

## **Consultation on FCA guidance for firms on the fair treatment of vulnerable customers**

### **Money and Pensions Service response**

The Money and Pensions Service welcomes the opportunity to respond to the FCA's consultation on proposed new guidance for financial services firms on the fair treatment of vulnerable customers. We agree with the FCA that firms need to go further to ensure that customers in vulnerable circumstances achieve similar outcomes to others, and that they are treated fairly in relation to purchasing products and services, and we welcome the FCA's work to support firms to do more.

#### **Executive Summary**

- The guidance as currently drafted addresses the key areas where firms should focus to serve their more vulnerable customers better, and we have focused in our full response on areas where this could be expanded to deliver better outcomes for consumers and more active guidance for regulated firms.
- We set out in our response to the FCA's consultation on the potential for a 'duty of care' for the sector our view that such a duty could bring fairness to all financial markets and help to deliver extra protection and better treatment of vulnerable consumers, and whilst this is not being introduced at present, we continue to believe that this could also play a significant role.
- We understand the FCA's preference to position this as guidance on the principles at this stage, but would seek greater clarity about its status, particularly in relation to enforcement. We would also urge the FCA to formally evaluate the impact of this guidance on consumers in vulnerable circumstances after a period of 18 months to assess whether it has had the desired impact or whether more prescriptive regulatory approaches are required.
- The aim of the guidance is to change the culture of organisations so that they are better able to meet the needs of vulnerable customers, but culture change must be initiated from the top. Unless there is an understanding of the issues and their importance at a Board and Senior Executive level, then significant change and improvement is unlikely, and we believe that this emphasis is currently missing from the guidance.
- It is also important to ensure that staff who design products, services and customer journeys fully understand the challenges and needs of more vulnerable consumers as their role is key to shaping customer experiences and outcomes. The current drafting of the guidance appears to focus on customer facing staff and should be extended to encompass others.

- The guidance provides useful case studies but could be much more helpful to firms by including some of the sector leading research and tools that firms can use as they develop their approach to the guidance, as well as reference to the charities that may assist firms to understand the needs of certain groups of customers.
- We agree with the FCA that clear customer communications accessible to more vulnerable consumers are important, but we recognise the challenge inherent in also meeting legal requirements in relation to financial products. We would suggest that the guidance should emphasise the role that additional guidance, in a range of formats, media and channels, can play to offer greater clarity, as well as the importance of referring more vulnerable consumers to independent guidance such as our own website or contact centre to verify understanding and options.

## **About Us**

The Money and Pensions Service (MaPS) exists to help people make the most of their money and pensions. We were created by the Financial Guidance and Claims Act 2018, bringing together the Money Advice Service, the Pensions Advisory Service, and Pension Wise, under one body.

The Money and Pensions Service is an Arms-Length Body, sponsored by the Department for Work and Pensions, with a vision of “Everyone making the most of their money and pensions” by ensuring that people throughout the UK have guidance and access to the information they need to make effective financial decisions over their lifetime. We deliver this across;

- Pensions guidance - to provide information to the public on matters relating to workplace and personal pensions.
- Money guidance - to provide information designed to enhance people's understanding and knowledge of financial matters and day-to-day money management skills.
- Debt advice - to provide people in England with information and advice on debt.
- Consumer protection - enabling us to work with Government and the Financial Conduct Authority (FCA) in protecting consumers.
- Strategy - work with the financial services industry, devolved authorities and the public and voluntary sectors to develop and coordinate a national strategy to improve people's financial capability, help them manage debt and provide financial education for children and young people.

In delivering our statutory duties, MaPS has an explicit obligation to ensure that information, guidance and advice is available to those most in need of it - bearing in mind in particular the needs of people in vulnerable circumstances. We are therefore in a strong position to respond to the FCA’s consultation on proposed new guidance for financial services firms on the fair treatment of vulnerable customers.

**Detailed responses to questions:**

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

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

This guidance forms part of a programme of work that commenced with the FCA's publication of Occasional Paper 8 that defined vulnerability and the 2017 Financial Lives analysis of those in vulnerable circumstances, and it would be helpful to contextualise the guidance with this, setting out progress made in the sector and the anticipated path of further improvement.

