



The Money Charity Response - FCA Guidance Consultation on Fair Treatment of Vulnerable Customers GC19/3 (October 2019)

The Money Charity is a financial capability charity whose vision is to empower people across the UK to build the skills, knowledge, attitudes and behaviours to make the most of their money throughout their lives.¹

We welcome the opportunity to respond to the Financial Conduct Authority's GC19/3, Guidance for firms on the fair treatment of vulnerable customers.

In this response, we set out our Key Points then answer the questions posed in the Guidance Consultation document.

¹ See box on back page.

Key Points

1. While the practical advice given in the proposed guidance is consistent with current best practice in the identification and treatment of customers in vulnerable situations, the framework needs to be strengthened by the addition of a rule or rules. (Question 1)
2. We propose that the rules be high-level, for example 'Firms must have a system for identifying actual and potential vulnerability in their customer base', 'Firms must ensure their staff are trained to identify and respond appropriately to customer vulnerability, with the aim of providing positive outcomes for all customers', etc, with the detailed guidance providing illustrations of how this might be done. We suggest either one rule for each section of the guidance or an overall rule linked to the guidance. (Question 8)
3. The final version of the guidance needs to be shortened and written in language more accessible for managers and consumers, setting out unambiguously what firms need to do. (Question 7)
4. 'Structural factors and firm behaviours' should be added to the list of vulnerability drivers. (Questions 2, 3 and 6)
5. Firms should make it easier for consumers to self-report vulnerabilities in ways that avoid embarrassment. (Question 4)
6. On staff training, we think that specific reference should be made to the training of offshore staff, who may be less able to spot UK context-specific indicators of vulnerability. (Question 5)
7. In line with good management practice, a designated senior manager in each firm should have responsibility for overseeing the firm's vulnerability strategy. (Question 5)
8. The Lending Standards Board 'Standards of Lending Practice – Personal Customers' is a good example of a short, succinct code with provisions for self-monitoring, reporting and remediation. (Questions 7 and 11). Supported by FCA rules (Question 8) this provides a model of what final vulnerability guidance could look like.
9. Regarding additional policy options (Question 16) we urge the FCA to proceed with the proposal to introduce a formal Duty of Care requiring firms to avoid reasonably foreseeable consumer harm and act in the best interests of consumers.
10. The FCA should include compliance with the Equality Act 2010 as part of its assessment of fair treatment of consumers, including those in vulnerable situations. (Question 2)

Answers to consultation questions

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

We agree that the FCA should not try to mandate a detailed one-size-fits-all customer vulnerability system, but we think there should be high level rules that require firms to have such systems. We suggest either (a) one high level rule for each chapter of the guidance, with the chapter illustrating how firms might go about complying with the rule, or (b) one overall rule, with the guidance as a whole illustrating how the rule can be complied with.

Feedback we have heard from middle level managers in financial firms is that it is necessary to have rules to gain high level management attention and commitment to a given policy. The question will be asked, 'Do we have to do it?' and the answer given needs to be 'Yes.'

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

Regarding the drivers of vulnerability, pages 7 and 23 of GC19/3 identify 'four key drivers of vulnerability' which are health, life events, resilience and capability. To these need to be added 'vulnerabilities caused by structural factors and firm behaviours', recognising that information disparities, product design and choice architecture may generate vulnerabilities among consumers. It is important that the industry recognises that its own behaviour can be a source of customer vulnerability and that vulnerability is not just an aspect of consumers themselves.

Regarding 'Status of the Guidance' (paragraphs 8-12, page 24) we find this section tangled and obscure. With phrases like 'it is not binding' (para 11), 'firms do not need to follow it' (para 11) and 'should... does not necessarily mean... should' (para 12) the impression is created that the guidance is entirely voluntary. This section of GC19/3 reads like it has been written by a lawyer acting for a financial firm to ensure that there is an escape clause for the firm. We suggest this section be re-written to make it clear that there are rules that must be followed, even though the precise details of the firm's vulnerability system can be designed to meet the needs and characteristics of that firm's customer base.

