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StepChange Debt Charity Response

FCA Guidance consultation: Guidance for firms on the fair treatment of vulnerable customers

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1. Do you have any comments on the aims of the draft Guidance?

We welcome the aims of the guidance. The emphasis on improving outcomes for vulnerable consumers throughout the guidance is particularly welcome – this makes clear to firms that just identifying vulnerability is not enough; they must take action to understand and meet the needs of their customers and actively avoid causing them harm.

It is pleasing to see the FCA's ambition set out in the guidance of ensuring that 'doing the right thing for vulnerable consumers' is 'deeply embedded' in firms' culture. As we have set out in previous consultation response, we believe this is needed to achieve a true transformation of the outcomes for vulnerable consumers in financial service markets.

Through our services, we continue to see how a combination of adverse circumstances, poor options and the conduct of financial services providers can create detriment, increase consumers' vulnerability to debt and make financial difficulties harder to deal with. Evidence of poor outcomes for consumers continue to be seen, such as in the credit card and overdraft markets. In Appendix 1 we have included some examples from our clients of where the treatment or outcomes they have experienced has not been of a good enough standard.

We conclude from this that, at some fundamental level, good customer outcomes are not yet the heartbeat of financial service culture. It is clear that the FCA needs to keep a strong focus on this to ensure firms make further progress.

We note that, while this consultation is separate from discussions about a duty of care, the two inherently overlap. Our call for the introduction of a duty of care was based on a strong view that the FCA needed to make clear that firms should not exploit consumer vulnerability, biases or constrained choices for profit. While we note that there is still ongoing debate about whether a new specific legal duty is needed, there is a growing consensus for the ultimate aim – of ensuring firms do not exploit vulnerability. Indeed, we believe this transformation (regardless of how achieved) is needed if the FCA's ambition to see a focus on good outcomes for vulnerable customers embedded at the heart of an organisation is to be achieved. We therefore recommend that the FCA add an additional aim for the guidance, which is to ensure that firms do not exploit vulnerability, biases or constrained choices for profit. The FCA also need to consider whether the guidance needs to be backed up by clearer expectations on firms through rules and principles.

2. Do you have any comments about the application of the Guidance or its status as non-Handbook Guidance?

We would welcome clarification on why the Guidance is stated as non-Handbook Guidance as we are not clear on the reasons for this. Given the Guidance is expanding on important issues related to key principles such as Treating Customers Fairly, we would expect it to be considered part of the Handbook. We are also slightly concerned by the non-binding nature of the Guidance and references to what firms 'should' do, when they may reasonably be considered to be things firms 'must' do if they are to be considered as treating their customers fairly. We appreciate that the Guidance cannot be too prescriptive, and that firms can meet their obligations in different ways. However, it still needs

to be clear that the Guidance will be taken seriously and used. We would therefore like to see more detail in the revised Guidance on how this will be used in supervision and enforcement, including detail of how the FCA's supervisors will be supported and resourced to understand and use it effectively.

The fact that the Guidance, by the FCA's own omission, was born out of requests from firms for greater clarity in this area suggest that the Guidance may need a more binding status. We have seen problems in other areas that can be learnt from here. During the consultation (CP17/27) on assessing creditworthiness in consumer credit, the FCA argued that firms had not understood the regulator's expectations under the rules and set out the need to clarify these. We are concerned about the risk of the same thing happening with this vulnerability Guidance. In developing the final version of the Guidance, StepChange would welcome the FCA evaluating the appropriateness of the status of this guidance and whether it is clear enough in setting out the FCA's expectations of firms. In developing the final version of the Guidance, the FCA should consider whether the message is clear enough in the status of this guidance as to their expectations on firms.

3. Do you have any comments on the distinction between actual and potential vulnerability?

In some respects, we can understand why the Guidance tries to make a distinction between actual and potential vulnerability. It gives an opportunity to highlight that potential vulnerability can be exploited by poor market practices or poor treatment by firms, leading to actual harm and we think this is an important thing for firms to understand.

However, we have concerns that the distinction set out in the Guidance could overly complicate the issue in practice. It could lead to firms' focusing too much on this distinction and placing too much emphasis on defining customers into one of these categories when this misses the key point. It could also lead to confusion for frontline staff.

We understand that the distinction may not be intended to be applied at a client level, but rather is about firms understanding when consumers could become vulnerable in their service. This would be welcome if so, but we would appreciate greater clarity over this in the Guidance so as to avoid confusion.

