

StepChange Debt Charity response to the Financial Conduct Authority guidance consultation and feedback statement: Guidance for firms on the fair treatment of vulnerable customers

September 2020

Introduction

StepChange Debt Charity is the largest specialist debt advice charity operating across the UK. In 2019, over 630,000 people contacted us for advice and information on problem debt. We welcome the opportunity to respond to this FCA consultation on guidance for firms on the fair treatment of vulnerable customers.

We welcome the updates to the draft guidance and the FCA's continued commitment to achieving fair outcomes for vulnerable consumers. The Covid-19 pandemic has, and will continue to, impact the numbers of people who are vulnerable. At this time, it is of particular importance that the FCA continues to build on its work to ensure that the fair treatment of vulnerable consumers is taken seriously by firms, and embedded into their culture, policies and processes throughout the whole consumer journey. We support the FCA's efforts to help drive change by providing clarity and focusing firms' attention on what they should do to comply with the principles set out in the guidance.

As an advice provider, we expect an increased demand for debt advice over the coming months as financial pressures build and the recession unfolds. Faced with this added pressure, the need for firms, including debt advice providers, to ensure fair treatment for people experiencing financial difficulties is particularly pressing. We therefore share the FCA's ambition to see firms being more proactive in anticipating the needs of vulnerable consumers, considering vulnerability at all stages of the product and service design process, and designing inclusive products and services that meet the needs of all consumers. Likewise, we strongly support the notion that senior leaders in firms should create and maintain a healthy culture in which all staff take responsibility for reducing the potential for harm to vulnerable consumers.

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

We strongly support the aims of the proposed guidance. The guiding principle that vulnerable consumers 'should experience outcomes as good as those for other consumers and receive consistently fair treatment across the firms and sectors we regulate' is in line with the ethos of equality and diversity. However, we express concern about the move from seeking outcomes that are '*at least as good as*' to outcomes that are '*as good as*' those for other consumers. This signals a downgrade of ambition from exceeding outcomes for vulnerable consumers, which may result in a similar lowering of ambition among those implementing the guidance.

While it is true that the principles are unlikely to adversely affect groups with protected characteristics, it is important to also consider whether they promote positive outcomes for these groups. Such considerations would bring the guidance in line with the public sector equality duty (PSED) which requires that organisations consider how they can positively contribute to the advancement of equality and good relations. The act states that 'compliance with the duty may involve treating some people more favourably than others.' This is because people with protected characteristics, particularly those with disabilities, often require additional support to enable them to

engage equally with services or service providers. We therefore recommend that the FCA revert to the original wording that requires outcomes ‘at least as good as those for other consumers’ and add the clause ‘and appropriate to any vulnerabilities experienced by the consumer’.

The FCA rightly identifies overlaps between the drivers of vulnerability and protected characteristics and the potential for the guidance to have beneficial outcomes for groups with protected characteristics. However, it does not elaborate on how certain protected characteristics interact with and may compound vulnerability e.g. people in these groups may be less open about their problems with advisers if they have faced discrimination in the past which may be detrimental to those with low capability or resilience. The FCA should work closely with Equality and Human Rights Commission (EHRC) to consider how protected characteristics may interact with vulnerability and seek to provide firms with the tools and insight needed to provide effective support for these groups.

It should also consider the overlaps between protected characteristics, low income and vulnerability. People with protected characteristics, in particular people with disabilities and those from black and minority ethnic backgrounds, are more likely to be on low incomes and to experience poverty¹. And groups with lower incomes are more likely to be vulnerable. Our statistics show that vulnerable clients have incomes which are on average 12 per cent lower than those without vulnerabilities, at £1,219 per month compared to £1,382 per month. They are also more likely to have negative budgets, at 45 per cent compared 30 per cent of the general population, and more likely to be behind on a household bill, at 57 per cent compared to 40 per cent.²

To ensure better outcomes for those with protected characteristics, as well as those in the broader vulnerable group, the FCA should consider how firms can provide adequate support and protections for those on low incomes. In particular, our research finds that a combination of poor affordability checks and certain behavioural biases mean that people who are financially vulnerable often rely on high cost credit which exploits their vulnerability and lands them in further financial difficulty.³ These outcomes are contrary to the aims of the PSED in that they serve to exacerbate existing inequalities experienced by protected groups. Faced with constrained choices, people on low incomes who are struggling to make ends meet are vulnerable to exploitation by firms offering high cost options, such as subprime credit cards, which can lead to further difficulty and trap them in cycles of unaffordable debt. This serves to embed structural inequality by making it incredibly difficult for those affected to improve their circumstances.