Regarding the application of the Equality Act 2010, we think the FCA should do more than 'work with' (GC19/3, paragraph 3.26) the Equality and Human Rights Commission when it sees or has reason to believe that a financial firm is breaching the Equality Act. We do not see an exclusive distinction between fair treatment of consumers (FCA) and freedom from discrimination (EHRC). It would be strange and contrary to common sense if a consumer experiencing discrimination by a financial firm in relation to a protected characteristic under the Equality Act should be deemed to have been treated fairly as a consumer by the FCA.

Under the Equality Act 2010, the FCA² has a Public Sector Equality Duty (PSED) to:

- eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010;

² Equality Act 2010, Schedule 19.

- advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
- foster good relations between people who share a protected characteristic and those who do not.³

This means that the FCA, in testing for fair treatment of consumers, including consumers in vulnerable situations, should make sure that consumers are not subject to unlawful discrimination on grounds set out in the Equality Act. If the FCA needs to engage additional expertise to make this assessment, it should do so.

We note that the Government has said that:

‘It is essential that the compliance of financial services firms with the Equality Act is properly monitored and enforced.’⁴

We call upon the FCA not to take shelter behind a distinction between discrimination and fair treatment but to include compliance with the Equality Act 2010 as part of its assessment of fair treatment of consumers, including those in vulnerable situations.

Q3: Do you have any comments on the distinction between actual and potential vulnerability (Annex 1, Section 1)?

We agree that a distinction can be drawn between actual and potential vulnerability, though we think the reach of potential vulnerability is wider than in the current wording of paragraph 5, page 23. All consumers are potentially vulnerable, in the sense that any of us can be affected by accident, illness, bereavement, loss of job, information asymmetry etc. Many consumers move in and out of vulnerability: potential vulnerabilities become actual ones then, later, become potential again. It is important that firms take a broad approach rather than a narrow, legalistic one. The aim should be to have good outcomes for all customers, regardless of the level of vulnerability. The ‘inclusive design’ approach should be taken to ensuring that customers in all their variety are catered for.

‘Structural factors and firm behaviours’ should be added to the list of the drivers of vulnerability, because firms’ decisions can create potential vulnerabilities or turn potential vulnerabilities in actual ones.

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 with the approach in this section, subject to the addition of ‘structural factors and firm behaviours’ to Table 1 on page 29. The reasons for this have been explained above.

Paragraph 35 (page 31) says that firms should ‘make sure it is easy for individual customers to tell the firm about their needs.’ The guidance could say more here about facilitating consumers’

³ <https://www.acas.org.uk/PSED>

⁴ Government Response to the House of Commons Treasury Committee report on Consumers’ access to financial services, 11 July 2019, page 9.

self-reporting of vulnerabilities, which can feel more private than discussing it on the phone with an unknown adviser. For example, credit reference agencies have a facility for consumers to add a Notice of Correction to their credit files.⁵ Firms should refer consumers to such facilities and set up their own equivalent.

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 agree with the approach in this section. Wording should be added to make clear that the staff training provisions apply to offshore service centres as well as to onshore ones. Firms are likely to need to give offshore staff additional training to enable them to recognise culturally and institutionally specific indicators of vulnerability in the UK context. The need for specific training for offshore staff should be added to the guidance, with a successful example of this activity.

An example of mentioning outsourcing is provided by Paragraph 7 of the Governance and Oversight section of the Lending Standards Board's Standards of Lending Practice for Personal Customers, which says that where relevant work is outsourced, firms should ensure that the outsourced firm can meet the LSB standards and 'exercise effective and ongoing oversight' of the delivery of required customer outcomes.⁶

Consideration should be given to where responsibility lies for implementing an appropriate vulnerability strategy. In our view there should be a designated senior manager responsible for the design and implementation of the vulnerability system. Ensuring there is a designated responsible individual is an aspect of good practice in management systems. For example, the Governance and Oversight section of the Lending Standards Board's Standards of Lending Practice for Personal Customers requires that:

'Firms should assign an appropriately skilled and senior individual with accountability for overseeing that the Standards of Lending Practice are being adhered to and customer outcomes achieved, and for ensuring that remedial action is instigated where this is not happening.' (Paragraph 9)

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 agree with the approach taken in this section, which should be reinforced by adding 'structural factors and firm behaviours' to the list of drivers of vulnerability, as we have suggested above. If a firm hides costs or risks, or takes advantage of superior information or market power in the way it designs and presents a product, any customer can become vulnerable to adverse outcomes, as the FCA has seen on a number of occasions in its supervisory work.

