Response to the Financial Conduct Authority's Future Approach to Consumers

The Money and Mental Health Policy Institute is a research charity, established by Martin Lewis to break the link between financial difficulty and mental health problems. This response to the Financial Conduct Authority's consultation on it's proposed future approach to consumers sets out evidence from our research and policy work on how the FCA can best support the needs of the 11.8 million adults across the UK who will experience a mental health problem each year. Money and Mental Health's research is informed by our Research Community, a group of over 5,000 people with lived experience mental health problems. All quotes are from members of the Community who have participated in our research. In addition to drawing on previously published research, this response presents new findings from a survey of 473 people with lived experience of mental health problems.

Background

- Mental health problems can be both a cause and consequence of financial difficulties.
- People experiencing mental health problems are three times as likely to be in problem debt,[1] and nearly half of people in problem debt are also experiencing a mental health problem.[2]
- Mental health problems can cause financial difficulties by reducing our ability to both earn and manage money. Some people may become too ill to work, resulting in an income shock which can quickly lead to savings depletion and escalating debt.
- Mental health problems can also affect a person's cognitive and psychological functioning, making controlling impulses to spend, keeping up with financial paperwork and form filling and contacting financial services providers much more difficult.[3] This can both lead to problem debt, and make resolving the debt more difficult. Our survey of 473 people with mental health problems found that:
  - 69% said their mental health problems affected their ability to manage their finances day-to-day.
  - Half (54%) said it affected their ability to shop around and find the best value products.
  - Eight in ten (79%) said it affected their ability to contact financial services providers when they need help or something goes wrong.
  - Only 3% of respondents said that their mental health problems did not affect their ability to manage financial services or carry out other day-to-day activities. [4]
- Mental health problems are also a common consequence of financial difficulties, with both the debt itself and the actions of creditors contributing to psychological symptoms.

[1] Jenkins R et al. Debt, income and mental disorder in the general population. Psychological Medicine 2008; 38: 1485-1493.

[2] Jenkins R et al. Mental disorder in people with debt in the general population. Public Health Medicine 2009; 6, 3: 88-92.

[3] Holkar M. Seeing through the fog: how mental health problems affect financial capability. Money and Mental Health Policy Institute. 2017

[4] Money and Mental Health online survey of 473 people with mental health problems, 15 December 2017 - 12 January 2018. Base for this question: 461.

People with mental health problems who are also in financial difficulty frequently report feelings of hopelessness and people in problem debt are twice as likely to think about suicide as those not in financial difficulty[5].

- Only 3% of survey respondents agree that financial services providers have a good understanding of how mental health problems affect people. Nearly half (45%) feel that financial services firms have treated them unfairly, and a fifth (21%) believe they have been denied access to a financial services product because of their mental health.[6]

1. While having regard to the general principle that consumers should take responsibility for their decisions, do you agree that there are circumstances where consumers cannot be expected to take responsibility? What do you think these circumstances are? How could - and should - the FCA intervene in these cases?

Responsibility based on real, not average or ideal, consumers

We appreciate the FCA's commitment to regulate for real life behaviour, and trust that psychological and behavioural insights will be used to inform the bar for consumer responsibility. This work must, however, consider the full range of circumstances and abilities that consumers may have. It is vital that misplaced assumptions based on the behaviour of an 'ideal' consumer and are not replaced with equally misleading assumptions designed around a mythical 'average' consumer. Mental health problems can have wide-ranging effects on a person's financial capability, from making it difficult to assimilate and weigh up information, to reducing motivation to engage, and increasing impulsivity.[7] With one in four consumers experiencing a mental health problem in any given year[8], the impacts of these illnesses must be taken into consideration when deciding what a reasonable expectation of consumer responsibility looks like.

We would argue that the definition of consumer responsibility should be designed with the needs of the least able in mind - whether that is consumers with the lowest financial capability, or those who are vulnerable as a result of their circumstances. A consumer's ability to understand financial services products offered to them may depend on their literacy, digital ability, financial capability and mental and physical health. Under the Equality Act 2010, firms have a responsibility to make reasonable adjustments to help consumers experiencing mental health problems. This should include offering additional support with decision-making, which could include the provision of tools to aid comparisons between options or simplified information.