At the end of last year, we responded to the FCA's consultation on the potential for a 'duty of care' for the sector, expressing support for the introduction of such a new duty that would give financial services firms a positive obligation to promote customers' best interests and a fiduciary duty not to cause harm to a customer's financial interests. We believe that such a duty could add value to and sit alongside this guidance, bringing greater fairness to all financial markets and allowing the FCA to deliver the commitments outlined in the *Approach to Consumers*. We set out a view that a new duty could provide a better balance between firm and consumer responsibilities and help deliver extra protection and better treatment of vulnerable consumers.

Whilst the FCA decided not to progress with such an approach at this time, we continue to believe that more needs to be done to protect consumers, and particularly those in vulnerable circumstances. We therefore welcome this guidance as a significant step in the right direction, creating greater clarity for firms on what 'good' looks like in serving customers in vulnerable circumstances and identifying how this runs through each stage of customer interaction.

We understand the drive to position this guidance as principles to follow, rather than adding additional weight and complexity to the Handbook, which risks additional compliance costs and the potential for unintended consequences. However, we are not sure that the draft guidance offers sufficient clarity about its status, particularly in relation to enforcement and we would suggest that paragraph 11 in particular creates confusion and significant potential for different legal interpretations.

This confusion could be resolved if the FCA were to consider and communicate different enforcement scenarios and set out case examples as to how this guidance would be used to consider if a principle had been breached through the supervisory relationship.

We see this guidance as part of a journey and a practical next step to enable firms to consider how they should be approaching vulnerability. As such, we believe it important that the impact of the guidance on the sector be formally evaluated after a period of 18 months to assess whether it has had the desired impact on improving the experience of consumers in vulnerable circumstances. We recognise that this could

represent a challenge but would suggest that the FCA focus on tracking a number of selected measures that relate to the stated outcomes of the new guidance for:

- firms to be more focused on ensuring that the outcomes experienced by vulnerable consumers are at least as good as those of other consumers; and
- greater consistency across firms and sectors so that vulnerable consumers are treated fairly in whatever financial service or product they buy.

It is not clear to us whether there is a precedent where non- Handbook guidance has been embedded and enforced in the way proposed here. If this is the first time this approach has been adopted, it would also be good to evaluate it against other more and less interventionist approaches. Furthermore, will the status of the guidance allow the FCA to share and promote case examples of how firms have complied or developed their focus in order to help achieve the culture change required, and if this is not possible, will they be able to encourage firms themselves to share their approaches to support the culture change we are seeking?

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

It is important for firms to understand the concept of customers who are ‘potentially vulnerable’ to financial detriment, particularly when the FCA’s definition recognises that the behaviour of firms themselves, or the impact of their products and services, can in itself be the driver of that vulnerability. It moves the sector away from a focus purely on characteristics to one of situational vulnerability that is important for firms to understand. Firms need to carry out their own assessment to understand the range of characteristics that may make someone vulnerable in relation to their services and how they can address these.

***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)?***

The description of how firms should approach this and the examples of possible ways for firms to develop their understanding are all helpful. We would add that firms also need to understand how the unintended consequences in how they shape and deliver products and services can also be drivers of vulnerability. To develop and sustain better outcomes for people in vulnerable circumstances, firms need to embed an approach to vulnerability in their service design and proposition development process, and not confine this to customer service interactions.

In terms of developing understanding of those who are vulnerable in their customer base, we would support the suggestion of reviewing complaints data but with a clear

understanding that those who can complain are often the more able consumers, and that those who are most vulnerable may find the process too daunting.

The recommendation to provide information to the consumer at regular intervals is useful. We suggest that consideration is also given to carrying out reviews of income and credit and savings use data as a means of identifying patterns of emerging potential vulnerability. This approach would also be consistent with the monitoring guidance at Annex 1, para 105 (a): ‘Firms should implement appropriate processes at key points in the customer journey to identify instances where the needs of vulnerable consumers are not met, so that they are able to address the causes and issues identified.’

***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)?***

It is important to make it clear in this section that the need to ensure that staff have the appropriate skills and responsibility to understand and address the needs of vulnerable customers must extend to all staff who have an impact on or accountability for customers. In addition to frontline staff, it is critical that those designing and developing customer propositions and journeys understand and evaluate the needs of customers in vulnerable circumstances and can address those.

