

Consultation Response

Financial Conduct Authority Future Mission: Our Future Approach to Consumers

February 2018

Ref: 0318

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Lucy.Malenczuk@ageuk.org.uk

Age UK
Tavis House
1-6 Tavistock Square
London WC1H 9NA
T 0800 169 80 80 F 020 3033 1000
E policy@ageuk.org.uk
www.ageuk.org.uk

Age UK is a charitable company limited by guarantee and registered in England (registered charity number 1128267 and registered company number 6825798). The registered address is Tavis House 1-6 Tavistock Square, London WC1H 9NA.

About Age UK

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.

About this consultation

In April 2017 the Financial Conduct Authority (FCA) published its Mission, explaining how and why the FCA prioritise, protect and intervene in financial markets. This current consultation develops this approach in more detail, aiming to develop a final document which provides clarity and sets clear expectations on how the FCA fulfils its objectives in respect of consumers.

Key points and recommendations

- The general principle of consumer responsibility must be read alongside the other 'have regards' statements to which it relates. We strongly support the FCA's increasing use of behavioural economics and studies of real world consumer behaviour
- The extent and longstanding nature of detriment in relation to some products e.g. pensions, indicates that cultural change is required within firms and the market as a whole and that the 'Treating Customers Fairly' approach has not yet delivered this. If meaningful outcomes are not seen in this area then we think it will be necessary for the FCA to seriously consider a duty of care
- We do not agree with the proposed changes to the 'vulnerable consumer' definition, which we think do not achieve the FCA's stated objective. We support an alternative devised jointly by a number of consumer groups
- We agree with much in the vision and in the Consumer Approach Paper, however some of the qualifications and lack of clarity detract from its impact
- We strongly support the FCA's role as a convener and thought leader, even where its powers do not provide all of the solutions to the issues raised by its work, assuming that the issues it considers are within its objectives. It has a unique position and is an essential part of addressing challenges faced by consumers in financial services markets.

Consultation questions

Q1. While having regard to the general principle that consumers should take responsibility for their decisions, do you agree that there are circumstances where consumers cannot be expected to take responsibility? What do you think these circumstances are? How could - and should – the FCA intervene in these cases?

We absolutely agree that there are circumstances in which consumers cannot be expected to take responsibility for their decisions, and the consumer protection objective would be meaningless if this were not recognised. There is a long history of attempts to define consumer responsibility which have generally been seen as an unhelpful distraction. The other statements to which the FCA is required to have regards in alongside the general principle already describe many of the factors which affect a consumer's ability to take responsibility e.g. a consumer's experience and expertise and the type of information provided by the firm.

We welcome the emphasis on regulating for the real world and the FCA's stated intention of basing interventions "on how individuals in markets behave in practice, rather than just according to theory" (p8, Consumer Approach Paper). We believe that by focusing on how consumers actually behave and applying the relatively new insights from behavioural economics FCA will be much better placed to carry out its statutory duties.

FCA should bear in mind that consumers may find it especially hard to take responsibility for their decisions in **situations in which the product or service is essential to a consumer, but where the consumer finds it hard to operate that product or service in a way which meets their needs**. One example which has significant impact on older people is the need to access essential payment methods through a third party. We are aware that some people who need the support of irregular carers to access cash may have almost no practical way to operate their account without sharing their account details and passwords. We would be interested in how the principle of consumer responsibility would apply in these situations.

We do not think that it is impossible for a consumer who finds themselves in vulnerable circumstances to make a good decision. However, most commonly when we talk about consumers in vulnerable circumstances the vulnerability is caused not just by the personal characteristics of the individual but also because of the way the wider environment and in particular firms' policies and actions interact with those personal circumstances. We set out steps we would expect firms to take in respect of customers in vulnerable circumstances in our response to the next question.

This focus on the general principle of consumer responsibility leads to some challenging conclusions. For example, many of us will find it extremely hard to take good decisions with their pension saving - after a lifetime without meaningful contact, to suddenly expose people to a range of complexities around how to draw down their savings is unrealistic and even unfair. As a result we need opt-out default pathways to help ease people through

product choices in later life, in a way that helps generate decent outcomes that serve people.

