Money and Mental Health's response to the FCA Mission consultation

Introduction

Money and Mental Health welcomes the opportunity to contribute to the consultation on the FCA's Mission. Money and Mental Health is research charity working to understand and to break the devastating link between financial difficulty and mental health problems. One in four adults will experience a mental health problem in any given year.[1] Across the UK, this totals 11.8 million adults.[2]

The relationship between mental health problems and financial harm is alarmingly strong, suggesting the market is not well serving this substantial customer segment.

One in four people experiencing mental health problems is also in problem debt, three times more than people without. This rises to a third of people experiencing psychosis.[3] People in problem debt are twice as likely to think about suicide as those not in financial difficulty, even after controlling for other factors,[4] and the more payments a person is behind with, the more likely they are to develop a mental health problem.[5]

Our response covers the following questions: 1, 2, 3, 6, 8, 9, 11, 12, 13, 15, 16, 17, 18 and 23. Given our expertise, our answers provide input on retail markets and consumers only.

Where we use quotations these are from the consultation document 'Our Future Mission' ('the Mission').

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[1] McManus S et al. Adult psychiatric morbidity in England, 2007. Results of a household survey. NHS Information Centre for Health and Social Care. 2009.
[2] Money and Mental Health analysis, using ONS 2015 mid-year population estimates and McManus et al, Adult psychiatric morbidity in England, 2007 Results of a household survey, NHS Information Centre for Health and Social Care 2008.
[3] Jenkins R et al. Debt, income and mental disorder in the general population, Psychological Medicine 2008; 38: 1485-1494.
[4] Meltzer H et al. Personal debt and suicidal ideation. Psychological Medicine 2011; 41, 4; 771-778.
[5] Jenkins R et al. Debt, income and mental disorder in the general population. Psychological Medicine 2008; 38: 1485-1493.

Q1. Do you think our definition of a well-functioning market is complete? What other characteristics do you think we should consider?

The FCA's definition of a well-functioning market is compelling, but omits to recognise the dramatically varying capacity of many consumers to fulfil the role required of them - in particular during periods of poor mental health, but also as a result of cognitive decline or learning disability. As a result, the FCA's definition is incomplete.

A well-functioning market requires active support for many groups of consumers to enable them to fulfil their role in the effective operation of that market.

The Mission rightly states that a well-functioning market requires 'engaged consumers.'[6] However, our work has shown that the cognitive and psychological impacts of having a mental health problem limits people's ability to be an active consumer, including their ability to engage with services and to shop around. This is not due to consumer laziness: people with mental health problems experience reduced response inhibition, working memory, attention switching and planning and decision making. During periods of poor mental health, consumers' ability to interact with markets effectively is therefore impaired.[7]

This means that, on the demand side, consumers will not always be able to 'take decisions based on those elements of price, quality and certainty of outcome that really matter to them', will not always be able 'to switch, at an appropriate cost, to products and firms that meet their needs', and will not have the 'ability to understand and process [financial] information.' These are not barriers that consumers can overcome, and typical regulatory responses such as disclosure and mandatory advice are likely to prove ineffective.

While the Mission recognises that 'some consumers or market users are more sophisticated than others', to be complete the definition of a functioning market needs to go further. We recommend the FCA adopts the principle that where consumer activism or engagement is impaired, both providers and regulators should take active steps to level the playing field, and provide appropriate support to boost their capacity. Support to increase the engagement and activism of consumers who are currently impaired will improve the functioning of the market as a whole.

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[6] Financial Conduct Authority. Our Future Mission. October 2016. p11.
[7] Holkar, M. 'Seeing through the fog': How mental health problems affect financial capability. Money and Mental Health Policy Institute. January 2017.

A physical health example may make this clearer: if Braille and screen readers were not available, consumers with a visual impairment would be at a substantial disadvantage in engaging with the market. Making these adaptations available to those impaired consumers improves the functioning of the whole market, by increasing the number of consumers able to engage with it.

Recommendation: The FCA should state that a well-functioning market requires adaptations to be available for those with physical or mental impairments that might reduce their consumer capability, in order to maximise the number of consumers able to engage with the market.

Q2. Do you think our approach to consumer loss in well-functioning markets is appropriate?

While we agree that loss is part of well-functioning markets, the impact of loss varies. The Mission already recognises that consumer detriment exists beyond financial detriment, by accepting that harm in financial services can take different forms including 'non financial harm such as impacts on consumers' confidence and well-being.'[8] We argue, however, that the externalities of loss or failed transactions go beyond impacts on confidence or wellbeing, and include profound damage to mental health.

