vulnerability and consumer protection objectives.**

## **b) Recommend that every new credit / debit card should be designed with spending controls**

In July 2020, the Personal Finance Research Centre published the first-ever UK research study<sup>8</sup> on the design and use of 'bank card gambling blockers'.<sup>9</sup>

This study found that *well-designed* blockers can help customers control their gambling spend. However, it found that in the UK as many as 28 million personal current accounts and 35 million credit cards do not offer account holders the option to block gambling expenditure.

We would like the FCA guidance to:

- recognise the new PFRC evidence on this design issue
- **recommend that when firms design new debit and credit card products that these include consumer spending controls as standard (including those to block gambling transactions).**

<sup>8</sup> Evans, J., Collard, S. and Fitch, C. (2020) A Blueprint for Bank Card Gambling Blockers, Available: <https://tinyurl.com/y675rhd5>

<sup>9</sup> These blockers involve a financial service firm checking – in real-time – a Merchant Category Code describing the type of business a customer is trying to pay with their debit or credit card. If the Merchant Category Code indicates the business is related to gambling, and the customer has activated their bank card blocker, then the payment should be declined.

This would tie in closely to the FCA's emphasis within the Guidance on the importance of inclusive design, as consumer spending controls are an excellent example of this in practice. They increase the chances of preventing harm or detriment to those currently experiencing difficulties with gambling, while offering added security choices and options for the wider customer base.<sup>10</sup>

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<sup>10</sup> As the PFRC report explains, firms like Monzo have found that customers who do not report gambling problems still activate the gambling block for security and fraud protection reasons.

## Ensure firms' responsibilities are as clear as possible

### a) Remind firms of their digital responsibilities under CONC

We highlighted earlier in our response the importance of the FCA clarifying what is required around proactive identification. In relation to this, we also have a further concern around the statement on page 28 that firms do not have to proactively identify vulnerability using data analytics, as we believe there *are* routine events in online customer environments where analytics need to be routinely and proactively used to identify vulnerability to harm.

One of these environments, for example, is the online credit application journey. In vulnerability terms, applications for credit – regardless of the channel used – are where vulnerable customers can often have difficulties with decision-making (mental capacity limitations).

Importantly, such applications are covered under the FCA's Consumer Credit Sourcebook (CONC). Here online credit applications are treated the same as those via a bank branch/over the phone, with no exclusion given for digital channels or environments.

While firms may correctly contend that they cannot physically hear or see a customer's behaviour during an online credit application, they can still observe this behaviour using **data**.

In an online application journey, an applicant's behaviour will generate multiple data items (e.g. the data they enter, the number and type of mistakes made during the application, their navigational use of any screen/help pages, and so on). These data are already routinely used by lenders to both improve the design of these journeys. They are also already used to intervene (e.g. 'pop-up help box' if a customer dwells for too long).

These data can also be used by lenders to identify behaviours that signal customer mental capacity limitations (and its four components of understanding, recall, weighing-up, and communication). Here firms can use 'data' to observe the customer, rather than speech or 'in-person' behaviour.

The FCA therefore need to:

- remind firms that CONC does not offer special treatment or exclusion for online lending journeys or platforms
- explicitly encourage firms to invest and take action in this area (given online lending now represents the dominant channel)
- be careful not to send signals that suggest such proactive monitoring of data is not already contained in the handbook

- change the status of section 2.10 in CONC from ‘guidance’ to ‘rules’ to underline this.

## **b) Separate ‘sales’ from ‘customer service’ to ensure this important area is not obscured**

In the FCA’s ‘vision for a well-functioning market’ (page 9), the FCA state that:

*“When competition is working well and we observe market integrity we will see: consumers who can buy the products and services they need because they are sold in a way that is clear, fair, not misleading and with good choice architecture (sales, disclosure or marketing environment that helps consumers to make good decisions)”.*

Furthermore, the FCA’s Outcome 3 reminds firms that consumers need to be:

*“provided with clear information and are kept appropriately informed before, during and after the point of sale” - (page 8, paragraph 1.32).*

Selling financial products and services is a key area for firms, customers and regulators. Clearly, selling financial products and services is a key area for firms, customers, and regulators alike. However, despite this, the vulnerability guidance only has one section that specifically examines ‘sales’ to vulnerable customers (and this is just two paragraphs long; page 82, paragraphs 4.11-4.12).