For example, we are concerned that the current distinction set out in the Guidance misses the fact that vulnerability is, by its very nature, the *potential* for something (normally harm) to occur. Then the actual thing that happens to someone is experience of detriment or harm.

The most important things for firms to focus on is the *impact* of the vulnerability i.e. what is the harm a customer might experience if their needs are not met. This information enables firms to truly understand how the vulnerability manifests itself and prompts the consideration of reasonable adjustments to the products and services they offer.

Such an approach to vulnerability would require firms to think hard about the way their products and services work for consumers with different needs and circumstances, and what firms would need to do to ensure good outcomes for those consumers. So the primary focus is on practices and products

rather than on consumer circumstances per se. This understanding is what will lead to real change and to an improvement in outcomes for vulnerable consumers.

4. Do you have any comments on our view of what firms should do to understand the needs of vulnerable consumers?

It is very welcome that the Guidance sets out that firms should take a proactive approach to identifying vulnerability – not just for individual customers, but by understanding the nature and scale of vulnerability within their target market and customer base. This is important for embedding vulnerability across all areas of a firm’s work, including in product and service design.

One point of caution we would make here is that the FCA will need to ensure that firms are not selectively defining their target market in order to not have to consider the full range of vulnerabilities that might be present in the actual consumer base and users of their products and services.

As in question 3, we would highlight that, when firms are considering the vulnerabilities present in their consumer base, they need to be asking *what* their customers are vulnerable to. For example, it is not about just identifying that 1 in 4 customers may have a mental health problem. It is about firms understanding what this means for their ability to engage with and use financial products and services, and the potential harm that could be caused if a firm doesn’t take their needs into account.

Taking this approach would also help with inclusive design. Instead of making exception or tweaks for individual customers, a greater understanding of the potential vulnerabilities within the customer base as a whole should allow the firm to design accessible services for all.

Finally, it is welcome to see an emphasis that firms should understand how their own actions or inaction could cause or exacerbate vulnerability, as well as how they might be exploiting behavioural biases. However, this would be an example when a requirement is framed as a recommended action “should”, when we would argue it should be a “must”.

5. 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?

Despite many firms having strong vulnerability policies, we still see inconsistency in how vulnerable consumers are treated and this can often be down to individual staff not being aware of certain policies or procedures or being empowered to utilise these. We therefore think it is appropriate that this forms a particular area of focus within the guidance.

One omission from this section of the guidance seems to be a focus on the role of senior staff. It is very focused on the capabilities of frontline staff and doesn’t seem to recognise that embedding vulnerability begins with having the right commitment from the top of the organisation. We would like to see this better reflected and for a link to the Senior Managers and Certification Regime to be made here. We recommend that there should be a designated senior manager responsible for vulnerability,

either via a Senior Management Function or via a specific Prescribed Responsibility.

While it could be argued that providing appropriate support for vulnerable clients forms part of the Conduct Rules within the SMCR regime we believe that a more formalised approach to firms' responsibilities in relation to vulnerability would be beneficial.

This will help to strengthen the impact of the guidance and to ensure that vulnerability is considered an organisational priority, able to compete with other regulatory requirements. Without this, there is a risk of only limited progress being made on improving outcomes for vulnerable consumers.

One area where we feel progress is still needed across the piece is ensuring that staff can not only identify vulnerability, but that they are empowered to act differently or diverge from usual procedure where this is necessary to meet the customer's needs. We hope the Guidance will ensure firms do so.

We note the recognition in this section of the importance of staff being able to recognise the limits of their remit and to be able to refer customers to further support if needed. We believe this is an important part of instilling confidence in staff to deal with vulnerability. However, we also recognise that there can be operational challenges relating to referrals to external support: sharing data; availability of additional support (particularly given the stretched nature of the charity sector); and measuring the effectiveness of referrals and the outcomes achieved for individuals. This may be an area that the FCA need to continue to offer guidance and support on.

6. 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?

Product and service design

The focus on product and service design within the guidance is very welcome – and particularly the requirement that firms should consider where products “deliberately or inadvertently exploit vulnerable customers”. However, we return to the point about whether or not the Guidance itself is strong enough in setting this expectation or requiring firms to do this.

As mentioned, we still see too many examples where features of products appear designed to exploit vulnerability or biases – so tackling this requires a strong response from the regulator.

Unsolicited credit card increases are an example here. The argument previously was that consumers could simply turn these down, but all the evidence showed they were not doing so and that unsolicited credit card increases were disproportionately impacting on those struggling financially. However, regulation has not fully addressed this and, even now, only voluntary measures have been agreed with firms, which still requires customers to opt-out of automatic credit limit increases.