The FCA needs to recognise that the psychological and emotional impact of loss can be important externalities to financial transactions, sometimes placing substantial costs on individuals and wider society. It is well within the remit of the regulator to act to minimise these externalities, or ensure costs, where possible, are transferred to those involved in the failure of the transaction.

Research shows that financial loss and financial distress can have a greater impact on people with mental health problems, slowing their recovery. People with depression and financial difficulties are 4.2 times more likely to have depression when contacted 18 months later compared to people without financial difficulty.[9] Those who have had a "major financial crisis" in the past six months are nearly eight times as likely to experience suicidal thoughts than those who have not,[10] and the

[8] Financial Conduct Authority. Our Future Mission. October 2016. p19.
[9] Skapinakis P, Weich S, Lewis G, et al. Socio-economic position and common mental disorders: Longitudinal study in the general population in the UK. British Journal of Psychiatry 2006; 189: 109-17.
[10] Meltzer, H., Bebbington, P., Brugha, T., Jenkins, R., McManus, S., & Dennis, M. S. Personal debt and suicidal ideation. Psychological Medicine 2011; 41(04), 771-778.

economic cost of each working-age suicide is estimated at £1.67m[11] in England. The annual economic and service costs of each individual experiencing depression were estimated to be £11,396 in 2007, anxiety disorder £3,506, and schizophrenia £29,765.[12] Across the UK, mental health harm from problem debt is estimated to cost £960 million each year.[13] Clearly, therefore, the onset or exacerbation of conditions such as these as in consumers a result of financial loss or the behaviour of financial services companies imposes creates substantial externalities. Just as an environmental regulator limits air pollution to reduce an industry's externalities in the form of lung disease, the FCA should use its regulatory remit to limit psychological "pollution" that worsens mental health.

Our research has shown that financial distress can affect people regardless of income. In a survey of 5,500 consumers with mental health problems, 86% of respondents said their financial situation had made their mental health problems worse.[14] Responses were similar across all income groups, demonstrating that financial stress does not only have an impact on those in poverty.

Recommendation: The FCA should embed an understanding of the emotional and psychological externalities of loss within their approach to consumer loss. Research should be undertaken to better quantify the economic costs of these externalities.

Q3. Do you think we have got the balance right between individual consumer due diligence and the regulator's role in enforcing market discipline?

The approach set out in the Mission fails to recognise that capability among consumers is dramatically variable. Not only will some consumers always be more capable than others - for example, have greater resources available or more developed skills - but the capability of a given individual will also vary over time, as their health and personal circumstances change. Consumer responsibility is only appropriate where consumers have been able to make <u>informed</u> decisions, and to do so, some consumers require a greater level of support than that which is currently provided.

[11] Department of Health. Preventing suicide: a cross-government strategy to save lives. Impact Assessment: 7037. July 2011.
[12] McCrone P, Dhanasiri S, Patel A et al. Paying the Price: The cost of mental health care in England to 2026. London. 2008.
[13] Clifford J, Ward K, Coram R, Ross C, Transforming Lives: A review of the social impact of debt advice for UK individuals and families evaluated using SROI, StepChange Debt Charity 2014.
[14] Holkar M, Mackenzie P. Money on Your Mind. Money and Mental Health Policy Institute. 2016.

At a high level, the Mission sets out that financial conduct regulation seeks to prevent or correct information asymmetries, reducing to an 'acceptable level' the problems that can arise through imbalances in access to information, or the ability to understand and process that information. Yet people's ability to understand and process information is extremely variable - especially during a period of poor mental health or cognitive decline. These variations are more than simply differences in levels of 'sophistication': again a physical health analogy may help to clarify.

Human beings vary dramatically in our ability to run: some may complete 100m in 10 seconds, while others take 40 or 50 seconds to complete the distance. A further group - those with disabilities affecting their ability to walk, or their lung function - may be unable to complete the distance at all without assistance in the form of adaptive technology (for example, a wheelchair or crutches).

In consumer behaviour, capability (or 'sophistication') varies in a similar way. Some will be very capable, while others struggle. But a substantial group face significant impairments or barriers to completing consumer tasks at all. A regulatory response is required to address this imbalance for this subset of consumers and ensure they get access to adaptations that enable them to engage with the market.

The Mission sets out how an important judgement in financial conduct regulation is 'where to draw the boundary between activities or risks that are best left to users and those where a regulator's activities can deliver their own economies of scale that provide a public good.' Consumers, of course, have responsibilities to create a market that works well, but this boundary needs to be set at an appropriate and realistic level for certain groups of consumers, and the boundary may need to be different for those with specific impairments that reduce their capacity to engage. Currently, consumers with cognitive and psychological impairments are unaided in their engagement with financial services, and this is driving significantly poorer outcomes.