[5] Meltzer H et al. Personal debt and suicidal ideation. Psychological Medicine 2011; 41, 4; 771-778.

[6] Money and Mental Health online survey of 473 people with mental health problems, 15 December 2017 - 12 January 2018. Base for this question: 473.

[7] Holkar M. Seeing Through the Fog: how mental health problems affect financial capability. Money and Mental Health Policy Institute. 2017.

[8] McManus S et al. Adult psychiatric morbidity in England, 2007. Results of a household survey. NHS Information Centre for Health and Social Care. 2009.

Balancing firm and consumer responsibility

The general principle that consumers must take responsibility for their decisions must always be grounded in an understanding of what can be reasonably expected of a consumer. This understanding helps us to reach the right balance of responsibility between financial services providers, with detailed understanding of financial products, and consumers who are often constrained in their time, attention and energy. Only 4% of the people with mental health problems surveyed agreed that financial services providers make it easy to make good decisions, while three quarters (75%) disagreed. Four in ten (42%) disagreed strongly.[9]

Consumer responsibility for decision making must be balanced by responsibility on the part of firms to create an environment which empowers consumers, enabling them to take responsibility. In the Consumer Approach paper, the FCA clearly recognise that offering information to consumers is not sufficient to ensure that they understand.[10] At present, consumers frequently feel bombarded with impenetrable information and jargon. Many of the people we spoke to reported feeling patronised by financial services providers, and even ridiculed when they asked questions. This is creating a culture in which it is difficult for consumers to assure themselves that they understand services, and to take responsibility.

"I have in the past asked for an explanation as to the difference between two products - I was none the wiser, but would have felt a fool asking the young person at the counter to explain in a different way that I could understand."

"He still wasn't able to simplify the information and when I asked him to write down the steps for me he got really shirty and began treating me like an imbecile. It was humiliating, people in the queue behind me were laughing because of some of his comments."

The FCA should work, using all remedies available, to ensure that firms communicate with consumers in terms that are simple to understand, provide adequate opportunities for consumers to check their understanding, and offer additional support where there is any doubt that they are making a fully informed decision. This should also involve providing consumers with tools, as well as information, which help them to control the financial services environment in which they operate. Examples could include the smart defaults, use of cooling-on periods and tailored account settings described on p37 of the Consumer Approach. Provision of these tools will help to redress the balance of power between consumers and firms, and empower consumers to take responsibility.

"I should not have to ask for details to be simplified, due to mental health problems, they should be simplified so all can understand, irrespective of any medical issues."

"Over the past few years banks have done a lot to make the wording and terminology of their products much easier for people to understand but I still think there is more that can be done to simplify things. It is very difficult for people with mental health problems to stay focussed and

[9] Money and Mental Health online survey of 473 people with mental health problems, 15 December 2017 - 12 January 2018. Base for this question: 471.
[10] Financial Conduct Authority. FCA Mission: Our Future Approach to Consumers. 2017. p27.

concentrate when reading long documents and terms and conditions etc on banking products."

"I often am immediately turned off by dealing with finances because even on a good day I find it difficult to understand the full extent of what I'm being offered. I feel like you have to have a degree in economics to understand it fully, and that it's even harder when you're struggling to focus with your mental health."

Mental capacity and online lending

Our research has highlighted specific issues around consumers taking out credit products while unwell.[11] CONC clearly states that if a firm must not lend to a consumer if they have reasonable grounds to suspect that a person lacks capacity, based on whether the firm understands or has reason to believe that a 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 in to the agreement; or that the customer is unable to retain information or explanations provided.[12] However, in practice, few firms undertake any activity when originating credit online that would allow them to find reasonable grounds to doubt capacity. In these circumstances, we would argue that it is impossible for a consumer to be held responsible, when the firm has not taken reasonable steps to check consumer understanding and provide additional support if required. The FCA should urgently review CONC guidance around mental capacity and online lending, and encourage firms to provide tools, such as cooling-on periods or questions assessing understanding in application processes, which would enable consumer understanding to be properly ascertained.

