Consultation Response

Financial Conduct Authority (FCA)

GC20/3 Guidance for firms on the fair treatment of vulnerable customers – Guidance Consultation

September 2020

Joel Lewis – joel.lewis@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 this consultation

In July 2019, the FCA published an initial consultation (GC 19/3) setting out their view of what their Principles for Businesses require of firms to treat vulnerable consumers fairly. GC19/3 sought views on the aims and content of the draft guidance, the costs, and benefits, whether the draft guidance was sufficient to ensure vulnerable consumers are treated fairly or if additional interventions were needed. This guidance consultation discusses the feedback received on GC19/3 and seeks views on the updated draft guidance and linked cost benefit analysis.

The analysis of responses to GC19/3 and updating of the guidance in response to comments took place before the coronavirus (Covid-19) pandemic.

Key points and recommendations

- We welcome the updated guidance and support the FCA's ambition for all customers, whether vulnerable or not, to achieve the best possible outcomes from financial services firms.
- We hope that Covid-19 support measures established by the FCA, alongside the updated guidance, has coincided with a wider cultural and behavioural shift in addressing vulnerability.
- Firms behaviour can lead to direct discrimination against certain groups of customers. The FCA should take a more proactive stance with firms on harms, like price exclusion, created by this discrimination.
- Retirement is a significant life event which could be a driver of vulnerability and harm.
- Firms need to build in tests to identify existing and emerging vulnerability in customers.
- The final guidance should explicitly state the supply side factors that cause and exacerbate vulnerability and harm.
- A Duty of Care is needed for the industry to raise standards of customer care and genuinely place the (vulnerable) customer first.
- Firms should see investment in training, systems, and processes to identify and support vulnerability as part of the cost of doing business.
- Firms should evidence how they are meeting the principles of the guidance which will allow the FCA to identify and address business and sector wide issues.
- In light of the current unprecedented circumstances, the guidance should be updated on an ongoing basis.

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.

Overview

We welcome the updated guidance and support the FCA's ambition for all customers, whether vulnerable or not, to achieve the best possible outcomes from financial services firms. The new guidance provides further opportunity for the FCA to act as a thought leader and share best practice. We hope the guidance will serve as the basis for individual firms and financial services sectors to continue to innovate and improve their treatment of vulnerable customers to provide greater choice and competition for consumers.

One of the very few upsides of the Covid-19 pandemic has been a greater understanding and recognition of what it means to be vulnerable. Millions of people who would previously not have considered themselves as such, have been thrust into difficult circumstances beyond their control. The temporary measures the FCA has established over the last six months have been extremely welcome in reducing likely harm and providing some confidence and clarity to businesses, consumers and those that support them. We hope that whilst some protection measures may be temporary, (even if extended) that the updated guidance has also coincided with a cultural and behavioural shift in addressing vulnerability which will significantly improve the experience of consumers.

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

We are disappointed that the FCA does not propose a more proactive approach for firms to respond to issues of discrimination for all protected characteristics under the Equality Act 2010. Firms should not just be responding to the needs of vulnerable customers but also understand how their practices and processes may directly and indirectly discriminate against certain groups of consumers. We urge the FCA to consider how a protected characteristic could indirectly relate to someone in vulnerable circumstances and the regulator's responsibilities under the Public Sector Equality Duty to address discriminatory practices. For example, we are concerned that the use of personalised pricing, particularly in the insurance and credit sectors, could lead to discrimination against older and vulnerable customers and be in breach of the Equality Act. The consultation acknowledges the harm for consumers who are excluded from accessing the best price, but pricing algorithms may serve to discriminate against certain groups such as older and disabled people. 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[1] (EHRC). 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. The FCA should also undertake further research and analysis to understand the interactions between vulnerability and exclusion and monitor the impact of the guidance on it. For example, whether the market stops serving the needs of vulnerable or other groups of consumers.

The FCA should also be explicit and transparent in how it works with the EHRC in instances where firms are found in breach of the Equality Act. The FCA could work with the EHRC to provide guidance for regulated firms on complying with the Act, particularly as financial service providers are exempted in certain instances from rules which prohibit discrimination on the basis of age.

The consultant document states, "We 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". However, in GC19/03 this statement was phrased as "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". The FCA should revert to the original phrasing as firms because it makes clear the importance firms should place on addressing customer vulnerability and emphasises that they should be trying to achieve the optimum outcomes.