Although the ‘customer service’ and ‘communications’ sections do touch on issues that overlap with sales, there are specific issues that are best introduced or dealt with under a ‘sales’ heading:

- mental capacity and decision-making limitations (as these are critical to formal agreements, arrangements, and contracts)
- encouraging disclosure of support needs following the on-boarding process (as capturing these support needs from the outset can help shape all subsequent interactions)
- ensuring that any incentive schemes for sales staff take customer vulnerability into account, and do not act as a disincentive to take the action that is best for these customers.

Overall, while the guidance has dedicated and lengthy sections on product design, customer services, and communications, the absence of a dedicated section on sales sends the wrong signal. Inadvertently, this may imply that this isn’t a specific issue in which a firm should invest time, planning, and resources, when in fact the opposite applies.

As we set out in our initial consultation response, this is an area where we feel some of the largest gains can be made in identifying vulnerability to harm at the earliest possible point in a customer’s relationship with a firm, and we would **encourage the FCA to**

ensure the final Guidance contains a more detailed, specific section on sales and lending.

### **c) Clearly state the legal position on translating materials into other languages**

The Guidance places a welcome emphasis on the need for flexible, multi-channel, and clear communication approaches. However the Guidance also states that:

*“Firms are not required to translate their communications. However, they should consider whether doing this is proportionate if they see a significant need or demand for this in their customer base.”* – (Page 31, paragraph 3.82)

We are concerned there is some risk of misinterpretation around the requirements on other languages. Firstly, it would be helpful if the FCA could clarify the situation regarding the Welsh Language Act (1993), as there is some confusion among firms about whether compliance is voluntary for private sector organisations.

Secondly, it may be equally useful to also explain the requirements placed on FCA regulated firms in relation to British Sign Language translation/interpretation, and whether the size of a firm would be taken into account in the need to provide such translation/interpretation.

Without this clarity and explanation, firms may engage in inconsistent and unfair practice.

### **d) Explicitly recognise that Contracts for Difference also include ‘spread betting’**

On page 82 (paragraph 4.8), the FCA Guidance states:

*“An example of poor design that could result in harm to vulnerable consumers is contracts for difference (CFDs) offered to retail consumers. These complex, leveraged products are offered through online trading platforms.”*

**It is important that the FCA makes it clear in this statement that these CFDs include ‘spread betting’.** There are three reasons for this.

Firstly, nationally representative research by NatCen found that “the highest rates of problem gambling were among those who had participated in spread betting (20.1%)”.<sup>11,12</sup> This means that consumers using CFDs are known to be vulnerable to

<sup>11</sup> NatCen (2015). Gambling behaviour in Great Britain in 2015.

<http://www.gamblingcommission.gov.uk/PDF/survey-data/Gambling-behaviour-in-Great-Britain-2015.pdf>

<sup>12</sup> The full NatCen finding is “highest rates of problem gambling were among those who had participated in spread betting (20.1%), betting via a betting exchange (16.2%), playing poker in pubs or clubs (15.9%), betting offline on events other than sports or horse or dog racing (15.5%) and playing machines in bookmakers (11.5%).”



problem gambling<sup>13</sup>, and firms offering these products need to be able to identify and support this vulnerability.

Secondly, spread betting is regulated by the FCA, rather than by the Gambling Commission. Consequently, the FCA need to instruct regulated firms to take action to protect such known vulnerable consumers, and specifically build this into their supervision and enforcement.

Thirdly, in the FCA's 2019 position statement on CFDs, they already recognise that CFDs include spread betting<sup>14</sup>. For consistency and transparency the same language and recognition should be included in the vulnerability Guidance.

In short, the FCA are responsible for regulating a financial product that is known to have a strong association with problem gambling. Therefore, the FCA need to signal this association to firm, and make it clear that firms need to use the vulnerability Guidance to take appropriate action on it.

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<sup>13</sup> This is not only recognised in the research evidence base, but also in the treatment and care service literature (see for example GmbleAware's references to spread betting <https://www.begambleaware.org/understanding-gambling/how-is-gambling-regulated/>).

<sup>14</sup> FCA (2019). Restricting contract for difference products sold to retail clients. PS19/18. <https://www.fca.org.uk/publication/policy/ps19-18.pdf>

## Help firms to embed the Guidance in practice

### a) Provide a ‘practitioners’ toolkit’ to help firms embed the Guidance

In the Feedback Statement, the FCA state that:

*“We have considered the possibility of maintaining a directory of useful resources. We see possible benefits and drawbacks to this: it could raise awareness of available resources amongst firms but we are concerned that including an organisation or charity in a directory could be seen as an endorsement. It may mean firms do not use resources that may be useful to them because they are not included on our list.”* (Paragraph 3.75, page 30)

However, we would encourage the FCA to reconsider this. In our view, **the FCA should provide a list of known useful resources to accompany the guidance**, but *not* have to maintain this list over time (which would be unwieldy and time-consuming).