"During my last manic episode I managed to apply for multiple credit cards bank loans etc. I ended up in debt of £39k. During a previous episode of manic behaviour I started using CFD's to gamble on the stock markets . I lost £260k."

2. Do you agree that firms have a responsibility to take reasonable steps to identify the signs of vulnerability, and to have processes in place to take appropriate action where they have identified a consumer with a particular need and at a particular risk of harm?

Money and Mental Health firmly believe that firms have a responsibility to take reasonable steps to identify signs of vulnerability, and to have processes in place to take appropriate action to support consumers who may be vulnerable.

Relying on disclosure

Some may argue that if consumers require help, they should ask for it. Money and Mental Health research, however, reveals the steep barriers to disclosure of vulnerability created both by societal stigma and the behaviour of firms. Only 9% of respondents to our survey said they

[11] Mackenzie P and Holkar M. Money on Your Mind. Money and Mental Health Policy Institute. 2016.
[12] Financial Conduct Authority. CONC 2.10: Mental Capacity guidance.

would have any confidence in asking a financial services provider for extra support. More than half (53%) said they would very much lack confidence when asking this.[13] Most of our survey respondents (65%) have never told a financial services provider about their mental health problems.[14] When asked why they had not disclosed, the following fears were revealed.

- Many people were simply embarrassed, or afraid of being judged.
  "Lack of confidence and fear of being ostracised, It takes very little to make me feel shame, guilt and fear; very often the look on a person's face when they know you have a mental illness is enough to do it.

- People were also afraid that their disclosure would disadvantage them if they later wanted to be apply for other products, particularly credit.
  "I have never told anyone because I am worried that the stigma that is associated with mental health will exclude me from financial products that I may wish to access in the future."
  "[I] thought i would be penalised for it, e.g. refused products."

- A significant proportion of people did not believe that it would make any difference to the way financial services firms treated them.
  "I did not think they would understand or be sympathetic. I am certain it would make no difference and I would find it upsetting."

Based on the reported experiences of survey respondents who had disclosed their mental health problems to financial services providers, these fears are not unfounded. Many said that their disclosure did not appear to make a difference to how they were treated.

"I find it difficult to engage face to face or on the phone (I rarely am able to make phone calls) so I wrote them a two page letter being very honest about my mental health issues although I found this very difficult as I am a very private person. They sent me back a very cold letter quoting their rules and saying that they couldn't make exceptions for anyone. I don't think they had read my letter properly as they did not refer to any of the information I had given. I was very distressed by the letter and it made me feel so isolated and frightened. It put me in a worse financial situation."

"I felt they thought I was just saying it for sympathy and not because it was really happening. Like it was an excuse."

Disclosing a mental health problem requires significant courage, and is often a stressful and distressing experience. The failures of financial services firms to treat those disclosing with dignity and to offer adequate support have created a culture where consumers fear to disclose.

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13 Money and Mental Health online survey of 473 people with mental health problems, 15 December 2017 - 12 January 2018. Base for this question: 461.
14 Money and Mental Health online survey of 473 people with mental health problems, 15 December 2017 - 12 January 2018. Base for this question: 461.

On this basis, relying on consumer disclosure will not provide adequate support to people experiencing mental health problems, and firms must instead take proactive steps to examine signs of potential vulnerability.

Mental health problems themselves may also create a barrier to disclosure. Anxiety about communicating with financial services firms is common. Feelings of hopelessness and low motivation may also make it difficult or even impossible for people experiencing mental health problems to tell financial services providers about their difficulties, necessitating a more proactive approach.

"When i'm ill I don't feel able to explain what's happening. I'm not able to deal with problems - I just ignore them because I can't cope with them."

"I avoid speaking to them and on the rare occasions i have, i have been too panicky and it may only occur to me at some later date that i could have mentioned it at all."

