Consultation Response

Financial Conduct Authority (FCA)

Guidance for firms on the fair treatment of vulnerable customers

October 2019

Ref: 1519

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About this consultation

The Financial Conduct Authority (FCA) are consulting on guidance for firms on the fair treatment of vulnerable customers. This is intended to provide regulatory clarity for firms involved in the supply of products or services to retail customers who are actually, or are potentially, vulnerable. In the regulator's Approach to Consumers, published in July 2018, they set out a vision for a well-functioning market that works for consumers. The FCA intend to ensure that the practical application of their powers and tools achieves good high-impact outcomes for consumers that make a difference. As part of their approach, the FCA have committed to consult further on Guidance for firms on the treatment of vulnerable consumers.

Key points and recommendations

- We support the FCA's ambition for all customers, whether vulnerable or not, to achieve the best possible outcomes from financial services firms.
- We welcome the guidance as a way of encouraging the industry to develop its own best practice and change the industry culture, however guidance alone cannot be enough. In the absence of a formal duty of care, the FCA will need to take an iterative approach, regularly updating the guidance and providing new examples, but also developing handbook rules for sector-specific issues such as unfairly penalising loyal or long-term customers.
- The FCA's summary of the drivers of vulnerability is helpful, but needs to recognise retirement as a time of potential vulnerability, and also supplement Table 1 (drivers of vulnerability) with a second Table showing the supply-side factors that can accentuate vulnerability (e.g. product complexity).
- The FCA should consider the interactions between vulnerability and exclusion and monitor the impact of the guidance on exclusion – for example whether the market stops serving the needs of some vulnerable consumers.
- The most vulnerable customers are those who are least likely to self-identify for support. People will only do so if they believe that the support is worth having, and will not stigmatise them, exclude them, or mean they have to pay more. Therefore, firms' support for vulnerable consumers should be positioned as part of their 'standard' offer, and regularly communicated, rather than being treated as only for those with 'special' needs.
- We would like to see the FCA saying more about how innovative market research practices could assist in understanding the needs of vulnerable consumers.
- The FCA's proposed action in relation to the Equality Act is disappointing, in the light of the recommendations of the Treasury Select Committee. We look to the FCA to take a more active role in relation to its Public Sector Equality Duty.

Introduction

Age UK is a national charity that works with a network of partners, including Age Scotland, Age Cymru, Age NI and local Age UKs across England, to help everyone make the most of later life, whatever their circumstances. In the UK, the Charity helps more than seven million older people each year by providing advice and support. It also researches and campaigns on the issues that matter most to older people. Its work focuses on ensuring that older people: have enough money; enjoy life and feel well; receive high quality health and care; are comfortable, safe and secure at home; and feel valued and able to participate. We have drawn on this experience in responding to this consultation.

Q1: Do you have any comments on the aims of the draft Guidance?

Age UK supports the aims of the guidance. All customers whether experiencing a temporary or enduring vulnerability, or none at all, should receive and expect to receive an equitable service. Drivers of vulnerability as defined by the FCA (health, life events, resilience and capability), describe the breadth of human experience that the majority of us will experience at some point in our lives. This places an onus on firms to design products, services and processes that can appropriately respond to changes of need and circumstance.

Q2: Do you have any comments on the application of the Guidance or its status as non-Handbook guidance?

We agree that providers of financial services bear ultimate responsibility for ensuring the fair treatment of vulnerable customers. Only they are close enough to their business to adapt their processes and products appropriately, so we welcome the approach taken in the guidance, with principles and case histories. We are, however, concerned that the guidance not appearing in the handbook will mean there is insufficient incentive to persuade firms to prioritise it, and give it the investment it may require. We return to the question of how the FCA could make it more effective in our responses to Questions 13 and 14.

The guidance does not rule out other forms of action and the consultation process will provide evidence for how future guidance and changes to the FCA handbooks will lead to the improved treatment of vulnerable customers. Due to their complexity, some for instance third party access, may need to be taken out of general guidance and require separate specialist guidance. Following the guidance should be regarded as an iterative process to improve the culture of a firm and not viewed as a series of checklists to be completed.

Table 1 of the Guidance usefully summarises the main drivers of vulnerability for individuals, however the FCA should put equivalent stress on how vulnerability can be increased by the nature of the product or service, or the actions of the firm. The text of the consultation mentions this briefly, but we suggest that an equivalent table be produced for these factors – e.g. complexity, time-scale, distribution channel, span of control and governance.