⁵ <https://debtcamel.co.uk/notice-correction-credit-record/>

⁶ <https://www.lendingstandardsboard.org.uk/wp-content/uploads/2016/07/Standards-of-Lending-Practice-July-16.pdf> , page 12.

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

The current draft Guidance is long and written in quite complex language. We suggest that the final version be simplified and made more succinct. It needs to be clear and accessible to busy managers and consumers, avoid long discussions of the interplay of principles, rules and guidance and set out unambiguously what firms need to do.

There was broad consensus on this point at the FCA's vulnerability workshop in London on 9 September 2019.

For an example of a clear and succinct code, see the Lending Standards Board's 'Standards for Personal Customers'. These standards include a section on consumer vulnerability.⁷

Q8: Do you have any comments on how firms are expected to use and apply the Guidance?

We agree with the idea of flexibility in implementing vulnerability systems. However, there need to be high-level rules making it clear that firms must adopt a system appropriate to their business. We suggest either an overall rule linked to the guidance or a short, high-level rule for each section of the guidance, along the following lines:

- 'Firms must have a system for understanding actual and potential customer vulnerability in their customer base.'
- 'Firms must ensure their staff are trained to identify and respond appropriately to customer vulnerability and potential vulnerability, with the aim of providing positive outcomes for all customers.'
- 'Firms must ensure that products and services are designed to minimise the impact of customer vulnerability and to avoid creating new customer vulnerabilities.'
- 'Firms must ensure that their customer service provision meets the needs of customers in vulnerable situations and delivers good customer service to all consumers.'
- 'Firms must ensure their communications meet the needs of all consumers, including those in vulnerable or potentially vulnerable situations.'
- 'Firms must monitor and evaluate their products and service provision to make sure that they meet the needs of all consumers, including those in vulnerable or potentially vulnerable situations.'

Having these high-level rules ensures that when a Senior Executive asks, 'do we have to do this?' the managers responsible for product design and service delivery can answer 'yes.' The body of the guidance illustrates how a vulnerability system can be designed and implemented. Firms will be able to vary their approach according to the specific needs of their business, providing the outcome they achieve fulfils the objectives of the high-level rules.

⁷ <https://www.lendingstandardsboard.org.uk/the-standards-for-personal-customers/#the-standards-for-personal-customers>

Q9: Do you have any views on the extent to which the Guidance will enable firms to comply with their obligations under the Principles and achieve better outcomes for vulnerable consumers?

While the Principles help provide a foundation for the guidance, we think that the Principles alone are too vague a basis for improving outcomes for customers in vulnerable situations. As explained above, we think there needs to be a series of succinct high-level rules setting out the various aspects of a vulnerability system. It needs to be clear to firms that this is obligatory.

The precise details of each firm's system can then be designed appropriately for each firm's customer base.

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

If firms adopt an 'inclusive design' approach with the aim of producing good results for all customers, the marginal cost of attending to customers in vulnerable situations should be relatively low. By improving system design and staff training there should also be savings, for example from reduced repeat calls, complaint letters and compensation payments. Staff morale should also improve, through fewer conflict situations and the pleasure of delivering outcomes that customers appreciate.

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?

The Lending Standards Board has adopted 'The Standards of Lending Practice – Personal Customers' which includes a section on vulnerability. Regarding implementation, the Standards have a section titled 'Governance and Oversight' which obliges signatory firms to adopt effective systems to implement and monitor the standards. Self-reporting and remediation are key parts of this. Paragraph 4 reads:

'Firms should have systems in place to ensure that any failure to adhere to the Standards of Lending Practice are identified and assessed for materiality and root cause. Where the materiality threshold is met, these are reported to the LSB and remediated in a timely manner.'

Combining high-level FCA rules (see our answer to Question 8) with LSB-type self-monitoring, reporting and remediation should ensure that vulnerability, instead of being a single line in firms' Risk Control Self Assessments (RCSAs), is accorded proper prominence and acted upon.

Q12: Do you have any analysis you could share with us of the positive outcomes for vulnerable customers resulting from the implementation of activities or processes in place aimed at achieving better outcomes for vulnerable consumers?