Our concerns over the FCA's new definition of vulnerability

As expressed in our joint letter to the FCA, dated 27th November, we have significant concerns about the FCA's proposed new definition of vulnerability. While we applaud the FCA's intentions to make this definition enforceable, allowing the regulator to use their entire range of powers against firms who are not treating vulnerable customers fairly, we believe the new definition could be read as placing the burden of disclosure on individuals, and undermining firm's responsibilities to proactively identify consumers in vulnerable situations. We do not believe this was the FCA's intention, as this contradicts recent actions, for example the requirement for credit card providers' to monitor customers' repayment records and make reasonable efforts to intervene when they see signs of potential financial difficulties.[15]

We have particular concerns about the use of the phrase 'readily identifiable', which we believed could reduce the impetus on firms to examine the data that they hold about consumers, and to strive in their contact with consumers to understand the individual's situation and provide necessary support. We are also concerned that defining vulnerable consumers as those who 'would suffer disproportionately if things go wrong' could be misinterpreted as having reference to suffering disproportionate to that which occurs across the market as a whole, rather than in reference to the individual's situation. A further concern is that this definition removes the reference to firm's behaviour included in the previous definition - "particularly when a firm is not acting with appropriate levels of care",[16] instead referring only to the market as a whole. We are concerned that these changes, taken together, may be interpreted by firms as a relaxation of their obligations towards customers in vulnerable circumstances, and could cause harm.

[15] FCA, Consultation Paper CP 17/10. 2017.
[16] FCA. Occasional paper no. 8. Consumer Vulnerability. 2015.

Alternative proposed new definition of vulnerability

Money and Mental Health have worked with a wide range of charitable consumer organisations, comprising Money Advice Trust, StepChange Debt Charity, Age UK, Financial Inclusion Commission, University of Bristol Personal Finance Research Centre and Macmillan Cancer Support to put forward the following alternative to the FCA's proposed new definition of vulnerability.

> "A vulnerable consumer is someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate and reasonable levels of care.
>
> This means that firms are expected to take reasonable steps to identify, understand, and provide support to such consumers, while products and markets need to be accessible, transparent and designed with these consumers in mind.
>
> Where firms and markets fail to treat vulnerable consumers fairly, or breach other consumer protection rules, the FCA will take action, including applying enhanced penalties. The FCA will also ensure the needs of vulnerable consumers are taken into account across its supervision, enforcement, market investigation and intelligence activity."

We believe this extended definition, building on the FCA's existing definition, achieves the desired objective of ensuring that the definition is enforceable, making clear to firms both their obligations and the ways in which the FCA will respond if their conduct is found to be lacking.

Firms' knowledge of consumer behaviour and circumstances

Financial services providers hold an increasing volume of data on our behaviour, preferences and circumstances, as more and more transactions are carried out through payments systems rather than in cash, and increasingly have the technological ability to process this information. Firms already use this data to design and sell products. They should also, where possible, use it in a proactive fashion, to inform product design to better meet the needs of customers and to identify and offer support to consumers who may be vulnerable. We support the FCA's commitment to using transactions data to identify potential harm (p36 of the Consumer Approach) and would argue that firm's should be increasingly expected to undertake proactive data scanning activities to identify consumers who may be vulnerable and offer appropriate support.

Activities drawing on customer data will always need to balance the potential benefits in identifying vulnerable consumers and offering additional support with the customer's right to privacy. Participants in our research, however, are generally open to the idea of their data being processed in this way.

"Maybe through monitoring your bank account and credit card the banks could detect when there is significant increased spending and send a text or email to you to check on your mental state and possibly implement some sort of intervention."

“Use algorithms to identify when there are erratic behaviour shown such as spending a lot in a short period and evidence of buying and returning goods.“

We understand that broader public debate is needed about corporate use of consumer data and the protections that should be provided against misuse and hope that the FCA will participate in these debates, while looking to government for leadership.

Proactive protection against future vulnerability

When firms do know about a customer’s mental health problems, their actions can make a significant different to a customer’s financial experiences and life more broadly. Our research community also brought forward some encouraging examples of good practice in the financial services sector: building societies assisting with remortgaging arrangements, banks monitoring uses of accounts, asking questions about unlikely transactions, challenging transfers, building in inhibitors to spending and credit card suppliers reducing credit card spending limits. Given the limitations of expecting people experiencing mental health problems to disclose their problems, and the numbers of consumers affected, we would also argue that it makes sense for firms to be asked to take proactive steps to help consumers protect themselves, without relying on identifying vulnerability. The universal provision of tools like personalised card controls, spending limits and personalised friction around financial decisions would be of specific benefit to people experiencing mental health problems, but could also help a much wider range of consumers, and uptake is likely to be higher where these options are not associated with vulnerabilities.