The fact that detriment has persisted for so long in this part of the market, as shown by the FCA's Retirement Outcomes Review, does suggest that the treating customers fairly approach has not succeeded in its first outcome "Consumers can be confident they are dealing with firms where the fair treatment of customers is central to the corporate culture"¹. If this new Consumer Approach does not show meaningful impact in some of these challenging areas then it will likely increase support for a move towards a duty of care.

Q2. Do you agree that firms have a responsibility to take reasonable steps to identify the signs of vulnerability, and to have processes in place to take appropriate action where they have identified a consumer with a particular need and at a risk of particular harm?

We strongly support the above statement. Projects involving various firms and Macmillan Cancer Support and work done by the Alzheimer's Society on the Dementia Charter, as well as Age UK's own Age Friendly Banking report, demonstrate that these expectations are not just desirable but also practically achievable. We expect firms to go beyond just having processes in place to having effective policies which deliver good outcomes in practice. We would welcome further discussion of what constitutes 'reasonable' in this context.

We have been impressed with the impact of the signals sent by the FCA in its Occasional Paper on Vulnerability. Whilst we also support many of the expectations set out by the FCA in the Approach Paper we are extremely concerned that the new definition proposed in the Approach Paper ~~change to the current definition of vulnerability~~ doesid not meet those aims, but instead ~~is was more~~ likely to defeat them. We have been especially concerned at reports that some firms have already started to change their approach to vulnerability in response to the proposed revision to the definition.

In particular, we think that it is important that any definition or rules on vulnerability:

- require firms to take all reasonable steps to proactively identify customers who may need additional support. There has been extensive research on why customers do not report additional needs to firms which illustrates that it is not acceptable for firms to rely on the customer to tell firms that they are in vulnerable circumstances e.g. inform banks of mental health conditions of cancer diagnosis~~report~~
- addresses both the market as a whole and firms specifically, the FCA's proposed revisions refer to the market only, which could be seen as removing expectations from individual firms
- recognises that vulnerable circumstances are often significantly connected to the behaviour of the firm themselves, as well as the personal circumstances of the individual.

¹ TCF Outcome 1

We think that the existing definition, developed for the FCA's Occasional Paper on Vulnerability, is currently working well. If the FCA is convinced of the need to revise the definition of vulnerability (for example to enable more concrete action to be taken on this agenda), we support the alternative wording proposed below, developed in collaboration with a group of organisations comprising Money Advice Trust, Money & Mental Health Policy Institute, StepChange Debt Charity, Financial Inclusion Commission, University of Bristol Personal Finance Research Centre and Macmillan Cancer Support.

Alternative proposed new definition of vulnerability

"A vulnerable consumer is someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate and reasonable levels of care.

This means that firms are expected to take reasonable steps to identify, understand, and provide support to such consumers, while products and markets need to be accessible, transparent and designed with these consumers in mind.

Where firms and markets fail to treat vulnerable consumers fairly, or breach other consumer protection rules, the FCA will take action, including applying enhanced penalties. The FCA will also ensure the needs of vulnerable consumers are taken into account across its supervision, enforcement, market investigation and intelligence activity."

We note that the is approach taken in this revised definition only works if consumers generally treated fairly, otherwise we would have to consider all the consumers who are unable to make good decisions about using pensions savings at retirement vulnerable.

We also note the concern expressed that protection for vulnerable consumers must be balanced against the risk that these protections prevent them from participating in the same markets as everyone else. Access is not always a good consumer outcome – take for example the payday loan market. However, we are not convinced that consumer protections are key drivers in reducing access and whether, even if they are, the appropriate response is to reduce protection.

Q3. Which consumer issues do you think sit directly within the FCA's remit, and which are a matter for Government? Are we right to commit our resources to working with other organisations, such as firms, other regulators, Government, courts, consumer groups etc., where improved consumer actions may require action that is not within the FCA's regulatory toolkit?

We strongly agree that the FCA is right to commit resources to working with other organisations to improve consumer outcomes. The FCA's priorities should be set in relation to its objectives and functions not by its toolkit.