Such an approach was helpfully taken with the 2015 Occasional Paper No.8, which was accompanied by a Practitioner’s Pack<sup>15</sup>. This was an incredibly useful resource in collating together key resources that many firms would not have known about, or may have overlooked since their launch.

### b) Recognise that ‘vulnerability champions’ will require extra support and care

One of the examples given of how firms can put the Guidance into practice, is the introduction of ‘vulnerability champions’. These are members of staff who take on the additional responsibility of providing in-depth support to frontline colleagues in relation to vulnerability.

While creating such champions can represent a positive step, the Money Advice Trust’s vulnerability work with more than 300 firms and over 28,000 staff, has identified problems where vulnerability champions:

- are introduced without training or support (and have to rely on their own experience and expertise to help colleagues, which can lead to inconsistent advice and practice)
- are recruited from staff with a passion and/or lived-experience of vulnerability (which is a positive asset, but which without support and supervision can lead to that staff member taking on too great a responsibility, or exposing themselves to vulnerability issues which they may find personally upsetting or difficult)
- can find themselves taking on a significant additional workload, but often without financial remuneration or non-financial recognition for this.

<sup>15</sup> FCA (2015). Practitioners’ Pack.

<https://www.fca.org.uk/publication/occasional-papers/occasional-paper-8-practitioners-pack.pdf>

In short, while it is welcome that the concept of vulnerability champions is included in the Guidance, **the FCA should remind firms that they need to carefully consider how such vulnerability champions will be introduced, work over time, will be supported in their efforts, and how the impact of this will be evaluated.** We would recommend that the FCA add a section on this – either under the Specialist Support section and / or in the section on offering practical and emotional support to staff.

### **c) Encourage firms to publish their vulnerability research and learning**

We are acutely aware – through our vulnerability programme of work with firms – that many firms are undertaking their own studies, commissioning their own market research, and collating their own learning on understanding and meeting the needs of vulnerable consumers. While this is welcome, we are also aware that these firms rarely publish or share the findings and lessons from their work. This can result in a number of negative consequences, including:

- important expertise and insight can be ‘locked-up’ in a single firm
- the duplication of research by firms on the same set of issues (while others are overlooked)
- an inefficient use of resources and time by firms
- smaller firms not benefiting from research knowledge or insight that they cannot undertake
- and multiple consultation/research approaches being made to the same charities.

The Guidance is right to acknowledge the vital role of research in helping firms to understand vulnerability and the needs of consumers. However, the FCA also has a vital opportunity to tackle the issues outlined above, which we frequently see when this research is not published or shared. **We would therefore encourage the FCA to update the Guidance to send a signal to large firms that they should publish and share their learning on vulnerability.**

This has happened on occasion – notable examples including Monzo on gambling blocks<sup>16</sup>, Barclays on identifying vulnerability through data<sup>17</sup>, and most recently Capital One’s toolkit on inclusive design for vulnerability<sup>18</sup> – but these welcome publications represent rare exceptions, rather than the norm.

<sup>16</sup> <https://monzo.com/blog/2018/05/16/gambling-self-exclusion>

<sup>17</sup> <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>

<sup>18</sup> Capital One’s Vulnerability Handbook is hosted on the Money Advice Trust’s Vulnerability Resources Hub, at [www.moneyadvicetrust.org/vulnerability-resources](http://www.moneyadvicetrust.org/vulnerability-resources)

## Question 3: Do you have any feedback on our cost benefit analysis?

We welcome the opportunity to comment specifically on the cost benefit analysis, and to provide feedback.

Firstly, we would question the assumption in the cost benefit analysis that design costs for vulnerability represent a ‘one-off’ without any ongoing cost for firms (Table 3). We do not believe this reflects the demands that are placed on firms by the FCA guidance.

As noted by the FCA on page 83 (paragraph 4.13), but also elsewhere, design *functions on a cycle*:

*“To ensure products and services meet the needs of vulnerable consumers in their target market or customer base, firms should take such needs into account at all stages of the product and service design cycle”.*

Such design cycles will be initiated by new services, products, and processes, and will have costs associated with each cycle as different vulnerable consumer needs are considered. **Consequently, it is likely that the cost of this will be ongoing, rather than a one-off.**

On the topic of costs to firms, we would welcome clarity on whether the analysis included debt advice agencies, as it is not clear that it did (for example, debt advice is not included in the list of sectors that the firms survey on costs and benefits was sent to).