3. Which consumers issues do you think sit within the FCA’s remit, and which are more a matter for Government? Are we right to commit our resources to working with other organisations, such as firms, other regulators, Government, courts, consumers groups etc., where improved consumer outcomes may require action that is not within the FCA’s regulatory toolkit?

The FCA has a statutory duty to secure an appropriate degree of protect for consumers. This cannot be achieved by the FCA working in isolation.

We judge the following issues to sit within the FCA’s remit:

- Ensuring consumers have a choice of appropriate products
- Fostering competition, particularly ensuring that consumers pay a fair price for services
- Consumer access to appropriate redress
- Fair treatment of customers

Some of these questions can be addressed by the FCA alone, however most require cooperation with other regulatory bodies or government.

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Ensuring consumers have a choice of appropriate products

The FCA can take steps to ensure that the products consumers are offered are appropriate for their circumstances and that these products and the ways in which they are sold offer consumers appropriate protection.

Fostering competition, particularly ensuring that consumers pay a fair price for services

The FCA has some powers which allow it to take action where prices are harmful or unfair. However the CMA and government may need to be involved in broader distributional questions about what constitutes a fair price.

Consumer access to appropriate redress

The FCA can ensure that consumers have access to appropriate redress when things go wrong, in partnership with courts.

Fair treatment of consumers

Determining what 'fair' treatment looks like, particularly where this has distributional consequences (e.g. where some consumers may gain at the expense of others) or concerns access to financial services or the use of technology and data, may lie within the FCA's remit where such discussions relate to specific financial products. Where these debates have broader social implications, however, they may lie beyond the FCA's remit. Nonetheless, decisions on these issues must be made, either by the courts or the Government, for the FCA to fulfil its role effectively. Working in partnership with these organisations to reach decisions is thus entirely appropriate.

It is also appropriate for the FCA to work with consumer organisations. It is difficult for individual consumers, particularly those in vulnerable circumstances, such as people experiencing mental health problems, to advocate for themselves in a complex marketplace. Consumer groups play an important role in aggregating consumer voices, and listening to these groups will help the FCA to better understand the needs of consumers and to design effective remedies.

Furthermore, technological advances mean we are experiencing swift developments in how markets, including the market for financial services, function. Many of the issues raised by these developments, including the increasing trend to bundle services and the use of consumer data, are cross-market. By working together with other agencies, including the CMA, government and other regulators, the FCA can find efficient, consistent solutions which help to make markets predictable for consumers. Issues facing vulnerable consumers in particular frequently cut across regulated markets, requiring cooperation between regulators. Money and Mental Health are glad to have recently worked with the FCA through UKRN to consider the challenges of regulating to support consumers experiencing mental health problems[17], and hope to continue this conversation through 2018.

[17] Holkar M and Evans K. Levelling the Playing Field: How regulators can support consumers with mental health problems. Money and Mental Health Policy Institute. 2017.

4. Do you agree with the aspirational vision and outcomes that we explore? Are there any further barriers or risks to us achieving it?

Money and Mental Health broadly support the vision set out by the FCA on p33 of the Consumer Approach, and believe that, if delivered, this would improve the lives of people experiencing mental health problems by reducing their vulnerability to financial difficulties.

Specific comments on each part of the vision and potential barriers to its achievement are provided below.