It is also critical that those with governance responsibility in the firm understand these issues. The aim of the guidance is to change the culture of organisations so that they are better able to meet the needs of vulnerable customers, but culture change must be initiated from the top. Unless there is an understanding of the issues and their importance at a Board and Senior Executive level, then significant change and improvement is unlikely. Whilst this is referred to in the introduction to the guidance, it should be reflected in the section on staff skills and capability<sup>1</sup>. Clearly the strongest way for the FCA to signpost this to firms would be to include it as part of the Senior Manager Certification Regime.

In relation to frontline staff, point 55 suggests that staff should be able to exercise some discretion to meet the needs of vulnerable customers. This is important but firms need to set out clear guidelines on where discretion is possible balanced with regulatory requirements in order to both empower and protect their staff and customers. Firms need to consider where discretion is possible and where staff need to refer a customer to a more senior member of staff or a specialist team in order to fully consider their needs.

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<sup>1</sup> Reference missing

This section highlights what is clearly missing from the guidance: whilst case studies are presented, some of the key tools that exist in the sector are not referenced. We would suggest that there should be a bibliography of accepted good practice to ensure that all those using the guidance, including new market entrants, can access this. For example, this could include:

- The UK Financial Abuse Code of Practice <sup>2</sup>
- The ABI guide to supporting vulnerable consumers in the long terms savings market<sup>3</sup>
- The research and resources from the Bristol Personal Finance Research Centre<sup>4</sup> and the Money and Mental Health Policy Institute

With the guidance's focus on firms having wide flexibility to interpret how to apply the good practice, they will need more resources and research to develop their own tailored approach and such tools and good practice are key. The possible ways set out for firms to develop the skills and capability of their staff includes working with specialist charities, but firms would also benefit from the guidance setting out some of the key specialists in the sector and the resources they have.

There is clearly a role for specially trained staff as suggested but it is important to ensure that specialist staff or teams are just part of the approach to supporting those in vulnerable circumstances. All staff need to be able to identify and support vulnerability to some extent and the danger of referring customers onto specialists is that many consumers do not consider themselves to be in vulnerable circumstances, even when they clearly are, and may resist a transfer to a different member of staff or team.

***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)?***

### **Product and service design**

It is important to emphasise that firms need to consider any unintended negative impact or consequences on customers in more vulnerable circumstances from anything that they develop in products or services, or any changes introduced to an existing product or service. We set out in response to the previous question the importance of those who develop propositions and products being trained to understand the needs of

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<sup>2</sup> <https://www.ukfinance.org.uk/financial-abuse-code-practice>

<sup>3</sup> <https://www.abi.org.uk/news/news-articles/2017/11/abi-publishes-guide-to-help-firms-identify-and-support-vulnerable-customers-in-the-long-term-savings-market/>

<sup>4</sup> <http://www.bristol.ac.uk/geography/research/pfrc/themes/vulnerability/publications/>

such customers and fully considering what might be the characteristics of all potential customers for a product or service.

A report published by Linklaters in partnership with UK Finance provides a useful checklist to inform the design process, suggesting that: ‘A firm may find it helpful to consider:

- How does the firm consider the benefits of a particular product/service for the intended customer segment?
- What steps have been taken to ensure that a new product service is inclusive by design?
- Has account been taken of any relevant market-based standards, codes or guidance?
- Has sufficient consideration been given from a vulnerable customer perspective?
- Do longer-term products incorporate an appropriate level of in-built flexibility that can adapt to the changing circumstances in which a customer might find themselves?’<sup>5</sup>

The Treasury Select Committee has also recommended that: ‘If firms designed their products to be accessible to all customers using a universal design approach, many of the issues faced by vulnerable consumers—including their concerns over having to disclose their vulnerability—would be removed.’<sup>6</sup>

Earlier this year, we published a report on *Transforming Customer Wellbeing*<sup>7</sup>, seeking to understand how the retail banking sector supports financial capability by embedding it in their core product and service offerings (focusing on current and savings accounts). This research found that having a greater understanding of the financial capability needs of customers enables more targeted design of new products, services and features. We recommended that providers should enhance their existing design and development approaches to integrate financial capability with other design priorities, such as customer experience and behavioural science. We recognise that this change requires providers to develop new capabilities within their design teams, and so have already started to work with a number of financial services firms to help them do so through our Financial Capability Lab.