Recommendation: The FCA must adopt a regulatory stance that sets different expectations of consumers whose consumer capability is impaired, including but not limited to those experiencing mental health problems, or ensures the provision of adaptations to boost their consumer engagement.

Q6. Do you think our intervention framework is the correct one?

We think the current intervention framework misses the opportunity to identify consumer detriment that occurs across the whole of the retail market, because it focuses on identifying issues in firms or markets in isolation. The framework also fails to appropriately recognise the impact of non-financial harm.

All six of the main diagnostic tools, used to identify the underlying cause of harm and to determine what action to take, look at individual firms or particular markets or sectors. This framework fails to recognise that consumer detriment resulting from an individual's ability to navigate the market can be compounded across different product groups and sectors: a small loss in each market may compound to substantial financial detriment for an individual consumer. It is worth noting that it is the *number* of debts on which a consumer is in arrears, rather than the total *value* of those debts, that correlates most strongly with poor mental health outcomes.[15]

Instead, the FCA should use thematic reviews and market studies to look at issues affecting a type of consumer, as opposed to looking at groups of firms or a single market. These reviews should look at how the retail market as a whole is functioning for different types of consumers. People with mental health problems are one example, but the reviews could also look at people with disabilities, older people, people who have English as a second language among others. This is key to achieving the FCA's consumer protection objective, and will help to identify structural competition issues that occur across markets.

The intervention framework also needs to explicitly recognise the role of non-financial harm. Currently, the FCA Mission does recognise that harm from financial services can take different forms, including 'non-financial harm such as impacts on consumers' confidence and well-being.'[16] However this is not explicitly recognised in the 'five-factor framework of harm,' a key part of the intervention framework. These non-financial harms should be considered as important externalities, where costs fall on those outside the transaction.

Recommendation: The FCA must use thematic reviews and market studies to look at issues affecting a type of consumer, as opposed to looking at groups of firms or a single market.

Recommendation: The 'five-factor framework of harm' must recognise the role of non-financial harm, specifically emotional and psychological harm.

Q8. Where do you believe the boundary between broader policy and the FCA's regulatory responsibility lies?

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[15] Jenkins R et al. Debt, income and mental disorder in the general population. Psychological Medicine 2008; 38: 1485-1493.
[16] Financial Conduct Authority. Our Future Mission. October 2016. p19.

While the FCA does not have the remit to mandate access, and the Mission rightly states that this is the role of broader public policy, the regulator does have a role in promoting a competitive market and in ensuring the wider application of existing law as part of ensuring good conduct and compliance.

The Mission document acknowledges that the FCA has a role in implementing competition and consumer law. This means the FCA should make sure that firm conduct satisfies wider consumer law, including the Equality Act 2010. The Public Sector Equality Duty means the FCA must have due regard to the need to eliminate unlawful discrimination and advance equality of opportunity when discharging its functions, and should therefore ensure compliance with the Equality Act by regulated firms.

The Equality Act 2010 provides a legal protection from discrimination on the basis of protected characteristics, including disability. Disability in this case includes mental health problems which have a substantial and long-term adverse impact on a person's ability to carry out normal day-to-day activities. If a person is protected under the Act a service provider may be under a duty to make reasonable adjustments where that person is at a major disadvantage compared to other people who do not have a mental health problem. It is now widely accepted that service providers offer adaptations for those with physical disabilities or impairments. In many cases, for the sake of simplicity, these are provided to all customers, like the recently launched RBS debit card with features to help those with a visual impairment to use it. In other cases, such as textphone or braille statements, adaptations are available on request. These adaptations impose additional costs on businesses but those costs are rightly met by customers as a whole.

Under the Equality Act 2010, to be entitled to protection, the condition must have a substantial adverse impact on everyday functioning, and this impact must put consumers with the condition at a substantial disadvantage. There is compelling evidence that, for many consumers with mental health problems, these two tests are met: certainly financial outcomes are dramatically worse for this consumer group, even after adjusting for income, in ways that could be alleviated by the adjustments set out above. This suggests that some people experiencing mental health problems who ought to be entitled to reasonable adjustments from consumer services providers under the Equality Act.

Based on our research, Money and Mental Health have compiled a set potential adjustments that would help meet the many and varied needs of consumers with mental health problems, who are often disabled by the consumer landscape they are expected to navigate, included as Annex A. These adaptations would help consumers with mental health problems overcome the barriers to accessing services or switching products and help them avoid financial and psychological harm; therefore helping to reduce the current imbalance, where people with mental health problems are at a major disadvantage compared to those without.