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

We are pleased to see retirement recognised as a significant life event which could be a driver of vulnerability and resulting harm. This is particularly relevant for pension providers and the financial advice industry, but also has impact across the sector. Retirement has a multi-faceted impact on individuals, from their (reduced) income and spending decisions which determines the products and services they require and advice they may benefit from. The Financial Lives survey[2] acknowledges that assets tend to accrue over the life course, but older people are often asset rich and cash poor and a third live on household incomes of less than £15,000. Older age does not and should not be automatically equated with vulnerability but as Financial Lives demonstrates, the majority of older people (60% of those aged 65+ and 69% of those aged 75+) demonstrate characteristics of potential vulnerability. Those affected by the drivers of vulnerability may need information, advice, and support to achieve positive outcomes. A firm's employees need to recognise that their product offer may not be suitable for an older and potentially vulnerable customer. If they are unable to provide an appropriate service, then staff should signpost to third party sources of support to help meet the needs of the customer.

Impact of long-term decisions

For some consumers wealth may increase into older age, as does the window shrink to rectify any mistakes or misjudgements which could be a result of vulnerability not being appropriately addressed. The guidance needs to be more explicit about the long-term nature of many financial relationships, particularly for older loyal customers or where decisions are irreversible.

To appropriately understand any existing or emerging vulnerability in a customer, firms will need to build in tests to identify it. Firms could look at proxies for potential vulnerability with information they may already hold on a customer. In the current economic and societal context, self-employed older people may be likely have seen a drop in their income. Analysis by the FCA shows that it is some of the youngest and oldest workers – "Millennials" and "Baby Boomers" that are most likely to have been economically impacted by Covid-19, whether through furlough, lost hours, pay or jobs[3]. Both groups are more than twice as likely as Generation Xers to have lost their jobs altogether during the pandemic. 30% of employees in their early 60s are receiving less pay than they did at the start of the year[4]. Other current proxies for vulnerability may include those that are renting and those that live alone.

Supply-side factors

The consultation paper has some acknowledgement of the supply side factors that can cause and exacerbate vulnerability. It states someone may be "especially susceptible to harm, particularly *when a firm is not acting with appropriate levels of care*." The FCA should list supply side factors alongside the other drivers of vulnerability to clearly demonstrate how the actions of firms and markets can make customers vulnerable, heighten existing vulnerabilities and lead to further harm when things go wrong. This would place a responsibility on firms, sectors, and trade bodies to understand how their role and not just the circumstances of their customers can lead to harm.

Ultimately, it may be difficult to take meaningful and lasting action on vulnerability without also introducing a Duty of Care. This would ensure that the industry is obliged to raise standards of customer care and genuinely place the customer first, and we believe would be of substantial benefit to consumers who have a vulnerability.

Advocacy
The industry will also need to acknowledge that it can often be difficult for customers to advocate for themselves effectively. Older people and those that care for them have told us about the stress and anxiety from having to deal with financial service providers, particularly during lockdown. Customers are also unlikely to be aware of what support options are available from the provider or temporary protection measures agreed between the regulator and industry. The onus should be on firms to discuss with vulnerable consumers how they can be supported, examples could include third party access or carers' accounts.

Secondary impact
We believe firms need to understand not just the impact of harm that may result as a direct consequence of their relationship with a customer but also be mindful of any secondary impact that may occur. For example, allowing an overindebted customer to build up further arrears or access high cost credit may have implications for how they can afford day-to-day expenses and threaten their housing security.

'Quick wins' for the FCA
Infrastructure bodies should also apply vulnerability into their thinking. The FCA should also provide guidance to these entities as they drive the delivery of different products on the market e.g. Pay.UK, Open Banking Implementation Entity and the Lending Standards Board. This should help develop a a co-ordinated consistent approach to ensuring the fair treatment of vulnerable customers across the industry.

We would also recommend 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. This would complement the existing evidence on the personal impact of the four basic drivers.

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

The consultation has specific figures on costs, but the benefits have not been quantified. There is a risk of framing the guidance and vulnerable consumers as cost-saving exercises, and/or firms bundling the costs with responding to Covid-19. The reality is the benefits will also likely create new opportunities for firms. Firms should see investment in training, systems, and processes to identify and support vulnerability as part of the cost of doing business but also an investment in supporting and retaining loyal customers.

Firms are advised to go to the third sector for data and information – but resources are lacking during the pandemic. There is a risk that only organisations with the greatest resources can support businesses build their vulnerability offering – and many groups may not be represented. This work will need to be properly funded with the objectives properly understood. The FCA needs to continually broaden its consumer network to consider new groups at risk of vulnerability, such as those that represent migrants and refugees, so that the regulator is best informed and have access to wide-ranging insights. This would help mitigate against missing out small organisations that support specific at-risk groups.