In the FCA’s own Occasional Paper 31 on an Ageing Population and Financial Services, there is a recommendation that: “*Firms may wish to consider how to identify those who are finding a specific transaction or interaction particularly challenging and take steps to remove them from standard processes and provide specialist support to help resolve their query.*” This is an important point that should be addressed in the guidance, not just how to design products and services but also to review where they are failing older

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<sup>5</sup> Linklaters/UK Finance.

<sup>6</sup> House of Commons Treasury Committee.

<sup>7</sup> <https://www.maps.org.uk/wp-content/uploads/2019/06/Transforming-customer-wellbeing-1.pdf>

or more vulnerable consumers and creating particular barriers, and the guidance needs to address this.

That occasional paper also included reference to third party access and included encouragement for “...the Money Advice Service and its successor body, the Single Financial Guidance Body (SFGB), ... to: ...promote consumer understanding of the benefits of planning ahead for third party access.” We are in the process of reviewing our own guidance on this point but also welcome the recognition in paragraphs 82, 83 and 130 that this is an important area for firms to consider: how to support consumers who may need to rely on trusted third-party support and how to ensure that experience is as smooth and positive as possible. It is widely reported that consumers trying to use third party access currently have a mixed experience, and the wider complexity and confusion that exists could expose consumers to potential scams and fraud.

### **Good customer service**

The customer service section of the draft guidance seems to overlap significantly with the frontline staff drafting in the first section and we would consider rationalising the structure of the guidance. It may be worth having a section on customer service that includes consideration of the staff who will deliver this, and the design of products and services section to include reference to the staff who will lead on this area of work.

The points set out for firms to consider in delivering good customer service are very helpful and reflect some acknowledged good practice in the resources we mentioned above.

### **Communications**

The section on communications is particularly important, and firms need to understand the communications barriers faced by customers in vulnerable circumstances. The balance of providing the required regulatory information on products whilst communicating effectively is a challenge that firms must address. The FCA’s previous discussion Paper 15/5 on Smarter Consumer Communications has been very helpful in guiding firms in relation to legally required complicated information and disclosures. It suggests how these can be simplified and/or made more accessible by offering additional materials, including in a variety of formats or layering information to make it more meaningful and actionable by customers. We believe that it would be helpful for this new guidance to make direct and explicit reference to this and include the relevant examples to prompt action.

As part of their overall communication strategies, firms should ensure that a statement of commitment to assisting vulnerable customers, together with information about the availability and nature of support resources, should be given prominence in marketing materials and websites, where this information is currently often inaccessible or buried.

Recent work to create a ‘simpler statement’ to support auto enrolment emphasises the importance of working towards this and this is something that the sector needs to consider, prioritising more common products first in order to have the greatest impact. Firms must consider the needs of those who are vulnerable in financial markets due to low numeracy or literacy and consider how to overcome those barriers.

This also emphasises the importance of further guidance, whether from the firm or independent to it, as a way of supporting communications with consumers, providing an opportunity for consumers to verify their understanding before committing to a product or understand their options better. We believe that this is particularly important in relation to consumers in more vulnerable circumstances and our own website and contact centre are examples of independent sources of such guidance for firms to refer customers to.

We welcome the suggestion in the guidance that firms should offer customers a choice of channels where possible but believe the guidance should perhaps be stronger in asking firms to consider alternatives for the significant number of consumers who remain digitally excluded. Those most digitally excluded are generally those consumers in more vulnerable circumstances. The Lloyds Bank UK Consumer Index 2018<sup>8</sup> estimates that the number of people in the UK lacking basic digital skills is declining, but in 2018, 8% of people in the UK (4.3 million people) were still estimated to have no basic digital skills and a further 12% (6.4 million adults) were estimated to only have limited abilities online.