There is a body of published evidence of positive outcomes for vulnerable customers of the implementation of appropriate systems, for example in the UK Finance 2016 Vulnerability

Taskforce report, in the Age UK 2016 Age-friendly banking report⁸ and in the vulnerability guides produced by the University of Bristol Personal Finance Research Centre.⁹ Our experience of financial capability work with vulnerable and/or marginalised groups (Travellers, migrants, ex-offenders, ex-homeless etc) confirms to us the validity of the approaches outlined in these reports and guides.

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?

We think the Guidance provides useful advice, but in its current form lacks the status necessary to ensure that firms take action to implement its recommendations. The Guidance needs to be supplemented by rules as set out in our answer to Question 8 above, which will provide a clear implementation framework for FCA supervisors and firms. FCA supervisors should check the implementation of vulnerability systems with the same rigour as FCA thematic reviews, which have an audit-like character for the firm.

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

We agree the FCA should monitor the effectiveness of the guidance. We recommend that the FCA develops a quantitative aspect to this monitoring and publishes progress reports on the industry's implementation of the guidance.

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

We think the guidance needs to sit beneath a series of high-level rules setting out the requirements for addressing the needs of customers in vulnerable situations. See our answer to Question 8.

Q16: Should we consider any further additional policy options?

Guidance on the fair treatment of customers in vulnerable situations is one part of the wider FCA regulatory framework. As we have argued elsewhere, we think this framework needs strengthening by introducing a formal Duty of Care. This could be done by re-writing the Principles or by legislation. The Duty of Care should cover both the tort and fiduciary approaches, ie:

- A Duty of Care to avoid reasonably foreseeable harm to consumers.
- A Duty of Care to act in the consumer's best interests (as per the rules on insurance).

⁸ https://www.ageuk.org.uk/documents/en-gb/for-professionals/policy/money-matters/report_age_friendly_banking.pdf?dtrk=true. See Case Study 4, Lloyds Bank Power of Attorney registering system and Case Study 6, Santander vulnerable customers awareness training.

⁹ <http://www.bristol.ac.uk/geography/research/pfrc/themes/vulnerability/publications/>

Our arguments for a Duty of Care are set out in full in our response to FCA Discussion Paper 18/5.¹⁰ The House of Lords Select Committee on Financial Exclusion, the Financial Services Consumer Panel, the Treasury Select Committee and many individual charities and consumer groups have called for or supported the introduction of a Duty of Care and we urge the FCA to move forward with the implementation of such a duty.

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

We think the guidance is good, and consistent with current best practice, but by itself will be insufficient. The industry has been considering this issue for several years, including the work of the path-breaking Vulnerability Taskforce convened by UK Finance in 2015-16¹¹ and of the Lending Standards Board.¹² The time is ripe to formalise this work in a series of rules to ensure that good practice is adopted throughout the sector. It is best to have a level playing field. If all companies are required to introduce good practice systems, no one can complain that they are carrying an unfair burden.

Q18: What are your views on whether proposing new rules or guidance at this stage would add to the effectiveness of our intervention? Where possible, please provide supporting evidence for your answer.

We think the guidance needs to be grounded in an overall rule or set of high-level rules. See our answer to Question 8 above.

¹⁰ <https://themoneycharity.org.uk/media/The-Money-Charity-Response-FCA-Duty-of-Care-Consultation-Nov-2018.pdf>

¹¹ <https://www.bba.org.uk/publication/bba-reports/improving-outcomes-for-customers-in-vulnerable-circumstances/>

¹² <https://www.lendingstandardsboard.org.uk/category/vulnerability/>

The Money Charity is the UK's financial capability charity providing education, information, advice and guidance to all.

We believe that everyone achieves financial wellbeing by managing money well. We empower people across the UK to build the skills, knowledge, attitudes and behaviours to make the most of their money throughout their lives, helping them achieve their goals and live a happier, more positive life as a result.

We do this by developing and delivering products and services which provide education, information and advice on money matters for those in the workplace, in our communities, and in education, as well as through influencing and supporting others to promote financial capability and financial wellbeing through consultancy, policy, research and media work.

We have a 'can-do' attitude, finding solutions to meet the needs of our clients, partners, funders and stakeholders.

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