From the Money Advice Trust’s perspective as the charity that runs National Debtline and Business Debtline, we are conscious that 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. It is therefore important that this is considered within the cost benefit analysis, and at the moment it is not clear that it has been.

In terms of costs to the FCA, the cost benefit analysis (page 49, paragraph 42) currently assumes that the increased monitoring and supervision of vulnerability activity within a firm will **not** incur any significant extra costs to the FCA:

*“We do not anticipate a significant increase in costs for the FCA. The proposed Guidance will build on our existing supervisory approach and will be taken forward within existing resources, see Chapter 1 in GC 20/3 for more information.”*

Given the importance, scope, and specificity of the draft FCA Guidance, we would have anticipated that additional costs would have to be incurred by the FCA to supervise and monitor individual firm behaviour on vulnerability, and also take evaluation and monitoring over time.

This almost 'cost neutral' estimation therefore raises important questions about how the FCA will organise this individual firm activity, wider evaluation programme, and the support and training that FCA supervisory staff may need to undertake this.

We would therefore welcome more explanation from the FCA on how this will operate, the estimated budget that will be required, and how this budget will be allocated over time.

Finally, we appreciate and understand the difficulties that were encountered in quantifying the benefits of the guidance to consumers. We would suggest that one future method of addressing this would be to use the Financial Lives Survey to include questions that ask consumers to:

- report the difficulties and harms encountered when engaging with financial service firms (to develop a framework of common harms or detriment)
- report the benefits experienced when receiving good service from financial service firms (to develop a framework of common good)
- quantify – for *selected* common harms and goods – a cost that they would attach to these.

This use of the Financial Lives Survey to not only profile the characteristics of consumers' financial lives, but to also understand the harms, advantages, costs, and benefits associated with these, would provide a rich source of data to inform the FCA's programme on vulnerability.

## Question 4: Do you have feedback on what we should prioritise when monitoring firms' treatment of vulnerable consumers?

We welcome the acknowledgement in the Feedback Statement of the concerns raised by many stakeholders in response to the first draft that there was a lack of sufficient detail around how the Guidance will be monitored, and used in supervision and enforcement. We recognise that the FCA has attempted to address some of these concerns in this version by providing some more detail on how firms will be assessed against the Guidance. While this is welcome, we still think the FCA could go further – including providing more detail on the on how the Guidance will be accounted for in the Senior Managers and Certification Regime.

Furthermore, while the clarity over what senior managers can be expected to be asked about in terms of treating vulnerable customers fairly (page 9) is welcome, we are concerned this might miss a central and critical perspective – that of frontline staff.

Frontline staff are responsible for translating a firm's vulnerability policy papers into actual practice, will have routine contact with vulnerable customers, and will also have insights that will far go beyond those formally shared with the FCA by firms in terms of the challenges they face. Consequently, we recommend that the FCA commission an independent survey of frontline staff in financial services about their experience of working with vulnerable customers. This would provide a valuable 'third' data-source to establish the practical impact and value of the Guidance.

In addition, the Financial Lives Survey can be a key tool in helping monitor the impact of the Guidance. However, at present, it is not clear on the extent to which this captures not just details of consumer's "financial lives", but their engagement with financial service firms (and any detriment experienced there). Building questions into Financial Lives Survey which captured reported experience of detriment and harm would be useful in monitoring firm behaviour over time, and alongside data on key participant characteristics.

We would also like to see the FCA providing a similar searchable register to the Financial Ombudsman Service's 'Ombudsman's Decisions' database, that allows public scrutiny of which firms have breached the FCA principles and sourcebook rules in relation to vulnerability. At present, it is difficult to find this information on the current FCA website.

Finally, in terms of the FCA's commitment to monitoring the impact across the market, we would encourage the FCA to consult on the content of its 2023 evaluation programme more widely, including examining how the Financial Lives survey (and other data sources) can be used within this.

This should include engagement with consumer bodies in order to ensure the evaluation programme effectively defines the outcomes for vulnerable consumers, and best data available and captures these, in order to reach a judgement on whether the guidance has made a positive impact.

