Money and Mental Health response to the FCA's consultation on draft Guidance for firms on the fair treatment of vulnerable customers

Introduction

The Money and Mental Health Policy Institute is a research charity established by Martin Lewis to break the vicious cycle of money and mental health problems. We aim to be a world-class centre of expertise developing practical policy solutions, working in partnership with those providing services, those who shape them, and those using them, to find out what really works. Everything we do is rooted in the lived experience of our Research Community, a group of 5,000 people with personal experience of mental health problems.

We are pleased to see the FCA publishing this draft guidance on the fair treatment of vulnerable consumers, and look forward to working with the FCA over the coming months as proposals are refined. In this document we respond to questions 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 13, 14, 15, 16, 17 and 18.

Background

- In any given year, one in four people will experience a mental health problem.[1] However, we do not always know when we are unwell, or receive treatment. Over a third (36%) of people with a common mental disorder have never received a diagnosis, and 62% are not currently receiving treatment.[2]
- Common symptoms of mental health problems, like low motivation, unreliable memory, limited concentration and reduced planning and problem-solving abilities, can make managing money significantly harder.[3]
- Four in ten (37%) people who have experienced mental health problems exhibit significant levels of anxiety when dealing with essential service suppliers including financial services firms. This is indicative of at least a mild phobia of this situation. Symptoms can include breathlessness, sweating or shaking.[4]

[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] McManus S et al. Mental health and wellbeing in England: Adult Psychiatric Morbidity Survey 2014. NHS Digital. 2016.
[3] Holkar M. Seeing through the fog: How mental health problems affect financial capability. Money and Mental Health Policy Institute. 2017.
[4] Holkar M, Evans K and Langston K. Access essentials. Money and Mental Health Policy Institute. 2018.

- All of this contributes to an increased risk of detriment in financial services markets. People with mental health problems are three and a half times more likely to be in problem debt as those without.[5]
- Half (46%) of adults in problem debt also have a mental health problem.[6]
- Mental health and financial problems can form a devastating, self-reinforcing cycle. Over 420,000 people in problem debt consider taking their own life in England each year, and more than 100,000 people in debt actually attempt suicide.[7]

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

We welcome the aims of the draft Guidance, particularly the focus on outcomes for vulnerable consumers. We are particularly pleased to see the FCA continuing to push firms beyond identifying vulnerable consumers, to seek a more holistic understanding of customer needs and taking appropriate proactive action to prevent harm.

We agree with the FCA's assertion that to achieve the right outcomes for vulnerable consumers, policies and processes to deal with the needs of this group cannot be tacked on as an afterthought, but instead must be deeply embedded in the cultures of firms.

To do this, we believe firms may need further guidance on what the FCA means in saying that vulnerable consumers should experience outcomes at least as good as other consumers. We agree that the Principle of Treating Customers Fairly should include treating all customers, including those who are in vulnerable circumstances, appropriately, but feel that, at present, a lack of clarity about how the FCA would define 'fair' leads to confusion and uncertainty among firms about the degree to which they are expected to take additional steps to support vulnerable consumers.

Although the guidance aims to create further consistency in outcomes across firms, it does not provide an answer to this fundamental question of definition which we believe is at the heart of ensuring that all firms implement this principle effectively. For example, a crucial question is whether 'fair' treatment would involve treating all customers the same, regardless of additional need, or providing additional support to those who have additional needs in order to ensure that they can achieve the same outcomes as other consumers - and whether the additional support should in turn be proportionate, or one-size-fits-all. Legally, the Equality Act suggests that where a

[5] Holkar M. Debt and mental health: A statistical update. Money and Mental Health Policy Institute. 2019.
[6] Ibid.
[7] Bond N and Holkar M. A silent killer: Breaking the link between financial difficulty and suicide. Money and Mental Health Policy Institute. 2018.

person with a disability is disadvantaged in accessing a process or service, the provider should take such steps as is reasonable to avoid the disadvantage.[8] Our understanding is that the FCA is aiming for a similar approach when aiming to ensure the outcomes achieved by vulnerable consumers are 'at least as good' as those of other consumers, but more could be done to clarify that this is what the FCA would define as fair treatment, and therefore necessary to comply with the 'Principle of Treating Customers Fairly'.