Overdrafts provide a further example. FCA research found unauthorised overdraft charges were disproportionately falling on a small group of poor and indebted customers, often in deprived areas.

Firms could and should have realised this from their own data and understanding of their customer base. However, despite SM&CR being in place since 2016 for many financial services firms such as banks and building societies, firms did not take action themselves and explicit intervention from the FCA was required. While culture change, through SMCR is important, the overdrafts example shows that it is still explicit FCA intervention which most drives change within firms, leading to better outcomes for consumers.

While it is wholly welcome that the Guidance includes such a focus on product and service design, there remains a risk that this will not be acted upon by firms without explicit intervention and supervision from the FCA.

Customer services

As per our comments in question 5, we welcome the focus in this section on staff being empowered to offer flexibility to meet customers' needs. This can be critical in avoiding harm being caused and preventing problems escalating.

It is positive to see reference to specialist teams, and examples of where these have been implemented effectively do appear to show a positive impact on outcomes for consumers.

However, we would also highlight the importance of firms not becoming overly reliant on specialist teams. Firms also need to ensure that non-specialist staff can still show discretion and flexibility, and that their wider service is accessible. Relying solely on specialist teams can disadvantage people who aren't referred internally and can also create bottlenecks where other staff don't take responsibility for ensuring good outcomes for customers in vulnerable circumstances.

On a more general level, it could be worth reflecting in this section that firms need to consider how they are creating a 'disclosure environment' where people feel confident telling a firm about their circumstances and are confident they will receive a positive response when they do.

Communications

We welcome the emphasis in the communications section on firms proactively checking that vulnerable customers understand communications (Figure 8, point d). One concern we have with how the Treating Customers outcomes are phrased is that outcome 3 talks about consumers being 'provided with clear information'; but this is largely transactional and focused on the action of the firm rather than the impact this has on a consumer (what is 'clear' to the firm might not be clear to a consumer). As we set out in our response to the duty of care discussion paper, we believe it would be better for this to be focused on the requirement of firms to 'ensure that the consumer understands the product or service'. It is therefore welcome to see the guidance picking up on this important distinction, although we note that reflecting it in guidance but not changing the TCF outcome may limit its impact.

7. Do you have any other comments on the draft Guidance?

We particularly welcome section 5 of the Guidance, focusing on firms monitoring how successfully they are meeting the needs of their vulnerable customers. This is something that StepChange have

continually called for, across a number of areas of regulation so we are very pleased to see it included here.

Although measuring outcomes effectively can be challenging, it is critically important in ensuring firms are: continually learning about the needs of vulnerable customers; identifying areas for improvement; and holding themselves to account. In question 12 we set out some detail of how we, as an organisation, have piloted the measurement of outcomes, including for vulnerable customers. We would be happy to discuss this further should this be useful.

A key question remains and is one the Guidance could try and address in more detail: how will firms use the management information they collect to improve outcomes for vulnerable consumers? Paragraph 108 of the Guidance suggests firms need to identify where their products or services 'exploit, or potentially exploit, the characteristics of vulnerable consumers that risks harm'. However, what if this is central to their business model? Without strong oversight or supervision beyond just this Guidance, there is a risk that firms will 'know' a lot but won't act on it. There is a big challenge here for the FCA to get firms to act on this knowledge and information.

8 and 9. Do you have any comments on how firms are expected to use and apply the Guidance?

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?

Please also see our answer to question 2. As we set out there, we believe the Guidance is a positive intervention and covers the most important areas and actions that a firm should undertake. However, we do have significant concerns about whether the status of the Guidance will be strong enough to ensure that firms give this the priority it requires. We would therefore like to see more detail in the revised Guidance on how this will be used in supervision and enforcement, including detail of how the FCA's supervisors will be supported and resourced to understand and use it effectively.

10. To inform our cost-benefit analysis do you have any comments on what costs firm may incur as a result of this Guidance?

Ahead of the cost-benefit analysis being undertaken, there are a few points we would raise:

- The cost-benefit analysis must include calculations around the time requirements on vulnerable consumers who have to engage in a system that isn't accessible and doesn't flex to their needs, and similarly the benefits this brings when people's time is saved through better product design, customer service and other adaptations for vulnerable consumers. Time costs to firms are frequently included in cost-benefit analysis so it is important that the same applies for consumers. This is particularly important given the other pressures vulnerable consumers may be facing on their time meaning any wasted time trying to resolve problems

with a provider is even more costly. This might be the case for people who are unwell and who may become tired more quickly than others, or those who have caring responsibilities for example.