Consumers are enabled to buy the products and services they need because the environment in which they are sold is clear, fair and not misleading with a good choice architecture.
In markets with effective choice architecture (sales, disclosure or marketing environment that enables consumer to make good decisions), we would observe the following outcomes: ● Where consumers are active and able, it is easy for them to get relevant information and to switch to better products ● Where consumers intend to be more active and able they are supported to become so ● Where consumers cannot be, or face constraints in being active and able, they are matched with products that better meet their needs wherever possible

We appreciate the recognition of variation in consumers' ability to be active and able in markets in this part of the vision. We would argue, however, that all consumers, not just those who are active and able, should be able to get relevant information. Poor presentation of information to consumers is consistently raised as a serious barrier to engagement in our research with people experiencing mental health problems. It puts this group at a significant disadvantage, as they are likely to find it more difficult to process large volumes of information and weigh up different options.[18]

We hope that the second two parts of this vision will support those consumers who, as a result of their mental health problems, are less able to engage in markets. We would argue that tools designed to help consumers become more active should not be provided online only, to ensure that digitally excluded consumers are also able to achieve better outcomes and are not left behind. We are pleased to see a reference to building positive defaults here. One specific way in which we would hope to see this progressed is broader use of basic bank accounts, which can be highly beneficial to people who struggle to manage a budget due to their mental health problems and who frequently end up paying fees and charges associated with unauthorised overdraft use at present.

[18] Holkar M. Seeing through the fog: how mental health problems affect financial capability. Money and Mental Health Policy Institute. 2017.

To ensure that this vision does benefit all consumers, it is important that when designing choice architecture, the FCA considers the needs and experiences of a wide range of consumers, not just the 'average' or neurotypical consumers.

Products: high-quality, good value products and services that meet consumers' changing needs.
In markets where consumers are offered good products and services, we would observe the following outcomes: ● A range of products offered by a range of suppliers ● Good-quality products and services that meet consumer needs ● Competitively priced products that are value for money

We are pleased to see specific reference to product design in this part of the vision. We would also like to see a specific outcome relating to the performance of products over time. As the heading of this section recognises, financial products are often used over long time periods during which consumers' needs may change significantly.

The success of the second outcome here, will depend on how 'consumer needs' are defined. To be most effective, this should be framed broadly, encompassing tools that empower consumers to protect themselves and enable them to make good financial decisions, as well products that meet basic access needs.

We see significant barriers to the achievement the third outcome, around competitively priced products, for consumers experiencing mental health problems. Many people experiencing mental health problems find it very difficult to navigate the market for financial services, with more than half (54%) saying that their health problems make it difficult to shop around and find the best value products.[19] There is a risk that greater use of data analytics by firms leads to greater market segmentation and personalisation which may increase the risks of price discrimination towards people experiencing mental health problems or other consumers who are less active.

Inclusion: everyone is able to access the financial products they need and the needs of vulnerable consumers are taken into account.
In markets where consumers are fairly included, we would observe the following outcomes: ● Fair treatment and fair risk pricing mean consumers are not unduly excluded ● All consumers can access basic financial services ● The needs of vulnerable consumers are taken into account

We approve of the first two outcomes detailed here, though believe that further specification is needed to determine what 'fair treatment and fair risk pricing' means. Where risk pricing is

[19] Money and Mental Health online survey of 473 people with mental health problems, 15 December 2017 - 12 January 2018. Base for this question: 461.

determined by the use of algorithms it may be that broader government action is needed to decide what constitutes 'fair' use of these technologies, and whether universal access requirements are justified, to counterbalance firms' growing abilities to personalise services and segment markets. In addition, we would prefer access to 'basic financial services' to be replaced with 'suitable financial services'. Financial inclusion is about access to products that empower consumers to make good financial choices and which meet their needs, not a tick-box exercise to ensure people can, in principle, access products. To achieve financial inclusion, we must ensure markets offer products which people actually want to use and see the benefit in.

We are glad to see the final outcome around the needs of vulnerable consumers included in this part of the vision. However, we believe further detail around what these needs are is required to allow this outcome to be operationalised and success judged appropriately.

Protection: consumers will be adequately protected from harm.
In markets where consumers are well protected, we would observe the following outcomes: ● Consumers are not exposed to deceptive or unfair practices by financial services firms ● Consumers are provided with the appropriate level of protection against fraud and scams ● When things go wrong, there are mechanisms in place to secure redress ● Where appropriate, consumers are prevented from taking out products that carry a high risk of harm

We support these outcomes, and are particularly pleased by the inclusion of the fourth point. We would like to see further action to support people experiencing mental health problems, who are frequently able to obtain credit inappropriately when unwell at present, which causes significant distress as well as financial difficulties.