## Question 5: 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 response of vulnerable consumers?

Understandably, the FCA does not offer a definitive ‘shopping list’ of the things firms should record about vulnerability. However, firms need to reflect on the data they need in order to provide a customer with a reasonable level of support. This might include:

- what a customer is **vulnerable to**:
  - things that make it harder to fairly choose, purchase, access, use, talk with, complain about, pay for, or benefit from a product or service
  - things not related to a product or service in the ways described above, but where a firm can either (a) still take internal action to help, or (b) signpost, refer, or partner with an external specialist agency
  - where a customer is potentially vulnerable (at higher future risk), and actual vulnerability (where harm is being experienced now).
- any customer views on **what support** could help this situation including:
  - adjustments to process
  - changes to contact methods
  - involving external third-parties
  - involving internal departments.
- any **contextual information** – such as the cause of the vulnerability – that could help provide this support
- any other information to **take action** to prevent, minimise, or avoid the harm a customer is vulnerable to.

When recording data on vulnerability, firms should consider their use of:

- **flags for staff** - once set, these signal to staff that a customer has been identified as vulnerable to detriment. Firms will typically use multiple flags. One flag will signal the presence of a ‘vulnerability’, whilst others will alert staff to key customer characteristics. Problems can occur with flags where they are not visible across all systems, or staff do not understand the flags.
- **support categories** – some firms have systems that allow staff to categorise the support given to customers. These involve staff choosing support codes off a



drop-down list, which are then visible on the customer account. Such a system can, however, only be used if a firm has mapped what help it will give to different vulnerabilities.

- **account notes** – these allow staff to write a brief contextual note about a customer’s situation and needs. In doing this, staff should always aim to record the absolute minimum of the most relevant data. Problems, however, can occur where staff are unsure what ‘relevant’ data is – recording too much, or too little.
- **secondary analysis** – the above data are not only used in helping individual customers, but in also giving a view **across the entire customer base** of the level and type of vulnerability, trends over time, and key outcomes. This allows a firm to better ‘know’ its vulnerable customers, and grasp how they are being supported and helped.

In November, the Money Advice Trust and Money Advice Liaison Group (MALG) will publish a new guide on data and, vulnerability, and the GDPR. We would be happy to share a final version of this guide in advance with the FCA. However, we have also provided some initial thoughts on flags, support codes, account notes, and secondary indicators/management information, in section below.

#### a) What should a flag system do?

The purpose of a flag system is to:

- visually alert a staff member
- inform them that a customer has been identified as vulnerable to harm
- remind the staff member to actively take any vulnerabilities into account
- direct them to consult support codes and account notes for vital context
- allow staff to add, update, or remove flags to reflect a customer’s situation
- contribute to a data-set that monitors vulnerability across all customers.

*Dashboard:* To do this, firms need to have a series of flags that act like the dashboard of a car. These should be limited in their number, clearly visible at all times, and succinctly inform staff about vital information.

*Looking back:* However, we would never drive a car by only looking at our speedometer, rather than in our mirrors, or the road ahead. Therefore we need a flag system that reminds staff to **look back** at support codes and account notes (as these will provide key contextual information).

*Road ahead:* Firms also need a **forward-looking** system. This should inform conversations with customers about their current situation, and allow staff control over flag setting to reflect any ‘new bumps’ in the road. It should allow potential vulnerability to also be flagged (so that firms can ‘watch’ for any emerging problems over time).

## What flags could firms use?

There are a potentially large number of flags available to firms (Figure 1 on page 34).

In making this decision, firms should consider the following factors:

- **flags signal a problem, they do not describe it in detail** – firms should not have too many flags for staff to interpret, remember, or look out for. Keeping it simple is key.
- **however, a single vulnerability flag is too simple** – customers often have multiple problems, a range of needs, and with different levels of severity. Some of this – like customers at high-risk of harm, or with communication problems - need immediate flagging. One flag cannot do this.
- **others may be involved** – customers may be supported by internal specialist teams, or external third-parties (e.g. family or debt adviser). Alerting staff to this from the outset can be beneficial.
- **‘unfinished business’** – sometimes, due to emotional upset or practical difficulties, staff will not be able to complete all the actions needed with a vulnerable customer. Flagging this can allow conversations to be broken into smaller, more manageable parts.
- **time and date stamps are key** – flags need to be accurate and up-to-date. Therefore knowing when a flag was set/is due for review is important.
- **‘feedback loops’ help** – frontline staff are in the best position to feedback on how well a flag system is working, and what flags need to be changed, added, or removed.