Recommendation: The FCA should commission research on the legal case for adjustments for those with mental health impairments in consumer financial services markets. This would help the FCA comply with the Public Sector Equality Duty. In the meantime the FCA should continue to facilitate and encourage the development of new adaptations by firms.

Q9. Is our understanding of the benefits and risk of price discrimination and cross subsidy correct?

No: the understanding of cross-subsidy as set out in the Mission fails to recognise that certain consumers face barriers to market engagement over which they have no control, and which may entitle them to Equality Act protection from the "substantial disadvantage" of cross-subsidising consumers without these impairments.

In the Mission, the first common feature of cross-subsidy is described as between '"sophisticated" or "naïve" consumers. Or differences in price-sensitivity might arise because of differences in willingness to make the effort to search and switch between suppliers. Or certain consumers may face barriers to switching.'

This analysis fails to recognise that consumers with mental health problems face cognitive and psychological barriers to searching for and switching between products. For example, across many of the common mental health conditions attention switching capacity is weakened. This cognitive domain allows people to strategically switch focus between different aspects of a problem or task. Impaired attention switching makes it harder to effectively engage with complex markets and to shop around for a good deal. This means people experiencing this problem pay more for goods and services, forced as a result of their mental health condition to cross-subsidise those goods and services for those who are mentally healthy.

The second common feature of cross-subsidy is described as the ability of firms to use data to "better tailor offers to active or sophisticated consumers, while the passive or unaware are left behind." However, in the latter group this will include people with mental health problems who don't have the choice to become 'active' consumers.

The Mission describes cross-subsidy as 'extracting more and more profit from trapped or otherwise price-insensitive consumers.' While financial services should tolerate some level of subsidy between different groups of consumers, the current market is extracting profit from people with mental health problems and other vulnerable groups and using it to lower costs for those lucky enough to be healthy. The FCA's understanding of the acceptability of price-discrimination and cross-subsidy needs to recognise that consumer engagement is not always a matter of choice.

It is the FCA's role to identify these barriers to engagement and to take action to overcome this structural competition problem and get these consumers moving. It is not always reasonable to expect individual consumers to overcome barriers to engagement.

Recommendation: the FCA should explore how best to remove, or provide adjustments to overcome, consumers' barriers to engagement, rather than expecting individual consumers to overcome them.

Q11. Would a Duty of Care help ensure that financial markets function well?

A Duty of Care in financial markets is an interesting proposition, and one which deserves a full exploration.

Regulating complex markets such as financial services is, as the Mission recognises, a careful balancing act between ensuring consumers are responsible for the consequences of their decisions and that they have adequate protection against information asymmetries and the market power of firms. The key to this balance is ensuring that consumers are able to make informed decisions, and that firms provide adaptations, tools and additional support to those consumers who face psychological or cognitive difficulties which would make it harder to do. A Duty of Care could provide the motivation for firms to make these adjustments.

A Duty of Care could also provide a useful mechanism for ensuring firms continue to treat customers fairly beyond the point of initial sale. Given the long-term nature of many retail financial products and the fact that consumer capability may vary over time with their health or personal circumstances, a Duty of Care may ensure firms continue to treat customers fairly through the life of their relationship. This may also help to reduce cross-subsidisation between active customers and those who are inactive because they face cognitive or psychological barriers to more active participation in the market.

Q12. Is our approach to offering consumers greater protection for more complex products the right one?

Yes, it is the right approach to offer consumers greater protection for more complex products. However, this approach fails to recognise that simple products can be complex for some consumers and that during periods of poor mental health some consumers need greater protection from financial harm. The premise in the Mission is that more complex products should come with greater protection. The same logic should be used to give greater protection for simple products for those who have cognitive and psychological barriers to engagement. While the purpose of regulation is not about ensuring a market where consumers never make poor choices, consumers must be able to prevent themselves from financially damaging behaviour during periods of poor mental health.

The FCA also needs to recognise where regulation or regulatory guidance is no longer fit for purpose, and is not providing consumers with the appropriate level of protection. In particular, the move to online transactions means the opportunity for firms to check a customer's understanding of a complex product has been substantially reduced. The FCA needs to be more responsive to ways in which technological change shifts the burden of understanding, or changes - because of the way information is presented - the apparent complexity of products.