- When calculating the cost-benefit analysis, it is important that the FCA remember that this Guidance sets out how firms can meet their *existing* requirements under the Principles. Business costs to meet these requirements should already therefore to some extent be part of the reasonable costs firms expect to incur.
- There can be issues with doing strict cost-benefits analyses in relation to vulnerability. This is because the number of consumers affected may be small in comparison to the wider consumer base. This numerical imbalance can discourage intervention; and we have heard proportionality stated as a constraint on remedies, including the possible costs that may be incurred by other (not vulnerable) consumers. However, the approach taken by the FCA on rent-to-own arguably better reflected this dynamic, with the FCA taking action specifically because a group of vulnerable consumers were paying too much. We would reiterate calls we have made previously (in response to the FCA's Mission and Consumer Approach documents) that vulnerable consumers should be given greater weight in cost-benefit analysis. This should include ensuring that it is not just the number of people affected that is taken into account, but the extent and severity of the impact on an individual.

11 and 12: 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?

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?

Since 2017, we have been piloting regular measurements of the outcomes experienced by our clients. As a debt advice charity, we define a 'client outcome' as the changes, or lack of changes, in a client's situation after receiving debt advice. This includes their financial situation as well as other aspects of their life such as overall wellbeing.

This highlights the outcomes across our clients as a whole but also enables us to see outcomes for different client groups, including our clients who have additional vulnerabilities on top of their financial difficulties. In early 2019, we released [a report](#) sharing the findings from our initial pilot phase of this outcomes project.¹ As this was a pilot, and the numbers of survey respondents was low in relative terms, the findings are indicational rather than definitive. However, we can still gather some important insight from this.

For example, the findings highlight the positive impact that getting the right support to people in financial difficulty can have – not just on their financial situation but on their overall wellbeing too.

For example, three months after debt advice, more than half (56%) of clients said they felt able to deal with day to day life better than before. Half (51%) of clients said they sleep better compared to before contacting the Charity for debt advice. Clients who said that their debt problem was “completely sorted out” scored an average score of 7.8 when asked “how satisfied they are with their life nowadays”. This is almost in line with levels recorded at the national average.ⁱⁱ

As mentioned, the project also allowed us to look at the outcomes experienced by our particularly vulnerable customers. This may give some indication into how vulnerable consumers in debt are being treated by their creditors. We found that clients with positive budgets and additional vulnerabilities to their financial difficulty have good outcomes in certain areas, for example they are the most likely group to have their debt problem completely sorted at three months. This finding suggests that the charity and creditors are taking positive action for clients often most in need of support or forbearance.

However, this data also identifies areas for improvement across both the debt advice and wider financial services sectors. Clients with negative budgets tend to have worse outcomes in terms of wellbeing and progress with sorting their problems. Indeed, in many measures, the situations of clients with negative budgets and additional vulnerabilities are even worse – highlighting once again how significant a factor income levels can be and the role that wider social policy issues play in determining outcomes.

The outcomes work also explored the effectiveness of referrals made by StepChange where it was identified that a client needed additional support alongside debt advice. As we highlighted in our response to question 7, measuring this is something that firms will need to consider as part of understanding the outcomes their customers are achieving. Our pilot project found that:

- At three months, more than half of clients (56%) said they had already got in touch with the organisation they were referred to by StepChange.
- Of those who had got in touch, 60% said they got the help they needed from that organisation.
- This equates to 34% of clients who successfully got the help they needed from another organisation after being referred by StepChange.

We would be happy to discuss our measuring outcomes pilot further and share our learning in terms of how organisations can measure the outcomes experienced by their vulnerable customers, if this would be helpful.

13. 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?

As we have set out earlier in this response, we would like to see more detail relating to how the Guidance will be used in supervision and enforcement, including detail of how the FCA's supervisors will be supported and resourced to understand and use it effectively. This will be vital if the FCA is to achieve its ambition of seeing financial service firms transform their response to vulnerable consumers. As we set out in our answers to questions 15 – 18, we would raise questions as to whether this Guidance alone will be sufficient to bring about the necessary culture change to achieve the FCA's objectives around transforming outcomes for vulnerable consumers. For this reason we would urge the FCA to continue to review what other actions may be needed to achieve this – including giving further consideration to the role of a duty of care (further detail on our rationale for this is set out in the answers to questions 15 – 18 below).