We would also that argue that an additional outcome in markets where consumers are well protected would be the development of a range of tools which empower consumers to protect themselves against poor financial decision-making - including cool-off periods, card controls, and the types of 'personalised friction' discussed on p37 of the consumer approach.

5. What further metrics would you use? Are there any specific data sources or tools that may be of benefit?

Concerns about the FCA's financial lives survey

We are pleased to see the FCA collecting data about the circumstances and financial needs of consumers, however we have serious reservations about the health questions used in the Financial Lives survey. The question used - "Do you have any physical or mental health conditions or illnesses lasting or expected to last for 12 months or more?" is consistent with the existing Equality Act definition of ill health or disability. It fails, however, to reflect the true incidence of mental health problems and the impact these can have on people's financial capability.

National surveys using diagnostic questionnaires used by clinicians to identify people experiencing mental health problems find that one in four people (23%) experience a mental health problem in any given year[20] - substantially higher than the number of people identified as experiencing any sort of health problem, mental or physical, by the FCA's survey.

Mental health problems can have a dramatic impact on a person's financial capability, and their ability to carry out day to day activities. When surveying people with mental health problems about the way their mental health problems affect them, we found that:

- 80% said their memory was affected
- 69% said it made it harder to get out and about
- 74% said their ability to learn, understand or concentrate was affected,
- 79% said they felt fatigued more quickly
- 73% said their behaviour in social situations was affected[21]

It is well-recognised that the existing Equality Act, which only offers protection to people whose condition is expected to last 12 months or more, does not provide adequate protection for people experiencing mental health problems. The 2017 Conservative Party Manifesto included a commitment to update the Act to extend protections against discrimination to mental health conditions that are episodic and fluctuating[22] and the Government's response to the Farmer-Stevenson Review of Mental Health at Work reiterated this commitment in late 2017.[23] Against this backdrop, and given the FCA's commitment to working with Money and Mental Health, it was disappointing to see this highly restrictive definition used. We believe the Financial Lives survey severely underestimates the number of consumers affected by mental health problems, and the financial difficulties that they face as a result. Our research shows that many people experiencing mental health problems experience shorter periods of ill health, with half of all respondents (54%) experiencing periods of acute ill health shorter than a year.[24]

This group report the same concerns about fair access to financial services as the wider group of vulnerable consumers captured by the FCA's Financial Lives survey. For instance, 62% of respondents told us that they do not have confidence in the financial services industry.[25]

We would strongly encourage the FCA to amend this definition in future iterations of the Financial Lives survey, to ensure that the data collected is consistent with other sources and

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[20] McManus S et al. Adult psychiatric morbidity in England, 2007. Results of a household survey. NHS Information Centre for Health and Social Care. 2009.
[21] Money and Mental Health online survey of 473 people with mental health problems, 15 December 2017 - 12 January 2018. Base for this question: 461.
[22] Conservative and Unionist Party. Forward, Together: Our Plan for Stronger Britain and a Prosperous Future. 2017.
[23] Department for Work & Pensions / Department of Health. Improving Lives: The Future of Work, Health and Disability. 2017.
[24] Money and Mental Health online survey of 473 people with mental health problems, 15 December 2017 - 12 January 2018. Base for this question: 461.
[25] Money and Mental Health online survey of 473 people with mental health problems, 15 December 2017 - 12 January 2018. Base for this question: 473.

meets the FCA's stated objective of including 'more transient or intermittent types of vulnerability'.[26]

Alternative sources of data

We would urge the FCA to consider the value of qualitative data in understanding the experiences and challenges faced by vulnerable consumers. This data can help to pinpoint exactly where things go wrong, where consumers misunderstand products, or communications cause problems, and often offers ideas of solutions that would work for consumers. Money and Mental Health would be pleased to explore ways that the FCA could work with our panel of over 5,000 people with experience of mental health problems to understand the issues they currently face in financial services markets and what would help.

6. Do you agree with this framework? Would you like us to consider any additional or alternative factors in how we regulate:

a. **for all consumers**
b. **for the most vulnerable or excluded, and**
c. **to meet the challenges of the future?**

Money and Mental Health broadly supports the FCA's strategy for delivering its vision, and believes that it will allow the FCA to improve financial outcomes for people experiencing mental health problems. Specific comments and suggestions on particular parts of the framework are provided below.