For example, the current FCA guidance on mental capacity has failed to recognise the shift to online lending.[17] The current guidance specifies that the firm may have reasonable grounds to suspect capacity if the firm observes a specific indication or behaviour. Examples of these indications include where a firm understands or has reason to believe that the customer does not understand what they are applying for; that the customer is unable to understand the key information and explanations provided in particular concerning the key risks of entering into the agreement; or that the customer is unable to retain the information or explanations provided.[18] Yet many of these indications are impossible to assess online without additional steps

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[17] Financial Conduct Authority. CONC 2.10: Mental Capacity guidance. https://www.handbook.fca.org.uk/handbook/CONC/2/10.html (last accessed 25 Janurary 2017).
[18] Ibid.

being inserted into the transaction. The FCA therefore needs to carry out a review of this guidance to assess its ongoing suitability. Money and Mental Health are also exploring the ways in which digital technology might allow for more sophisticated, real-time assessments of mental capacity at the point of sale.

Q13. Is our regulatory distinction between consumers with greater or lesser capability appropriate?

Yes, the FCA's distinction between consumers with greater or lesser capability is appropriate. However, it is crucial that the FCA recognises that there is a difference between practical or educational barriers to financial capability, such as digital and financial inclusion, and cognitive or psychological barriers.

Academic and medical literature has shown that mental health problems have a dramatic effect on financial capability:[19]

- People with depression, obsessive compulsive disorder or post-traumatic stress disorder are likely to struggle with short-term memory. This can make it much harder to remember PIN numbers or the details of a conversation with the bank;
- People experiencing bipolar disorder or attention deficit hyperactivity disorder often struggle to resist impulses, and may go on dramatic spending sprees, sometimes funded by credit cards and overdrafts;
- People with borderline personality disorder or psychosis can find it very difficult to compare options and might struggle to work out which financial products are right for them;
- Depression, substance dependence, borderline personality disorder and psychosis can all make it more difficult for people to plan ahead, meaning customers may not understand the implications of financial decisions like taking out a loan
- Serious anxiety can cause difficulty making telephone calls or opening post, making it harder to deal with financial problems and to keep track of bills.

While mental health conditions do fluctuate, there will be times when these consumers cannot overcome these cognitive and psychological barriers and the subsequent impact on their ability to manage their finances can cause significant financial detriment. This detriment is clear when you remember that people with

[19] Holkar, M. 'Seeing through the fog': How mental health problems affect financial capability. Money and Mental Health Policy Institute. January 2017.

mental health problems are three times more likely to be in problem debt than those without.[20]

We are pleased to see that the Mission sets out the aim of the FCA to look at the capabilities of actual consumers and their likely responses, rather than those of a theoretical consumer. However throughout the Mission there are clear examples of where consumers with lesser capability are presumed to have choice over their situation: for example descriptors such as ‘passive’ or ‘unaware.’[21] This shows a lack of understanding of the cognitive and psychological barriers people with mental health problems face when engaging with financial services: an assumption that their behaviour is changeable through personal motivation. We do not expect such change from those with physical health conditions or physical disabilities: no-one asks a wheelchair user to improve their skill at climbing stairs, or assumes someone who has recently broken their leg could walk quickly if only they chose to do so. The failure of the FCA to fully recognise the disabling impact of mental health conditions on consumer capability results in an insufficient regulatory response and markets that do not work well for large numbers of consumers.

Q15. What more can we do to ensure consumers using redress schemes feel they are receiving the appropriate level of personal attention?

We are pleased that the Mission recognises the need to make redress quick and simple to access for vulnerable consumers. In order to ensure consumers using redress schemes feel they are receiving the appropriate level of personal attention, and to ensure that redress schemes are truly accessible to all, the FCA must ensure that a range of communication options are available.

Many people with mental health problems exhibit phobic or avoidant behaviours, which prevent them from effectively engaging with certain forms of communication. Communication problems are personal and specific in nature; for example some people may not trust online portals/forms or chatbots, needing the reassurance of a real person, whereas others may be frightened to speak to people in person and be well-suited to these online options. Ensuring that information is easy to access and understand is also critically important. Jargon, difficulty locating salient information or inability to communicate with a service provider in a preferred way could all discourage a person experiencing a mental health problem from engaging with redress schemes.

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[20] Jenkins R, Bhugra D, Bebbington P, et al. Debt, income and mental disorder in the general population. Psychological Medicine 2008; 38: 1485-1494.
[21] Financial Conduct Authority. Our Future Mission. October 2016. p23.