We note that the draft guidance makes no mention of retirement, a life event when consumers' financial resilience will be tested due to changing income and a period where people may experience a lack of support in how to manage their finances in a complex market. For example, a quarter of older people also have no savings[1] but maintaining a financial buffer to be able to plan for the long-term and cope with life-events is crucial to reducing the impact of vulnerabilities.

Q3: Do you have any comments on the distinction between actual and potential vulnerability (Annex 1, Section 1)? (Please note we are not seeking views on the meaning of vulnerable consumer because we have consulted on that previously.)

The distinction seems reasonable, however it is the interpretation by firms that is important. Tackling vulnerability should be looked at in the round, and a separation between actually and potentially vulnerable consumers could lead to a division in the approach to improving outcomes at both firm and regulatory levels. It may be more helpful for the guidance and firms to position vulnerability on a scale of risk – e.g. people with lots of risk factors are 'actually' vulnerable, whereas those with fewer may be 'potentially' so - particularly ones that may be easier to identify such as bereavement, divorce, income shock, indebtedness and low savings.

The guidance should specifically recognise the long-term nature of many financial relationships, and make it clearer that vulnerabilities may develop during the relationship. For example, a customer may not be vulnerable at the time of setting up a private pension, but could well start to experience vulnerabilities later on. We would like to see firms building tests to identify vulnerability into the whole life-cycle of the relationship, not just at point of sale.

Q4: Do you have any comments on our view of what firms should do to understand the needs of vulnerable consumers (Annex 1, Section 2)?

We agree that, as set out on page 32, firms need to conduct regular market and customer analysis so they can identify (potential) vulnerability and develop appropriate systems and processes. However, we recommend that the FCA provide more in-depth guidance on how market research practices can be improved to facilitate this, for example by:

- Use of narrower age bands rather than the common tendency to categorise everyone over 65+ as being in one age group. In 2016 the Market Research Society introduced guidance[2] on the use of age bands.
- Innovative research techniques to reach people in vulnerable circumstances who may not respond to traditional research recruitment methods. This might involve, for example, setting up ongoing panels of people with disabilities or caring responsibilities.
- Mystery shopping.
- Inclusive design techniques[3] involving 'co-design' with people in vulnerable circumstances.

We welcome the focus in the guidance on looking at the implications for offline customers. Many older people, even if they are online, do not wish or are not able to use internet or mobile banking and firms must not presume that all customers will access services in this way. Firms can increase an older person's vulnerability by failing to understand their needs or designing products and services that do not work well for people in retirement. This can stem from a misguided belief that it is not possible to include older people in market research or by inadvertent exclusion, for example by conducting research exclusively online.

Part of understanding the needs of vulnerable customers is about understanding how communication systems can be inclusively designed. Firms need to understand the time, effort and emotional commitment that a customer may experience when for instance, describing to a call centre operator that their spouse has passed away and they need to close their account. When things go wrong, firms need to make sure they have learnt from the experience to improve a customer journey. Part of this will be not placing an undue burden of proof for customers to declare a vulnerability. The design of reporting processes must not exclude customers. For instance if forms of redress are exclusively digital, then this will exclude some older people.

We also recommend that the FCA explores and highlights the links with financial exclusion. There is a risk that firms decide that serving the needs of particular groups of vulnerable consumers (such as travel insurance customers with life-limiting illnesses) is no longer attractive. We have long believed that the FCA should have a formal role in considering and remedying exclusion. However, even without a statutory objective in this area, the FCA should highlight exclusion as a form of vulnerability. Someone who has problem accessing a marketplace is likely to be quite vulnerable to poor practice if they are desperate for a service. While this exclusion may arise from one of the drivers of vulnerability highlighted in Table 1 (for example low income), to recognise formally that someone is likely to have difficulty accessing a product adds an extra dimension.

Q5: 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)?

We welcome the principles and good practice points set out in this section. We provide a few further suggestions below.

Firms should build into staff performance management reviews how they have worked with vulnerable customers and reward those that have worked positively and proactively. Operational and customer facing staff need to be incentivised for proactive good work with vulnerable customers.

In some firms there is existing good practice, often where staff feel empowered to identify and help customers they identify as being vulnerable. The banking protocol to deal with suspected cases of abuse in-branch is a positive example of how staff training can help reduce harm caused by fraud and abuse. However, the success of this protocol depends largely on the face-to-face interaction with staff, and we would like to see the FCA working with firms to understand and disseminate best practice in online transactions.