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 must use their resources to support these customers, and we would like to see firmer action by the FCA to make firms go above and beyond for their vulnerable customers. Many firms save significant sums from moving services online. A feature of future cost and benefit analysis could examine how much firms have saved and require them to reinvest a proportion of this in supporting vulnerable consumers

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

The guidance does not explicitly state how the FCA expects firms to demonstrate compliance through its monitoring and supervision. The FCA could require each firm to produce a single document within a specified timeframe, of how it will respond to the guidance and meet the needs of its vulnerable customers. If firms say they are not meeting all of the principles which predicate positive customer outcomes, then should share a plan on how they will meet any gaps. This will allow the regulator to see if gaps are present across the industry allowing things to be addressed in a structural way. The FCA needs to understand and analyse if and how the guidance has made a difference, wider than just informal conversations with firms and those that work in compliance.

The FCA must also create a regulatory structure that monitors the treatment of vulnerable customers, and the outcomes they receive, on a regular basis. If firms overstate the action they have taken, the FCA must be able to identify this and respond appropriately. All this will require a framework and appropriate process, depending on the sector.

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?

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

In light of the current unprecedented circumstances and given the continuing uncertainty around the economic climate, the guidance should be reviewed more regularly than the stated 2021 and 2023 intervals. Regular reviews of the guidance will also provide the opportunity for planned and expected FCA work on a Duty of Care, whether the industry is meeting the needs of older consumers and exploring loyalty penalties in the insurance market, to feed into updated guidance. The guidance may not be enough to ensure older consumers receive consistently fair treatment and help firms understand their particular needs. A new duty sitting alongside the updated guidance will provide a better incentive for understanding the drivers of vulnerability and the harms that need to be protected against. We would also welcome separate guidance on the use of third-party support by older and vulnerable customers.

If the guidance is to have the desired effect, firms will need to provide appropriate training for their staff. Training needs to ensure that customer facing staff can capture the necessary information, interpret it accurately and speedily, and then ensure they are adept at prioritising how to best support the customer.

It is also important that firms can deal with vulnerable customers empathetically. The consultation paper has good examples of how some firms have helped bereaved customers, and use 'tell us once' systems which are designed to minimise the number of times someone vulnerable or experiencing a traumatic episode has to relay the same information to staff. The guidance should go further to discuss the burden of proof that is expected for bereaved relatives and how firms may be able to support customers. We have heard directly from older consumers during lockdown that financial service providers were not willing to show any leniency in requiring customers to send physical copies of death certificates and wills, despite the clear logistical barriers for an older bereaved person to do so. We welcomed the FCA's guidance about how firms could provide a degree of flexibility with identification checks. Firms should also consider, particularly during current circumstances, how customers can evidence a bereavement or incapacity of a partner without requiring onerous duplication of documents[5].

The FCA and industry need to ensure that both firms and consumers are aware of and understand how to benefit from the temporary protection measures, especially where they not online or have difficulty accessing telephone banking services.

Customers themselves may not be in a position to understand either that they have a vulnerability, or the impact of this may have. As a result, they may not think that they are entitled to support. While we appreciate that many firms are seeking to encourage customers to use electronic means of communication, we are concerned that some messaging is potentially confusing for older customers as it suggests that they should avoid getting in touch unless they can do so online. Any customer-facing communications should make it clear that anyone unable or unwilling to communicate with their bank electronically is welcome to do so using other means.

It is also important that telephone banking services are readily available, and that call centres can cope with demand. We have heard reports of older people facing long waits and then not being able to access the services they need. We do, of course, appreciate the difficulty for firms in scaling up such operations at short notice, but this issue is likely to continue for the duration of the pandemic. Several banks have already established special helplines for their older and vulnerable customers, and all large FS firms should be required to do so.

Similarly, access to cash remains an important issue for many older people and there have been many innovative examples of firms helping their customers to access it over lockdown. We have previously written to the FCA highlighting concerns with access and expect this to remain a difficult issue for some time to come.[6] It is important the FCA continues working with the Payment Systems Regulator to ensure that vulnerable customers can access cash and consider how reduced access will lead to harm in those that depend on it.

---

[1] https://publications.parliament.uk/pa/cm201719/cmselect/cmtreasy/1642/1642.pdf
[2] https://www.fca.org.uk/publication/research/financial-lives-survey-2017.pdf
[3] https://www.fca.org.uk/insight/coronavirus-and-intergenerational-difference-emerging-picture
[4] https://www.resolutionfoundation.org/app/uploads/2020/05/Young-workers-in-the-coronavirus-crisis.pdf
[5] https://www.fca.org.uk/publication/correspondence/dear-ceo-letter-coronavirus-update-firms-providing-services-retail-investors.pdf
[6] https://www.ageuk.org.uk/latest-press/articles/2020/05/charity-calls-on-fca-to-secure-older-peoples-access-to-cash/ \