Redress schemes should therefore offer a range of communication channels and options, including:[22]

- Service providers should offer a range of communications channels, including face to face, email, telephone, post and webchat, to meet the differing needs of their customers.
- People should be able to express a preference for one or more of these communication channels, and as far as possible providers should meet this preference.
- Customers should not be forced to undertake tasks in a particular way - such as over the phone - or at a time of day - for example in the evening - which they find difficult.
- Staff should be trained to recognise that frustration can be a sign of difficulty completing a task, and to provide support to customers who may respond to their difficulties in this way.
- For people experiencing difficulties with impulse control or attention switching, cluttered website design can make completing simple tasks online difficult.
- Websites and communications should be designed to ensure that key tasks are easy to find, with minimal distractions.
- Memory problems can make remembering passwords and the content of conversations with firms or regulators difficult. A written summary or transcript of calls and conversations should be offered to people experiencing memory problems, to help them remember what was discussed and agreed at a later date should be made available.
- Firms and operators of redress schemes should continue to explore alternative ways of verifying consumer identity, including voice recognition and biometrics, although care must be taken to ensure these are secure.

Q16. Is our approach of giving more vulnerable consumers greater levels of protection the right one?

Yes, the approach of giving more vulnerable customers greater levels of protection is the right one. However, the proposed approach to vulnerability in the Mission fails to recognise mental health as a distinct vulnerability, or make clear that the FCA will act more robustly in markets where vulnerable consumers are concentrated.

[22] Holkar, M. 'Seeing through the fog': How mental health problems affect financial capability. Money and Mental Health Policy Institute. January 2017.

Unlike other vulnerabilities, when you are mentally unwell, it is the very part of you which makes consumer decisions which is ill. The psychological and cognitive impacts of poor mental health, similar to the impact of low income, act to multiply other vulnerabilities and lead to greater consumer detriment. It is true, as the Mission states, that the process of living on a low income affects cognitive capacity available for other tasks.[23] People with mental health problems are not only more likely to be living on a low income, but the impacts of poor mental health make it harder to manage day to day. The table below provides a quick summary of common ways in which a mental health problem might affect a person's ability to manage their finances.[24]

[23] Mani, A., Mullainathan, S., Shafir, E., and Zhao, J. Poverty Impedes Cognitive Function. Science 341 (6149): 976-980. 2013.

[24] Holkar, M. 'Seeing through the fog': How mental health problems affect financial capability. Money and Mental Health Policy Institute. January 2017.

Mental health problem	Most associated with
ADHD	● Short attention span, may be easily distracted ● Prone to impulsive behaviour ● May struggle with complex planning and organisational aspects of financial management
Affective psychoses (mood disorders with psychotic symptoms)	● Widespread problems with financial management, affecting even simple tasks such as remembering passwords or filling out forms ● Paranoia and delusions, that can cause communication problems
Bipolar disorder	● Reduced understanding and problem solving abilities, worse during acute periods of illness ● Lack of self-restraint; may be impulsive ● Higher spending, particularly during manic periods, but also common during periods of depression ● Unreliable memory, which can make it harder to stay on top of a budget or pay bills on time ● May struggle to process complex problems, such as comparing a range of products
Borderline Personality Disorder	● Likely to find it harder to solve problems and understand information ● Particularly difficult to plan ahead, which may lead to poor long-term financial management ● May struggle to understand social and emotional signals, which can make it hard to communicate with others effectively
Depression	● Likely to find it harder to solve problems and understand information, especially during periods of acute depression ● May struggle to concentrate on tasks ● Lack of motivation, even for things that are normally enjoyable, makes financial management difficult ● Prone to comfort spending or spending on others to boost low mood
Generalised anxiety disorder	● Likely to struggle with complex financial tasks, such as comparing different energy tariffs ● May be afraid of certain forms of communication, such as opening letters or talking on the phone
OCD	● Unreliable memory and low confidence in own memory

	● May obsess about or panic in response to certain triggers. This could include bills or other important correspondence ● May find it harder to solve problems and understand information
PTSD	● Severe memory problems ● May be unable to understand others' emotions, can seem insensitive or rude when interacting with others

Recommendation: the impacts of mental health problems set out above demonstrate clearly that the FCA should prioritise consumers with mental health problems in addition to those on low income.

Some financial markets - such as high cost short term credit and point-of-sale credit - have higher than average concentrations of vulnerable consumers. It is right for the FCA to take a more robust approach to regulating these markets, recognising that the capacity of these consumers to play a substantial role in making them function well is likely to be limited or absent.

Q17. Is our approach to the effectiveness of disclosure based on the right assumption?

We are pleased to see the FCA using behavioural economics to understand the psychology of how consumers make decisions. However, there is a gap in the academic literature of behavioural economics, which is yet to analyse in depth how different groups of consumers - such as those with mental health problems - make decisions, and how documented cognitive biases vary between these groups. As a result the current market view fails to understand that different people might need different responses, and that it is groups of people who respond to behavioural nudges, not markets.