Customers should be able to speak to staff who have the power to make decisions and not be routed around to different teams and asked to repeatedly describe why they need extra support. Positive approaches in use of ‘tell us once’ systems are an example of when an organisational approach to reducing poor experience combined with staff training should improve a process, customer outcomes and reduce workload for a firm.

Referral processes for specialist support should be ‘real-time’ as far as possible, and certainly for in-house services. Otherwise, there is a risk that customers can be sent away if the ‘specialist’ is not available, or that specialist services are only offered in one particular location. Firms should design systems so that vulnerable people are not told ‘come back later’ or ‘you need to go to X branch’ – something which can be very difficult for older people with limited mobility. For example, smaller local bank branches could have teleconferencing support for services such as bereavement notifications.

As the guidance notes, referral processes for specialist or third party support need to be well understood. Firms need to understand where complex needs might mean a customer would benefit from referral to a specialist service or third party support and representation. Referral needs to be easy and customers not required to know the language of vulnerability to be signposted for support. If firms wish to signpost to consumer or advocacy groups then they should develop funded partnerships with these organisations.

A gap in the guidance is any reference to local authority safeguarding procedures, which may apply in the case of children and anyone over the age of 18 who:
a) Has needs for care or support (whether or not the authority is meeting any of those needs).
b) Is experiencing, or is at risk of, abuse or neglect, and
c) as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it.

Q6: 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 (Annex 1, Section 4)?

We welcome the focus on product and service design to overcome the lack of awareness, misunderstandings and barriers to accessibility across the piece. In Age UK’s view, this section should also refer to firms’ duties under the Equality Act, and in particular the EHRC guidance[4] on the duties of business when providing goods, facilities and services.

Firms’ use of language is important. Age UK research[5] has shown that terminology like ‘preparing for life events’ does not resonate with older people. They preferred a much more down to earth approach and language. Uncertainty about the future makes planning ahead a particular challenge, so messages need to balance ‘being prepared’ with making the most of life now. The concept of ‘balancing’ current and future needs or expenses may be a useful way to frame discussions about what can realistically be done to plan longerterm. The aid of a ‘retirement checklist’ could support older people to explore what preparations they feel comfortable making, whilst letting them know at the same time what else is possible to plan for should they wish to.

Q7: Do you have any other comments on the draft Guidance?

Older and vulnerable customers are more likely to face price discrimination and to pay a loyalty penalty than other customers are. The FCA and firms need to consider how this is reflected in the guidance and how firms will prevent this happening. This should be actively monitored. While we welcome the steps the FCA has taken to date in the travel insurance market, there is too much reliance on signposting to specialist services. In our response to the FCA’s recent consultation, we proposed additional steps that need to be taken, such as standard definitions of terminology such as ‘terminal’ illness. It has also recently come to our notice that there is no standard approach by life insurers in the case of people who have made advance decisions to refuse treatment.

Firms need to ensure that their products reflect changing practice, and the FCA will need to continually revisit their guidance to reflect developments in the market such as increased personalised pricing and the growth of ‘fintech’ services. We need to ensure that older and vulnerable customers are not left behind. All customers should be able to benefit from improvements to a service, e.g. budgeting tools or security features with tech designed around the needs of the user, rather than expecting people to fit around changes. The FCA needs to ensure that tech firms do not breach the requirements of the Equality Act.

Q10: To inform our cost-benefit analysis, do you have any comments on what costs firms may incur as a result of this Guidance?

Supporting customers whether they be in a permanent or temporary state of vulnerability, is simply part of the cost of doing business and a key condition of their licence. The FCA should include in its cost-benefit analysis considerations that are not solely financial, such as the cost/benefit to health and wellbeing. Many firms have profited from the vulnerability of their customers, for instance, by making them pay a loyalty penalty. It is only right that firms have to use their resources to support these customers.

Many firms save significant sums from moving services online. A feature of the cost-benefit analysis could examine how much firms have saved and require them to reinvest a proportion of this in supporting vulnerable consumers.

Q11: 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?