14. Do you have any comments on our intention to monitor the effectiveness of the Guidance?

It is positive to see the FCA setting out their intention to monitor the effectiveness of the Guidance. This will be critical in informing decisions about other actions that might be needed in order to achieve the aims the FCA sets out in this consultation around transforming outcomes for vulnerable consumers. However, we would like to see more detail on how this will be done. The current section lacks detail on what exactly the FCA will be measuring and what changes they expect to see as a result of this intervention, for example.

15 – 18. Do you have any comments on the potential additional policy options?

Should we consider any further additional policy options?

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

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 have answered questions 15 – 18 together to avoid any repetition.

Policy option 1 sets out the idea of bringing together all the relevant existing requirements from the Handbook in one place. This would be helpful in setting out clearly what firms' obligations are and reiterating the expectations the FCA has on them so we would support this being done.

However, while doing so would be a step forward, we do not think it would be sufficient on its own.

In our opinion, there is still a gap in the current regulatory framework relating to the still too poor articulation between regulatory expectations, firms' culture and consumer outcomes. At route we believe this occurs because the existing objectives, principles and rules do not create a sufficiently clear and transformative understanding of what an 'appropriate degree of consumer protection' is and what is expected in terms of good consumer outcomes.

Instead, the FCA has pursued a more 'workstream by workstream' approach, tackling issues in individual markets and defining consumer protection in these specific instances. This may be similar to what is being proposed in option 3. While this is welcome and can help to reduce harm in specific markets, our experience suggests this is not enough to cause a fundamental shift in industry culture. This approach also lacks a preventative focus and means that action is often taken only once harm occurs.

It is for these reasons that we support the introduction of a duty of care alongside the guidance. This would place a duty of care on all financial services providers to ensure that they take an anticipatory approach in their dealings with customers, ensuring they are acting in the best interest of their customer, to remove or reduce the risk of harm. This should make clear that a firm cannot profit from consumer vulnerability, biases or constrained choices. This would be closest to policy option 4 set out in the paper.

We believe that only a duty of care has the ability to really drive the culture change needed to improve consumer outcomes. In particular, it embeds the concept of care towards, and fair treatment of, consumers at the highest level of the regulatory framework and would ensure that support for vulnerable consumers remained a high priority within firms.

Appendix 1: Examples of poor practice

When a client experiences poor practice, our advisors are able to record this (with their permission) to help us identify issues across different sectors. The below examples, of real situations that our clients have faced, highlight just some of the issues we still see in relation to how vulnerable consumers are treated. We have removed the details of the exact firm for each example.

High-cost short-term loan - *The client spoke with <firm> as they have been adding interest and charges making it difficult for him to repay his debts. He also disclosed that his mother is ill and when he explained the interest and charges are giving him additional stress the manager he spoke to at <firm> was rude and sarcastic.*

Mortgage - *Client approached their mortgage lender when aware they were going to experience difficulties paying instalments. Client felt they received a lack of support as they were told to call back once they had missed a payment and there wasn't anything <firm> was able to do for them. The client wasn't offered any options to help with paying their mortgage while experiencing a change*

in circumstances.

Setting up repayment plan - <Firm> have been calling the client repeatedly - sometimes 3 times in half an hour - and pressuring the client to pay more than she can afford outside of her Token Payment Plan (TPP). They have told her if she doesn't pay £100 per month bailiffs will come to her property (the debts are non-priority so this is incorrect). The client has a deficit budget, is undergoing cancer treatment and has three young children. Client stated that she has been going without essentials in order to make these payments. The client stated that <firm> have been threatening, rude and have reduced her to tears on several occasions.

Guarantor loan - Client has felt harassed by creditor, who has been contacting the client and the client's guarantor multiple times per day. The client has raised complaints with creditor directly, which have been unresolved. The client experiences mental illness and the stress caused by their current situation and this creditor in particular is causing additional emotional and mental distress.

Personal loan - Client stated she suffered with stress and anxiety on the call, but <firm> continued to apply undue pressure, insisting she pay with her Personal Independence Payment (PIP). The client also stated she felt <firm> were asking very personal questions. She was very upset by the whole encounter as she thought she was speaking with the firm's specialist support team and wasn't expecting it. Client stated she was reduced to tears and has since sought help through Mind to find a psychotherapist.

High-cost short-term loan: <Firm> were wholly unsympathetic regarding client's health issues; ignored the 3rd party's questions about 'duty of care' towards their customers - stated the client must continue making the payments as "he had signed the paperwork".

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ⁱ StepChange Debt Charity (2019) *Measuring Client Outcomes*, Available:

<https://www.stepchange.org/Portals/0/documents/Reports/stepchange-debt-charity-measuring-client-outcomes-pilot-project.pdf>

ⁱⁱ Ibid