People with mental health problems, for example, may catastrophise or panic in response to threatening words which would prompt most people to make an immediate payment. In the worst cases this may result in a mental health crisis and total disengagement from creditors.

Let us imagine that 90% of people appropriately respond to a particular nudge to make a "good" consumer decision. This may be a great outcome for the market. However, if the 10% who do not respond share a characteristic that makes them vulnerable - such as an ethnic background associated with a particular cultural bias, or a mental health condition that changes the way they process the words used to nudge - the overall outcome may cause harm, by sharpening cross subsidy between those who make “good” and “bad” decisions.

The FCA should therefore undertake behavioural economics studies of groups within society, including those with particular mental health problems, looking at how their cognitive biases vary from the population norm, and how they respond to nudges.

Further behavioural studies on other groups, such as older people and those with learning difficulties, would provide further richness on how the financial services industry might need to adapt to meet their needs. This will enable the FCA to design more effective interventions that truly meet the diverse needs of consumers, and without this research regulatory interventions risk being ineffective.

Q18. Given the evidence, is it appropriate for us to take a more ‘interventionist’ approach where conventional disclosure steps prove ineffective?

We believe that in cases where conventional disclosure steps prove ineffective for large amounts of consumers, it is definitely appropriate for the FCA to take a more ‘interventionist’ approach. However, the study of why disclosure steps and nudges are sometimes ineffective for certain groups of people is underdeveloped.

As set out above, there needs to be substantial further research in this space on the behavioural biases of different groups of people, including people with mental health problems. The FCA should experiment as to whether nudges and disclosure steps are effective for different vulnerable consumer groups, in particular those with mental health problems.

The FCA needs to develop a system where interventions are used for groups of people where nudges are ineffective, not markets where nudges are ineffective. The latter approach would mean too few interventions.

For example, being able to pre-register to deny yourself access to new credit during a manic phase would help people with bipolar disorder to protect themselves from financial harm. Given the nature of the condition, nudges to limit credit applications would not be effective for this customer group. Intervention is therefore needed to support them in getting the products they need from providers. However, this is clearly not an option that everyone would want or need to use. Product needs vary for different people, and we need to develop a financial services environment that reflects this reality.

Q23. Do you think it is our role to encourage innovation?

Yes, we think it is the FCA's role to encourage innovation.

We are encouraged by the FCA's progress in this space through initiatives such as Project Innovate, and we are pleased to be holding a TechSprint in conjunction with the FCA. Financial technology has a vital role to play in helping consumers with mental health problems avoid financial harm. There is a growing wave of products that can help, such as budgeting tools that include jam-jarring and pre-pay cards. However, these tools are largely being built by fintech firms rather than the incumbent players, and the ability of fintech firms to innovate continues to be stifled by the lack of access to data. The current regulatory sandbox initiative recognises that to truly innovate firms need access to consumer data, and the FCA is in a unique position to help foster this innovation in a safe test environment.

The FCA could play an important role in fostering competition ahead of the introduction of the Open Banking Standard in 2018. New providers seeking to enter the market do not currently have access to consumer data with which to develop or trial their products. The need for data to support development is well-recognised by the FCA: in the series of Tech Sprints run by the regulator, sandboxes of data have been provided to participants to enable them to build and test products. Currently, only the incumbent providers have access to large volumes of transaction data and this puts them at a competitive advantage over new entrants.

Widespread access by new to a large volume of transactions data would boost competition in the UK's financial services markets ahead of the Open Banking Standard. It would also allow for the timely application of machine learning and artificial intelligence techniques which would allow firms to build predictive and supportive tools to boost the financial capability of UK consumers, particularly those experiencing mental health problems or other forms of vulnerability. Together, these tools could help families who are struggling or only just managing to make ends meet to better understand and control their financial situations.

Recommendation: to promote innovation and competition, the FCA should work with firms to collect, anonymise and release large transactional datasets for academic and commercial study and innovation.

Annex A - Summary of adjustments required

The range of cognitive and psychological disadvantages people with mental health problems may face is wide, and the prospect of making adjustments to overcome these may appear daunting to providers. Relatively simple adjustments, however, could make a significant difference to the experiences of people with mental health problems. Most of the cognitive and psychological difficulties could be improved if not resolved with the provision of minor adjustments in the way that information is presented and that firms communicate with customers, and by making some simple tools available to consumers to help manage their finances.