It is important that the FCA works with firms to protect financially vulnerable consumers from products that exploit behavioural biases and lead to unreasonable and harmful costs, and the guidance should be updated to reflect this. Specifically, low income should be included in the key drivers of vulnerability and it should be clear that the marketing of products or services that exploit

¹ See, for example: B Francis-Devine, [Poverty in the UK: Statistics](#), House of Commons Library, June 2020; J Nussbaum, [Measuring poverty 2020](#), Social Metrics Commission, July 2020

² StepChange Debt Charity, [Breaking the Link: A Closer Look at Vulnerable People in Debt](#), June 2018

³ StepChange Debt Charity, [Red Card: Examining the link between subprime credit and problem debt](#), June 2018

financial vulnerability and lack of choice in this way constitutes a breach of the principles. In addition, to meet its obligations under the PSED, the FCA should consider working with the EHRC to encourage regulatory and policy change in aid of breaking the links between low income and high cost credit.

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

We welcome the updates to the draft guidance. In particular, we welcome the move from categorising consumers as ‘actually’, ‘potentially’, and ‘non’ vulnerable towards understanding vulnerability as a spectrum of risk. This rightly highlights that all customers are at risk of becoming vulnerable and requires firms to consider the needs of all customers along the spectrum. It also recognises that people towards the sharper end of the spectrum will have greater and different needs which must be met in order to prevent the risk of harm from growing.

However, the messaging around proactive identification is potentially misleading. Paragraph 3.57 states that ‘whilst we expect firms to understand the needs of vulnerable consumers, the Guidance does not place obligations on firms to proactively identify individual vulnerable consumers through staff interactions or the use of data analytics.’ But understanding the needs of vulnerable customers inevitably requires firms to identify vulnerability. Firms need to be able to identify where people are on the risk spectrum, and the forms of vulnerability that people may experience at different points on the spectrum, in order to determine how to respond to different types and levels of vulnerability. In particular, they should be able to identify risk before it occurs in order to put preventative measures in place. Given that firms have different customers and different products and services, it is likely that the nature of the vulnerability risk spectrum and dynamics within it will be at least in part unique to each firm. So, while we support a risk-spectrum approach, we cannot see how firms will use this effectively within proactive identification using management information (MI) and other data.

In comparison, the messaging around MI and data analysis is strong in this sense. It places an emphasis on the need for firms to understand how their customer journey affects their vulnerable consumers and the outcomes they experience, and it provides practical examples of how to use MI for this purpose and to respond to the needs of vulnerable customers. To strengthen this message, the guidance should be more explicit about how firms apply the spectrum. They should be encouraged to use the framework provided by the FCA to develop their own risk spectrum which enables them to map vulnerability and potential sources of risk within their own organisations. This includes using MI and other data to identify issues that may push people toward the sharp end of the spectrum and anticipating strategies to prevent this.

We welcome the shift from stipulating that firms understand where there is a risk of products or services exploiting vulnerable consumers to specifying that ‘if a firm designed products and services in order to intentionally exploit vulnerable consumers, this would be a clear breach of our Principles’. The updated guidance rightly recognises that ‘some products and services can have features that are harmful to vulnerable consumers. For example, short term credit with high fees and charges for roll overs can negatively affect consumers with low financial resilience’. This message should also be reinforced throughout the guidance to emphasise its importance and to provide firms with the

necessary tools to root out exploitative products. For instance, the guidance identifies the usefulness of MI in understanding the experiences and outcomes of vulnerable consumers. MI should also be used to assess whether and how particular products and services may drive risk or exploit consumer vulnerability.

We reiterate concern about 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. Moreover, the Guidance states, in paragraph 1.26, that the Principles are legally binding but the guidance itself is not. This may temper firms' expectations of how the guidance should be approached. The principles are broad and adaptable to the needs of individual firms which is helpful insofar as firms vary hugely in scope and design so a one size fits all approach would be unsuitable. But in terms of enforceability, this may make it difficult to ensure that firms are responding to the Guidance which is much more specific about how they should behave in order to ensure positive outcomes for vulnerable consumers.

Supervision alone is unlikely to improve confidence in this area as issues may only come to light when things go wrong. We recommend that the FCA support the guidance with changes to the rules that signal the requirement for fair treatment of vulnerable consumers more strongly. The TCF outcomes should be updated to include an outcome on vulnerability and more general overarching references to vulnerability should be included in rulebooks in order to add weight and focus to the guidance.

In addition, there needs to be a strong vehicle for accountability which will push firms to take the lead on improving outcomes for vulnerable consumers. The FCA should consider undertaking an annual audit of outcomes for vulnerable consumers in financial services markets and should require firms to report on how they are complying with the principles and guidance, and how they intend to improve over the coming years. To induce transparency these reports should be publicly and freely available. This focus on accountability will force firms to reflect on their treatment of vulnerable consumers at least once a year, while increased transparency will be key to driving cultural change as consumers increasingly respond to ethical considerations.