Regulating for the real world

- Staying one step ahead on data
  We support this work and consider it an essential counterbalance to the power consumer data provides to firms. Only by staying ahead on data can the FCA identify where data is being used to abuse market power or discriminate against consumers. Given the FCA's privileged access to micro-data, we would also ask the regulator to consider how it can use this data to inform understanding of financial difficulty, in research equivalent to the Financial Lives survey.

  We would also urge the FCA not to neglect qualitative data and reported consumer experiences. We regularly come across examples of people changing behaviour to overcome problems with financial services provision in work with our Research Community - and where people adapt, harm may not be evident in quantitative data. People's qualitative experiences of using financial services are equally important.

- Designing remedies around real behaviour
  We are pleased that the FCA plans to continue to take a psychologically informed approach to regulation. The FCA should be careful, however, that models based on

[26] Financial Conduct Authority. FCA Mission: Our Future Approach to Consumers. 2017. p29.

ideal consumers are not replaced with equally implausible assumptions based on 'average' consumers. The FCA must be careful to consider the wide range of circumstances and experiences of consumers when designing remedies. We recommend a 'dropped kerb' approach of trying to design systems and tools the least able consumers, which will also make life easier for many others.[27]

We would also advise the FCA to take this psychological approach beyond remedies, and encourage firms to embed this approach in the design of products.

- Prioritising situations where consumer mistakes are predictable, prevalent, pervasive and problematic
  With limited resources available, it is right that the FCA should prioritise the problems causing the greatest harm to the greatest number. We agree that substantial benefits could be obtained by addressing behavioural biases that undermine competition and improving choice architecture. However, this approach should not prevent the FCA from taking action in cases where a smaller number of consumers, potentially in more complex situations, are experiencing significant harm, although this work is likely to be resource-intensive.

Regulating for the vulnerable and excluded consumers

- Collecting better information on harm
  We support this approach, and would be pleased to continue to work with the FCA to improve understanding of the challenges facing consumers experiencing mental health problems.

- Developing remedies across organisations
  We agree that many of the most pressing issues facing vulnerable consumers, including people experiencing mental health problems, cannot be solved by one regulator in isolation.[28] We are pleased to see the FCA committing to working in collaboration with other regulatory bodies, and would be glad to support this work where possible.

- Focus on the most vulnerable and least resilient groups
  We are pleased to see the FCA's acknowledgement of the scarcity mindset and impact this can have on behaviour. However, our research demonstrates that pathways to vulnerability and low financial resilience are complex and dynamic. Often low resilience is a result of other adverse life events, which have led to savings depletion or the build up of problem debt. We would encourage the FCA to focus on the precedents of low financial resilience, and to take a more proactive approach.

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[27] Holkar M and Evans K. Levelling the Playing Field: How regulators can support consumers with mental health problems. Money and Mental Health Policy Institute. 2017.
[28] Holkar M and Evans K. Levelling the Playing Field: How regulators can support consumers with mental health problems. Money and Mental Health Policy Institute. 2017.

People who experience mental health problems, for example, may often find that their resilience falls over time, as a result of difficulties working and a reduced income, the accumulation of debt related to overspending during a crisis, or the depletion of savings.[29] Preemptive support, including allowing consumers to put positive friction in place on spending decisions, to set up flexible third party control options and to self-exclude from new credit, could help to avoid many of these problems and the low financial resilience that results.

Regulating for the future

- Adapt to the new environment
  We are particularly pleased that the FCA will be exploring how consumers take decisions online. Our research has found significant harm resulting from people taking out credit products online while unwell. We are concerned about the lack of friction in online application processes, and hope the FCA will consider reassessing CONC guidance to take account of new online lending processes and ensuring necessary protection is provided.

For further details contact katie.evans@moneyandmentalhealth.org.

[29] Bond N, Braverman R and Clarke T. Recovery Space: Minimising the financial harm caused by mental health crisis. Money and Mental Health Policy Institute. Forthcoming.