There is a business case for service providers to offer these adjustments, given that one in four customers will go through a period of poor mental health in any given year. Beyond this, the Equality Act 2010 (EqA) provides a legal basis for adjustments to be made in some cases, where mental health problems qualify as disabilities protected by the act.

It is vital to be clear that not everyone experiencing a particular mental health condition will experience the same cognitive or psychological impacts. There is no checklist of adjustments that should be made in any given case. In determining what support should be provided to people experiencing mental health problems, consumer services providers should trust the judgement and autonomy of the individual. In many cases, tools needed by those with a mental health problem would be valued by a wide range of customers and should be provided on an optional basis.

The table below summarises the adjustments required, if you require any further detail please do not hesitate to get in touch.

Issue	Adaptations
Budgeting options	● **Jam-jarring:** could provide valuable support to people who are struggling with planning, decision making or memory problems to keep track of their financial obligations ● **Nudges:** delivered by smartphone notification or email, could help people keep track of spending, particularly if budgets can be automatically adjusted to compensate for unplanned spending. ● **Timely reminders:** of payments due, in a variety of communication formats, would prove helpful to those experiencing memory problems, avoiding late payment

	and other punitive fees. ● **Visualisation of spending data:** could also make it more accessible to people experiencing attention problems or low energy who might find digging through traditional lists of transactions difficult. ● **Flexible direct debits:** would make this important payment option, especially for those who struggle to remember when payments are due, more accessible to those on low or volatile incomes. ● **Automatic comparison:** potentially provided through budgeting apps, could help consumers with attention switching difficulties or impeded working memory to get better value.
Control options	● **Double confirmation** of large transactions: in many cases a simple prompt to reconsider impulsive behaviour can avoid harm. ● **Cooling off periods** before large transactions are processed: a delay in processing large transactions, particularly those made at night, would provide an opportunity to check impulses. ● **Ability to self-exclude** from payment systems and financial services at set times: people experiencing mental health problems are significantly more likely to make online purchases which they later regret at night. The ability to block payments or access to retail overnight could help people to maintain control. ● **Restrictions on spending** with specified merchant codes: enabling people to block the codes for services - such as gambling or online retail - would help many consumers who find these difficult to resist. ● **Self-exclusion** from new credit: Research suggests that greater impulsivity is associated with greater use of high-cost short-term credit. Allowing people to block their access to new credit at certain times could help combat impulsiveness or poor planning. ● **Third party support:** Providing options for a carer or trusted friend to view statements or have limited shared access to an account could enable people to use the support of their friends and family in a safer and more regulated way (see below for more detail).
Third party support options	● **Read-only access:** consumers should be able to grant real-time, read-only access to a carer or trusted friend. ● **Notifications:** consumers should be able to request

	notifications of specific activities on their account(s) to be sent to a carer or trusted friend eg. notifications of large transactions, overdraft limit warnings. ● **Credit Reference agencies:** should permit users to set up notifications to a carer of any new applications for credit, or the removal of a Notice of Correction from their account. ● **Restrictions:** consumers should be able to delegate the authority to make some kinds of account decisions or transactions to a trusted friend or carer. In particular, consumers should be able to impose a maximum transaction size on their account, where dual authorisation is required to go above this. Consumers should also be able to exclude themselves from increases to credit limits and overdraft limits, and new credit applications, without the approval of their trusted friend.
Communication options	● **Range of communication channels:** Service providers should offer a range of communications channels, including face to face, email, telephone, post and webchat, to meet the differing needs of their customers. ● **Communication preferences:** People should be able to express a preference for one or more of these communication channels, and as far as possible providers should meet this preference. Consumers should not be forced to undertake tasks in a particular way - such as over the phone - with which they struggle. ● **Transcripts:** Memory problems can make remembering the content of conversations with firms difficult. Providers should offer a written summary or transcript of calls and conversations to people experiencing memory problems, to help them remember what was discussed and agreed at a later date. ● **Staff training:** Staff should be trained to recognise that frustration can be a sign of difficulty completing a task, and to provide support to customers who may respond to their difficulties in this way. ● **Website design:** For people experiencing difficulties with impulse control or attention switching, cluttered website design can make completing simple tasks online difficult. Providers should take care when designing consumer self-service websites to ensure that key tasks are easy to find, with minimal distractions. ● **Alternative log-in:** Memory problems can make remembering login details difficult. Providers should

	continue to explore alternative ways of verifying consumer identity, including voice recognition and biometrics, although care must be taken to ensure these are secure. Where these low-friction login options are available, consumers who struggle with impulse control must be empowered to add other forms of friction to their transactions. ● **Comparability:** prices should be easy to compare and service bundling reduced wherever possible