Even where the solutions to an issue are not within the FCA's power, the FCA can achieve important positive outcomes and its involvement is often a vital link in the chain towards resolution. In particular:

- FCA has unique expertise and information or intelligence gathering tools;
- We have seen significant success where FCA has taken no formal 'action' but the signals and convening powers have enabled progress to be made;
- It is rare that there is no action within the FCA toolkit, especially as the FCA makes more creative use of options available to it, such as the regulatory sandpit etc; and
- The FCA is well placed to provide impartial, authoritative analysis and where appropriate, suggestions for further work.

We agree that it is important that the FCA is clear about when an issue or solution is not within its remit. Where possible, we would suggest that for key issues the FCA highlights this within its Business Plan or other public document. This not only helps the FCA to remain focused and effective, but also increases clarity for others working in the field, e.g. the Money Advice Service/Single Financial Guidance Body, Government, other regulators.

Pension decision-making at retirement is very much in the FCA remit. Providers have a responsibility to help their customers get the best outcomes, yet the FCA's Retirement Outcomes Review identified many persistent problems, with a lack of shopping around for retirement income products being a particular concern for Age UK. -This is exacerbated by the complexity of many current products, which are extremely difficult to compare. Again default product pathways should be looked at in detail, and the FCA should lead the debate here.

Currently outside the FCA's remit is the issue of longer-term outcomes following pension decisions. While there are regulations around the at-retirement decision making process, providers do not bear enough responsibility for looking after their customers' longer-term interest. The FCA should consider whether to extend the remit of Independent Governance Committees so they can examine in detail what providers are doing in this space.

Regarding the pensions dashboard, we are concerned that commercial operators will use the dashboard to cross-sell other products, for example life assurance. We believe the FCA needs to proactively consider how it can best regulate this space, in order to make the dashboard as functional as possible for consumers, and limit the scope for mis-selling.

Q4. Do you agree with the aspirational vision and outcomes that we explore? Are there any further barriers or risks to us achieving it?

We broadly support the vision and outcomes expressed and find a lot to agree with in the paper, especially the continued emphasis on getting things right for consumers in vulnerable circumstances, considering the application of the general principle of consumer responsibility in terms of real world consumer behaviour and continued regard for access and inclusion.

We think that one of the biggest risks to achieving the vision is providing sufficient clarity of expectation. We note that many of the strong statements in the Paper around consumer protection and vulnerable consumers in particular are heavily qualified (e.g. judgements on consumer responsibility are 'complex and finely balanced'; 'careful balancing act' is needed in respect of identifying vulnerable consumers) could undermine the impact of the vision. Whilst we understand the need to ensure that the vision is practical as well as aspirational we would welcome a response which sets out expectations as clearly and concretely as possible.

We would also like to see a more aspirational approach. Given some of the long standing detriment and continuing need for culture change we understand that it is important to establish a solid basic level of standards. However some firms are doing much more than others to support their customers and act responsibly in the market, and so rather than label the acceptable as aspirational we would prefer that more stretching aspirations are also included. For example in the discussion on how firms use consumer biases (p8) we think the minimum expectation should be that firms to not exploit bias and best practice should be that firms proactively use behavioural research to help customers towards better outcomes.

Q5. What further metrics would you use? Are there any specific data sources or tools that may be of benefit?

The Financial Lives Survey is an important innovation and we are especially pleased with how quickly and openly the results have been shared. As we review the findings we do have some questions regarding some aspects of the survey where they do not seem to match completely with other measures commonly used, e.g. [the Financial Lives Survey finds that 5% of UK adults say their ability to carry out day to day activities is reduced a lot through health conditions or illness whereas reports from the last census have a figure of 8.5% around the proportion of people experiencing various health conditions.](#) We would welcome the opportunity to discuss these issues in greater detail.

Q6. Do you agree with this framework? Would you like us to consider any additional or alternative factors in how we regulate:

- a. For all consumers**
- b. For the most vulnerable or excluded, and**
- c. To meet the challenges of the future**

We would support projects which take a longer term view of how markets and consumer need is changing to enable a more proactive approach.