	MOST BASIC FLAG	ADDITIONAL FLAGS (STAFF 'TICK ALL' THAT APPLY)	MOST DETAILED INFORMATION
<b>EXAMPLES</b>			
Is there a vulnerability issue?	YES	LIFE EVENT HEALTH CONDITION FINANCIAL DIFFICULTY FINANCIAL SKILLS LONG-TERM   SHORT-TERM FLUCTUATING POTENTIAL VULNERABILITY	DETAIL ON SEPARATE VULNERABILITIES IN ACCOUNT NOTES AND SUPPORT CODES
Is there an accessibility issue?	YES	SPOKEN COMMUNICATION WRITTEN COMMUNICATION MORE TIME NEEDED DECISION-MAKING CANNOT USE IVR ENGLISH LANGUAGE ISSUE	DETAIL ON THE SUPPORT NEEDED TO ENABLE ACCESS IN SUPPORT CODES
Is there a risk or greater care issue?	YES	GREATER SENSITIVITY REFER NOW TO SPECIALIST SUPPORT TEAM CHECK ACCOUNT NOTES	ACCOUNT NOTES AND SUPPORT CODES PROVIDE MORE DETAIL (THESE MAY BE LOCKED TO SOME STAFF IF SITUATION IS VERY SENSITIVE)
Is there a customer support need?	YES	AUDO CORRESPONDENCE BRITISH SIGN LANGUAGE ALTERNATIVE FORMAT NUMERACY SUPPORT CHIP & SIGNATURE	FIRMS CAN USE A RANGE OF SUPPORT CODES TO BETTER CATEGORISE AND QUANTIFY NEED
Is a third-party involved?	YES	INTERNAL SPECIALIST TEAM MANDATED 3 <sup>RD</sup> PARTY POWER OF ATTORNEY CARER DISCLOSURE FRAUD RISK	ACCOUNT NOTES PROVIDE DESCRIBE THE DETAIL OF THESE ARRANGEMENTS
Are there any unresolved actions?	YES	CONTINUE INTERRUPTED DISCLOSURE CHECK-IN ON CUSTOMER REQUEST MEDICAL EVIDENCE	ACCOUNT NOTES DESCRIBE THE DETAIL OF WHAT ACTIONS NEED TO BE TAKEN AND WHY

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<sup>19</sup> Extract from Money Advice Liaison Group and Money Advice Trust, forthcoming publication on GDPR and vulnerability (to be published November 2020)

## b) What support categories or codes could be used?

The purpose of support categories is to:

- clearly and quickly communicate to staff what help a customer may need
- present this information using codes or short pre-written sentences
- allow staff to add, update, or remove codes to reflect a customer's situation
- direct staff to consult account notes if greater detail is needed (particularly where need is complex or long-term)
- use these fixed codes and categories to quantify the help and support given across the customer base
- take an approach that requires firms to think systematically about the categories of support they can offer.

### Why codes and categories?

Firms will often record customer support needs within the account notes section.

This is understandable – particularly if a customer's support needs are complex, detailed, and need explanation. However, one disadvantage of account notes is that this information can easily be overlooked when multiple pages of notes and past entries exist.

Using codes that visually alert staff to the support that vulnerable customers need, can help to overcome this basic problem. Equally, it also forces firms to develop their support strategy – as in order to create such codes, firms need to know what help they will (and won't) provide.

Doing all this requires resources – however, its pay-off lies in the alerts to staff on the help individual customers need, and aggregate data on need across the wider customer-base.

### What codes should firms use?

There are a large number of potential support codes firms could use (Figure 2 on page 37).

In deciding this, the issues that apply to flags need consideration, plus the following:

- **support codes need to be visible and understandable to staff** – there is no point in firms devising support codes, only to locate them somewhere not immediately visible to staff. Equally, visible codes are little use if they are so complex they require a reference book to decipher.
- **support codes can indirectly infer specialist category data** – where a code describes a form of support for a particular health condition – such as a hearing

impairment - then this represents special category data (and must be processed accordingly). In short, if a support code infers an underlying health condition, it has to be treated as special category data.

- **account notes are still needed** –support codes exist to alert staff to customer need. However, account notes should be used alongside to provide more detail (e.g. if needs are multiple, complex, or long-term).
- **time, dates, and feedback loops stamps are key** – like flags, codes need to be accurate and up-to-date. Therefore knowing when a code was set/is due for review is important. Staff should also be able to feedback on how well the support code system is working, and what codes need to be changed, added, or removed.
- **customers will usually know best about the support they need** – if in doubt, staff should always ask.

## Potential support codes: an A to W

### Audio CD Correspondence

Requires audio correspondence/interaction.

### Authentication/ID issue

Customer struggles with authentication.

### Bereavement/grief

Has had a recent death of someone close.

### Blocker

Customer has turned on spending block.