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

The section on monitoring and evaluation is key, particularly as the level of flexibility for firms in applying this guidance makes it critical that there are formal triggers and evaluation to ensure that senior and board level accountability can be effective. This section is possibly vaguer than the other chapters and this may be an area where firms will really need examples of what might be appropriate for different type and size of firms to create a stronger steer on how to approach this.

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

The guidance is deliberately set out as quite broad and intended to be used by firms as an aid in how they comply with the principles, rather than as prescriptive processes and requirements. Interpreting the guidance and implementing this approach will be a

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<sup>8</sup> UK Digital Index 2018

[https://www.lloydsbank.com/assets/media/pdfs/banking\\_with\\_us/whats-happening/LB-Consumer-Digital-Index-2018-Report.pdf](https://www.lloydsbank.com/assets/media/pdfs/banking_with_us/whats-happening/LB-Consumer-Digital-Index-2018-Report.pdf)



significant piece of work for firms and whilst the case studies are helpful, they do not provide enough of a resource for smaller firms and market entrants that may struggle to undertake this full review on their own. We would suggest that the FCA offers more detailed examples of how firms may wish to undertake particular approaches, such as formal processes to create an understanding of vulnerability in relation to a particular firm's client base.

***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?***

As set out above, the guidance provides pointers to firms to comply with their obligations under the principles and deliver similar outcomes for vulnerable customers as those required for all customers. However, without clear requirements or greater detail, it is not likely to achieve a step change, but to merely take firms further along the journey to supporting vulnerable customers. There will continue to be significant variation between firms, both because of capacity and interpretation of the requirements.

There is a risk that firms' natural behaviour will be to approach this as a compliance initiative rather than a culture challenge and we believe that more information and clearer prompts will help to promote more active implementation. Clearly, the aim of the guidance's principles are to inform an active, reflective approach, and to make this a success and ensure it does not devolve into a tick box compliance exercise we believe it needs to offer more case studies, more signposts to relevant resources, and greater clarity about the supervisory approach that will support it, and how expectations may evolve over time as the approach becomes embedded in firms.

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

This is not a question that the MaPS can respond to.

***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?***

As set out in response to question 5, we believe that there are existing resources looking at different aspects of vulnerability that provide more support and greater detail to firms on how they can approach this.

***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?*

We do not have any such analysis.

***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 status of the guidance as non-Handbook guidance with a legal status in providing evidence of compliance with the principles does create some confusion in how firms would be held to account. As currently drafted, Paragraph 11 of the guidance risks confusing firms and stakeholders and failing to clarify provide certainty on how this guidance will be implemented and embedded.

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

The consultation broadly sets out an intention to monitor but not how this will take place nor any indication of a formal review at any point. This is an important issue and if the policy objectives are to be delivered, we believe that it is important to establish a formal evaluation of whether these have been achieved, and we would suggest as outlined earlier that a formal review be planned in 18 months. This guidance is a natural progression from the FCA's Occasional Paper 8 in 2015, and the Financial Lives Survey detail in 2017 that has provided a strong steer for firms to understand and address issues of vulnerability in their customer base, so it is right to expect significant early progress in improving outcomes for such customers. At the point of review, if the guidance as currently positioned has not achieved the intended outcomes, then other, more directive policy levers should be considered.

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

The current proposals can be implemented and reviewed before additional policy options are considered if the guidance route has not achieved sufficient improvements for customers in vulnerable circumstances. However, the FCA's suggestion of setting out in one document all the relevant existing requirements in the FCA's Handbook that impose obligations on firms in how they treat vulnerable customers would be a good idea to implement at this stage, particularly to support new market entrants to understand their clear obligations. We would urge the FCA to carry out this analysis.

***Q16: Should we consider any further additional policy options?***

As we set out in response to question 2, MaPS remains convinced that a formal 'duty of care' on financial firms could provide a better balance between firm and consumer



responsibilities and help deliver extra protection and better treatment to vulnerable consumers.

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

See our response to the previous question.

***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.***

Alongside a new duty of care, new guidance would provide a greater incentive for firms to consider and address the needs of vulnerable customers and creates a more explicit framework for the FCA in its supervision and enforcement activity for firms. We therefore agree that this would support FCA's effectiveness in ensuring that firms treat vulnerable customers fairly.

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