



## *The Money Charity Response - Financial Conduct Authority GC20/3 Vulnerability Guidance (October 2020)*

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.<sup>1</sup>

We welcome the opportunity to respond to GC20/3 on Vulnerability Guidance, which we support with some proposed amendments as set out below. As with our responses to other FCA consultations we approach the issues from a financial capability perspective, ie how to improve product design and customer service so that consumers are assisted, and not impeded, in making financially capable decisions that improve their financial wellbeing.

In this response, we set out our Key Points, make some overall comments on the issue then answer the questions posed in the Consultation Paper.

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<sup>1</sup> See box on back page.

## Key Points

1. We think the latest draft of the Guidance (Annex 4 of GC20/3) is a significant improvement over the previous draft, especially in the clarity with which it sets out the practical steps firms need to take.
2. There are four amendments we would like to see made:
  - Improving the definition of the word “should” (Para 1.31 of Annex 4).
  - Introducing a high-level rule (or rules) requiring firms to have an effective system for addressing consumer vulnerability.
  - Making it clear that breaches of the Equality Act will be breaches of the FCA Principles.
  - Making it clear that overseas call centres are within scope of the Guidance.

## Overall Comments

We feel this latest draft of the Guidance (Annex 4 of GC20/3) substantially improves on the earlier draft (GC19/3) and now contains a series of clear recommendations that are capable of guiding a firm that takes vulnerability seriously to implement an improved customer service system. However, there are several outstanding points we would like the FCA to address:

### 1. “Should” needs to mean “should”.

Paragraph 1.31 of the Draft Guidance (Annex 4 of GC 20/3) gives a definition of the word “should” which in its current form is self-contradictory and in essence reads “should... does not necessarily mean should”:

“**Should**: where we think a firm ought to consider a course of action (not specified in a Principle) to comply with a Principle, but this does **not** necessarily mean they **should** follow a detailed or prescribed course of action.” [Emphasis added]

One of the principles of definition writing<sup>2</sup> is that a definition should not contain the word being defined, or the result is circularity. We therefore suggest the second “should” in the above draft definition be replaced by another word such as “must”, “have to” or “obligatory”. Alternatively, the definition could be extended slightly to spell out what the FCA means. The following is our understanding of what the FCA is trying to say:

“Should: where we think a firm ought to consider a course of action (not specified in a Principle) to comply with a Principle. This does not mean the course of action is

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<sup>2</sup> See, for example, [https://en.wiktionary.org/wiki/Help:Writing\\_definitions](https://en.wiktionary.org/wiki/Help:Writing_definitions)

obligatory, but if the firm decides not to follow it, the firm needs to be able to demonstrate how it is complying with the Principle by other means.

## **2. A high-level rule requiring an effective system for addressing consumer vulnerability**

In our response to GC19/3 (2019) we proposed that there should be a high-level rule (or rules) requiring firms to implement effective systems for addressing consumer vulnerability. In the present draft of the Guidance, the FCA reminds firms that compliance with the Principles is obligatory but does not create a rule requiring firms to have effective systems for dealing with consumer vulnerability. In our view, firms are much more likely to comply if there is a rule, so we suggest a rule (or rules) be adopted. These do not have to set out every detail of a vulnerability system but rather establish that firms need to develop systems to address consumer vulnerability effectively. Having a rule (or rules) will make it easier for middle managers to persuade senior executives to adopt appropriate systems and for FCA supervision to check that appropriate systems have been implemented.

## **3. Breaches of the Equality Act should be deemed to be breaches of the FCA's Principles and Rules, including those on vulnerability.**

In Paragraph 3.12 (page 21) of GC20/3 the following sentence appears:

“A breach of the Equality Act may also be a breach of the Principles.”

This statement implies that there is a category of breaches of the Equality Act that are not breaches of the FCA Principles. We would be interested to know what these are. We are not aware of the FCA itemising such breaches, and we think it is contrary to public policy that there could be a breach of the Equality Act that is deemed not to be a breach of an FCA Principle, given the emphasis on treating consumers fairly and the FCA's Public Sector Equality Duty. We would like to see the above sentence re-worded as follows:

“A breach of the Equality Act will also be a breach of the Principles. Breaching the Equality Act is not consistent with the Guidance on Vulnerability.”

## **4. Overseas call centres should be specifically mentioned**

Paragraph 4.25 of Annex 4 of the Guidance mentions “distribution chains” and the need to make sure that all firms in the chain treat customers fairly. In our response to GC19/3 we referred to the challenge of making sure that overseas call centres comply with UK vulnerability guidance. Because of cultural, language and IT factors, particular thought needs to be given to making sure that vulnerability is noticed and appropriately responded to from offshore locations. We would like to see overseas call centres mentioned in the

guidance, either in the text of the guidance (as part of the “shoulds”) or as a case study, so that it is clear to firms that overseas call centres are within scope of the guidance.

## **Answers to consultation questions**

### **Q1: Do you have any comments on our assessment of equality and diversity considerations of our proposed Guidance?**

We agree that equality and diversity should be improved by implementation of the Guidance.

### **Q2: Do you have any feedback on the updated draft Guidance?**

As indicated in our opening remarks, we think the updated draft is much clearer and provides practical guidance to firms that take the issue seriously. However, there are four amendments we would like to see:

- Improving the definition of the word “should” (Para 1.31 of Annex 4).
- Introducing a high-level rule (or rules) requiring firms to have an effective system for addressing consumer vulnerability.
- Making it clear that breaches of the Equality Act will be breaches of the FCA Principles.
- Making it clear that overseas call centres are within scope of the Guidance.

See our Overall Comments above for our specific suggestions on each of these points.

### **Q3: Do you have any feedback on our cost benefit analysis?**

On the benefits side, we feel confident that the Guidance will have a large payoff. To implement customer service systems to detect and respond to vulnerability, firms must also improve their customer service to **all** customers. This is because on first contact a firm may not know whether a customer is vulnerable or not, so it must respond to all customers as being potentially vulnerable. If the most the industry achieves is one improved customer interaction per year per customer (shorter waiting time, improved menu system, better response from first responder etc) customer benefits will sum to far more than the costs identified by the FCA for introducing vulnerability-sensitive systems. Firms should find that they also benefit from introducing such systems in terms of improved customer satisfaction, reputation and customer loyalty.

### **Q4: Do you have feedback on what we should prioritise when monitoring firms’ treatment of vulnerable consumers?**

The key thing is that the vulnerability system should be more than a pro forma, tick-box exercise. This means FCA supervisory staff establishing whether firms have evidence of

effectiveness of their vulnerability systems. Firms should be required to present auditable evidence covering staff training, customer contact data, complaints and the outcomes of customer surveys.

**Q5: 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 respect of vulnerable consumers?**

Firms already extensively monitor customer interactions. Where they are not already doing so, they should extend this monitoring to vulnerability as covered in the FCA Guidance. In addition to this, we think firms should periodically reach beyond their existing evidence base, for example by conducting customer surveys. This is because vulnerability can be hard to detect and difficult for customers to raise themselves. Firms need to be aware if there are “below the surface” issues they are not picking up. Non-contactability or non-response to surveys can in themselves be indicators of vulnerability, for example if a customer has become homeless or ill. For example, Citizens Advice has just published research showing that over the last decade seven million people have not received their post due to reasons such as rough sleeping, living in temporary accommodation, experiencing domestic abuse or being members of the Traveller community.<sup>3</sup>

**Q6: Do you have any other feedback on our proposals?**

The four amendments in our Overall Remarks are the main changes we would like to see.

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<sup>3</sup> Citizens Advice, Millions Without Mail, September 2020.

**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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