### Braille Correspondence

Communication in an alternative format.

### British Sign Lang. interpreter

BSL required.

### Cannot sign/Signature may vary

Customer signature may vary when they sign a document (illness/writing difficulties).

### Check before disclosure (joint product)

Customer does not want their details disclosed to another party on that account.

### Chip & Signature/No Chip & Pin

Does not use Chip & Pin.

### Communication needs

Ask customer what these are/follow advice.

### Court Protect/Public Guardian

This is registered on customer account.

### Customer Contact (repeat/frequent calls)

Customer contacts us repeatedly.

### Digital issues

Customer might struggle with digital skills.

### Decision-making limitation support

This customer may struggle to make certain decisions without our support and help.

### Developing situation (watch)

A potential vulnerability has been disclosed that could emerge and develop over time.

### Difficulty with Speech

Customer has difficulties in talking/speaking (but not in understanding what we say).

### Easy Read Correspondence

Customer has correspondence needs.

### English language support

This customer may need English language support (due to written/verbal problems).

### Failed ID & Verification

Different verification route is needed.

### Fraud risk

Under investigation/care of fraud team.

### Hearing/Induction Loop

Customer requires hearing loop.

### Large Print Correspondence

Large print required.

### Life Event Support

Disruptive life event (death, birth etc.).

### Literacy issues

This customer might struggle with literacy. May prefer non-written support/talk.

### Longer appointment time needed

More time required due to vulnerability.

### No contact via telephone

Cannot use/does not want phone contact.

### Numeracy issues

Customer might struggle with numeracy.

### Other - see customer notes

Where no other support need can be used, or where free text is required.

### PoA/Representative Access

Power of attorney is present.

### Text Relay

Uses text relay service to communicate.

### Third party

Customer account has third-party mandate.

### Unable to use IVR

Cannot use IVR if contacting by phone.

### Written confirmation required

Requires written confirmation (e.g. due to mental capacity, memory issues, etc.).

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<sup>20</sup> Extract from Money Advice Liaison Group and Money Advice Trust, forthcoming publication on GDPR and vulnerability (to be published November 2020)

## What about ‘disclosure outcomes’?

When a customer discloses a vulnerable situation, firms will want to help.

And support codes will help to categorise the vast majority of these responses.

However, firms may take other actions which although still helping a customer, may be more about following process. These might include, for example, staff signposting to an external service that offers specialist gambling support.

It could involve recording that contact was made with the emergency services due to concern about the customer. Or it could simply be that a transactional problem was successfully resolved.

## Future contact and monitoring

Recording such actions using a support code can help during future contact with that customer (allowing staff to see what signposting or processes were followed).

It can also help to describe this across the whole customer base.

This may be particularly useful – as noted by the FCA - when comparing the treatment and outcomes of vulnerable and non-vulnerable customers.

Clearly, account notes can provide such information. However, the visual alert given to staff, or the aggregate picture built-up by using these codes across the customer base, can be invaluable.

## Which outcomes could we record?

Again, firms will need to consider their own specific processes and needs, but the following disclosure outcomes are often recorded:

- **External referral to debt advice agency** – the signposting support code allows staff and firms to understand who has been referred to a debt advice partner
- **External referral to health organisation** – similar to the above, this signposting code tracks referrals to either specific named health organisations or more general signposting.
- **Escalated as a complaint** – this allows insight into which vulnerable customers have been escalated to complaints due to a report of poor service or practice.
- **Emergency service contact** – this gives insight into customers who have caused serious enough concern for a firm to have contacted an emergency service.
- **Escalated to another team** – firms may want to track referrals between teams, so that they can establish how quickly a customer issue is resolved.

- **Query resolved** – this allows firms to track how many queries from vulnerable customers are resolved
- **Ongoing / unclear / unresolved** – this allows firms to track how many queries are ongoing / unclear / unresolved.
- **Other** – an ‘other’ category is important, as it allows staff to report actions not covered by current codes, but where (if there is good reason) such codes could be created in the future.

### c) What account notes could be used?

The purpose of an **account notes** is to:

- give the additional detail and context that cannot be conveyed in a flag, support code, or outcome measure
- allow staff to read previous notes, and add new account notes to reflect a customer’s current situation
- provide a data-source that – in the absence of support codes or outcome measures - can be ‘word scrubbed’.

*Pinned not lost (where possible):* One of the key problems staff can have with account notes is that they can be ‘lost’ or overlooked when multiple pages of notes and past entries exist.