Lastly, while we appreciate that the work on Duty of Care has been paused due to resource constraints caused by coronavirus, we remain of the view that this would help to ensure that a focus on good outcomes for vulnerable consumers is embedded in the cultures of firms. It would add weight to the statements cited above which seek to prevent firms profiting from consumer vulnerability, biases or constrained choices. We believe that a duty of care will drive the culture change needed to improve consumer outcomes. In particular, it embeds the concept of care and fair treatment of consumers at the highest level of the regulatory framework.

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

Implementing this guidance will inevitably impose some costs on firms, particularly the costs associated with understanding and identifying need. We note that the cost benefit analysis includes a range of estimates on the proportion of UK adults who may be vulnerable at any point. The lower

end of this range (5%) is based on evidence of firms' prior experience of identifying some aspects of vulnerability, a proportion small enough to put firms off from implementing changes to policies and practices to better meet those clients' needs, particularly where the cost of poor practice falling on customers are not transparent to firms. Given that these costs can be significant, and that the proportion of clients on the vulnerability risk spectrum is very likely to be much higher (and very much higher for some firms), we believe that in the absence of action by the FCA, firms are likely to underserve the needs of their vulnerable customers.

The costs presented are averages which smooth potentially very high costs for firms establishing systems and processes for the first time. For example, it is unclear how long it will take firms to build up sufficient data and knowledge if none currently exists and how resource intensive this will be. However, the costs of building insight into need should not be a valid excuse to ignore the needs of vulnerable people. Rather, having culture, policies and processes to ensure fair treatment of vulnerable clients should be considered a standard operating cost and a threshold condition for authorisation by the FCA.

The guidance suggests that firms collect and analyse data/management information on the experience of vulnerability in their customer base in order to understand vulnerability and, in turn, deliver the right outcomes for vulnerable consumers. The guidance should also be more prescriptive in this respect, requiring firms to collect this information for monitoring purposes, as discussed above, otherwise there is a likelihood that firms will not invest in this, limiting their ability understand and respond to the specific needs of their customers.

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

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?

Management Information (MI) is key to understanding the customer journey and where risk lies within this. Effective use of MI will enable firms to develop and update firm-specific risk spectrums as they learn more about the ways in which consumer vulnerability interacts with their own processes. It is important that firms use MI, such as customer feedback and complaints, to proactively identify risks to vulnerable consumers and put protections in place that mitigate against this. To reinforce a culture of effective data usage, the FCA should use the occasion of an annual audit of outcomes for vulnerable consumers in financial services markets, as recommended above, to provide updates to firms about data and risk assessment processes with examples of good and bad practice.

Both firms and the FCA hold responsibility for ensuring the fair treatment of vulnerable consumers. Firms should be monitoring their own progress in this area, focusing on the outcomes of vulnerable

consumers within their own firms. But they should also be required to report on these findings to the FCA to enable it to monitor progress across firms and sectors.

Specifically, in addition to collecting data on the outcomes of vulnerable consumers firms should be collecting data on differences in outcomes between consumer groups, particularly differences in outcomes between vulnerable consumers and the wider population. This will better enable them to monitor their treatment of vulnerable consumers and whether those consumers are actually experiencing outcomes that are at least as good as those for other consumers. It is also important to measure variations in outcomes between consumers affected by different drivers of vulnerability and those affected by multiple drivers of vulnerability to ensure fair treatment even for the most vulnerable. The TCF outcomes should be set as a benchmark against which to measure fair treatment.

In relation to the discussion above about equality and diversity considerations and the PSED, firms should also collect and analyse demographic data in order to assess outcomes and experiences among groups with protected characteristics. This will enable firms to assess whether there are specific systems or processes that repeatedly disadvantage particular groups and, in turn, allow them to work towards better outcomes for these groups

Requiring firms to report the data that they collate will enable the FCA to measure performance across firms in order to monitor which are doing better at driving improvements for vulnerable consumers. For instance, the FCA can assess whether larger firms have greater success in this area and then target support to smaller firms to help them achieve better outcomes. This will also enable the FCA to aggregate data across sectors allowing it to identify particular sectors in which vulnerable consumers are more likely to experience negative outcomes and to act upon this. Furthermore, it will allow the FCA to identify whether certain drivers of vulnerability can lead to harm in specific sectors and the potential causes of this. If the FCA is collecting data from firms, it should ensure that the data it collects is as consistent as possible to allow for comparisons between firms' progress.

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

We have no further feedback at this time.