Firms need to make their offer to vulnerable consumers clearer. Across the industry and even in the same organisation, different languages and cultures have developed which can create widely different outcomes for consumers. This will ultimately lead to frustration and disengagement from customers. For example, only a third (32%) of respondents to

Age UK's Your Voice Engagement Panel Survey[6] thought that banks have policies and procedures in place to support people in vulnerable circumstances. Increasing awareness is crucial but industry and the FCA also need to help increase trust and confidence in firms. Firms should make it clear that services for vulnerable consumers are part of their 'standard' offer, rather than only for those with a 'special need' as the majority of consumers are not aware of support available and the fear of stigma is such that a significant proportion of vulnerable consumers would not declare a need for support.

Q13: 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?

The guidance needs to aspire for more than just the enforcement of minimum standards but the promotion of best practice alongside this. A culture of quality improvement means that even the best performing firms still need to strive for further improvement. Part of this would be sharing best practice and research with the regulator

Q14: Do you have any comments on our intention to monitor the effectiveness of the Guidance?

It is vital that, in the absence of any formal duty of care on firms, the FCA not only monitors firms' compliance with the guidance, but also makes it clear where firms are failing to do so. We would expect the FCA to take an iterative approach to the guidance, with regular updates on firms' progress and new examples of good practice.

Q15: Do you have any comments on the potential additional policy options?

We also think that improving outcomes for vulnerable consumers should not be left solely to guidance. Therefore we would strongly support the use of new sector-specific rules in certain cases. One example might be where abuse is suspected and staff would be required to follow protocols to speak to the individual in question and potentially escalate concerns to the Police, Social Services or Trading Standards.

We are disappointed that the FCA does not propose a more active approach to issues of discrimination, across all protected characteristics. For example, we concerned that the use of personalised pricing, particularly in the insurance and credit sectors could lead to discrimination against older and vulnerable customers and in breach of the Equality Act 2010. The FCA must play a role in not just protecting vulnerable customers and ensuring they are treated fairly but also look to eliminate discrimination as part of its responsibilities under the Public Sector Equality Duty. The Treasury Select Committee has concluded that taking on responsibility for "insurance compliance with the Act, both in individual cases, and for firm wide issues, should therefore be transferred to the FCA" from the Equality and Human Rights Commission[7]. The Committee also concluded that the FCA should have used its powers to investigate insurance algorithms to see whether they comply with the

Act, particularly when firms could not give assurances that their pricing data would be compliant. We urge the FCA to consider further the issue of whether it is meeting its duties under the Equality Act.

Q17: Do you agree that proposing to issue guidance is the most effective means of achieving our aim at this stage?

We support the use of guidance as a way of pushing firms to improve practice more broadly without being too prescriptive. However, this should not stop the FCA from making rules in specific cases.

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[1] https://www.ageuk.org.uk/latest-news/articles/2018/april/financial-sector-urged-to-rethink-how-it-helps-older-people/

[2] https://www.mrs.org.uk/pdf/MRS%20Best%20Practice%20Guide%20Age%20bands%20for%20researching%20over%2065s.pdf

[3] See, for example, the Inclusive Design Toolkit developed by the University of Cambridge http://www.inclusivedesigntoolkit.com/whatis/whatis.html

[4] https://www.equalityhumanrights.com/en/publication-download/what-equality-law-means-your-business

[5] https://www.ageuk.org.uk/latest-news/articles/2018/april/financial-sector-urged-to-rethink-how-it-helps-older-people/

[6] Age UK's Your Voice panel is a self-selected panel and in May 2019 the panel consisted of 766 people aged 50+ years. The panel is not representative of the 50+ population and is particularly weighted towards those aged over 75 and those perhaps less likely to engage with other research or panels. For example, in this survey 45 per cent of panellists are aged 75+ compared with only 22 per cent of those aged 50+ across England. The panel also aims to include 'seldom heard' voices so we recruit panellists through a wide range of sources offering a choice of how to take part – online, by post or by telephone – whatever suits the individual panellist's needs/preferences. Fieldwork took place in May 2019 and 566 panellists answered the question "People can be in vulnerable circumstances for various reasons, e.g. a long-term illness, a disability or life-changing event such as a bereavement. Which, if any, of the following service providers (prompted) do you think, have policies and procedures in place to support customers in vulnerable circumstances? Panellists were then asked "If you were in vulnerable circumstances, which of the following service providers (prompted), if any, would you feel comfortable sharing this information with so that they can take this into account when they are dealing with you?" 556 panellists responded.

[7] https://publications.parliament.uk/pa/cm201719/cmselect/cmtreasy/1642/1642.pdf