Consequently, some firms allow staff to ‘pin’ the most current and relevant notes to the top of the first page of notes. Where such an option isn’t available in a firm’s system, alternatives should be sought (such as repeat posting of older notes – to ensure they appear first).

*‘Word scrubbed’ (where needed):* Sometimes firms will be unable to use vulnerability flags, support codes, or outcome measures.

In such situations, firms may choose to batch process or ‘word search’ their account notes for specific key-words related to vulnerability. These can provide an approximate indicator of how many accounts may involve some form of vulnerability.

Such a measure can be used in lieu of flags or support codes, or may be used to establish a ‘missed case’ where such a flag or code should have been applied.

*Writing account notes:* As account notes reflect an individual customer’s specific circumstances, it is not possible to offer generic examples. However, in developing staff ability to write flag notes, firms need to consider:

- **Minimum / maximum ‘rule’** - Staff should aim to record the absolute minimum of the most relevant data possible in an account note. In practice, this will mean thinking about what information will be needed to both inform meaningful action,



and also help the next member of staff (who won't have had contact with the customer) to provide the support needed.

- **Vulnerable to what?** – account notes provide an opportunity for staff to record exactly 'what' a customer is vulnerable to, and what actions might be taken to avoid this.
- **Facts not feelings** – notes should normally only contain verifiable facts (what was said or done by a customer) rather than impressions or feelings that a staff member has - staff should never guess or diagnose what is causing a customer to act in a certain way.
- **Account notes can infer special category data** – as noted earlier, where an account note mentions a form of support for a particular health condition – such as a hearing impairment - then this represents special category data (and must be processed accordingly).

#### d) What secondary indicators/management indicators could we use?

The aim of secondary indicators is to:

- give an **aggregate overview** of the vulnerable customer base, and its characteristics and trends over time.
- allow firms to better 'know' their vulnerable customers, and compare their **experience and outcomes** with non-vulnerable customers.
- allow firms to use these data to **inform the design and operation** of journeys, processes, products, and services that better meet the needs of customers in vulnerable situations.

#### How might they work?

When a vulnerable customer contacts a firm, or discloses their situation:

- a firm's **first instinct** must be to use any flags, support codes, or notes to best help that individual customer
- as a **second task**, a firm might then 'pool together' data from such flags and codes to describe vulnerability across their entire customer base
- and as **part of this**, a firm might then require staff to **routinely record other data** about each vulnerable customer to add further detail to that picture of the wider customer base.

The **secondary analysis** element will then come into how a firm uses this pool of data to inform and guide its strategy on working with vulnerable customers.

## What indicators could we use?

Again, there are numerous secondary indicators that firms could use. In deciding upon this, firms should take into account the issues noted for flags and support codes.

They should also consider whether a **real need exists** to record a secondary indicator about vulnerability. Routinely recording such data may require extra staff time, and firms need to build this into operational planning.

## Anonymised data

Where a valid legal basis for processing exists, firms will be able to record data directly on a customer's account.

Taken together with information from other accounts, these aggregate data can then be used to monitor and evaluate the fair treatment of customers.

However, if an appropriate legal base for processing personal or special category data does not exist (such as where consent has been refused), then firms may wish to consider recording the information as **anonymised data**.

This requires a firm to strip away any identifiable information, and create a new record which is no longer linked to the original customer account. In short, measures must be in place to ensure re-identification of individuals is not possible.

In doing this, firms can ensure that data that might be useful for aggregate monitoring purposes are not lost (while being mindful that this can introduce issues of 'double counting' into aggregate data, if a customer agrees at a later point for their linked account data to be used for these purposes).

## Question 6: Do you have any other feedback on our proposals?

The FCA's work on vulnerability has come a long way from its original 2014 and 2015 papers. This work represents a significant and important development, which together with the industry's response (including through the Financial Services Vulnerability Taskforce) has made a difference.

However, this progress has not been consistent. Not all firms have understood, adopted, or delivered the activities that the FCA has clearly signalled are needed in identifying, understanding, and supporting vulnerable customers.

The immediate challenge for the FCA, once it has finalised its vulnerability Guidance, will therefore be to monitor firm application of the Guidance (and its underlying principles), and take enforcement action where its regulatory expectations have not been met.

This is therefore the next major challenge for the FCA: ensuring its own staff understand exactly what is required from firms on vulnerability, and having the permission and resources to take enforcement action that will practically ensure vulnerable consumers actually do have outcomes that are as least as good as those of non-vulnerable consumers. We would welcome further clarity on how this will be achieved.

**For more information on our response, please contact:**

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