This clarity may be provided by providing additional information about what 'good' outcomes look like, and being more specific about the harms the FCA is seeking to avoid. In particular, we would encourage the FCA to go further in clarifying for firms that 'doing the right thing' does not end with FCA guidance and regulations, and be explicit about the expectation that firms must also comply with the Equality Act. In our work we rarely see firms meeting the anticipatory duties the Act places upon them with regards to people with long-term mental health conditions which significantly affect daily living. More generally, the FCA should provide greater clarity about what specific outcomes they are expecting firms to aim for and to measure, as the term 'outcome' is used in different ways by different firms. Some use this to refer to firm-facing metrics, like complaints volumes, while others are more consumer centric. This could easily cause confusion and undermine the FCA's stated aim of increasing consistency if further clarity is not provided.

We believe that this clarity about:

1) what characterises 'fair' treatment,
2) what 'good' outcomes look like, and
3) which specific outcomes the FCA wishes to measure

is crucial if the FCA is to achieve the aim of improving consistency in the way in which vulnerable customers are treated across the financial services industry. Clear guidance is essential if firms are to understand exactly what is expected of them, and while the draft Guidance goes some way towards this, we believe further detail is likely to be required.

We would continue to encourage the FCA, and other essential services regulators, to consider implementing minimum standards for vulnerability[9], providing clarity on the specific steps that firms should take to ensure services are accessible to vulnerable consumers, increasing the chances that this group can achieve good outcomes. This does not mean abandoning principles-based regulation, as they can easily be phrased as principles rather than rules, but would ensure that both firms and customers are clear about what is expected.

[8] S20 Equality Act 2010).
[9] Evans K. Minimum standards for mental health. Money and Mental Health Policy Institute. 2019.

Question 2: Do you have any comments on the application of the Guidance or its status as non-Handbook guidance?

We are pleased that the FCA has taken steps to link this Guidance back to the relevant Principles and Handbook content, and hope this will confirm for firms that taking action to support vulnerable customers is not optional. Consolidating all relevant details from the Handbook in a single document in the final Guidance would be even more helpful in ensuring firms are aware of the breadth of their obligations towards customers in vulnerable circumstances.

We appreciate that the FCA has to walk a difficult line in clarifying that Guidance sets out ways in which firms could achieve their obligations under the Principles and Handbook, but is not the only way of doing so, particularly given the important role innovation plays in improving the treatment of vulnerable consumers. However, we know that when the FCA is not clear about its expectations, this drives inconsistency across firms, and requires repeated interventions to improve practice. The delay this entails in improving standards across the market means some customers needlessly suffer harm which could have been avoided if expectations were more clearly communicated at the start.

We believe the FCA should be clearer that this Guidance is being issued because of repeat and concrete evidence that some firms are failing to meet their existing obligations, and that failure to take action and improve practices will have consequences. Providing further clarity about the outcomes sought for vulnerable customers and a clearer understanding of what ‘fair’ treatment involves, together with further information about how this Guidance will be used in the FCA’s supervisory activities, would reassure us that despite non-Handbook status the Guidance will be effective in improving outcomes for customers in vulnerable situations.

Question 3: Do you have any comments on the distinction between actual and potential vulnerability (Annex 1, Section 1)? (Please note that we are not seeking views on the meaning of vulnerable consumer because we have consulted on that previously.)

As currently posed,the distinction drawn between actual and potential vulnerability could actually be unhelpful for firms, by adding an additional dimension to an already complex field. The FCA’s definition of vulnerability clearly explains that vulnerability is about circumstances or factors that can put people at increased risk of detriment. We feel that, by focusing on susceptibility, this definition makes it clear that vulnerability is always about potential outcomes.

Introducing the term “potential vulnerability” is likely to be confusing when the proposed definitions of actual and potential vulnerability are both about people who are at increased *risk* of detriment, but to different degrees. The current confusion over the definition is driving very different responses to vulnerability both within and between firms, in a way which creates further inconsistency in responses across the market. It is not clear that distinguishing between these two categories of vulnerability will make it easier for firms to meet the needs of vulnerable customers or improve outcomes. Instead, the FCA should encourage firms to consider the degree to which customers are vulnerable to detriment, and the specific nature and impact of vulnerability, in order to respond appropriately. The important thing here is that firms should seek to understand what detriment customers are potentially vulnerable to, whether this is currently just a risk or actually happening, and what steps should be taken to change the situation to reduce detriment, or manage the risks.

Question 4: Do you have any comments on our views of what firms should do to understand the needs of vulnerable consumers (Annex 1, Section 2)?

We welcome the FCA's proposed guidance on what firms should do to understand the needs of vulnerable consumers. While many firms are getting better at identifying vulnerable customers, it's welcome that the FCA proposes encouraging firms to focus on the specific needs that can arise from vulnerability across the customer base. It is essential that firms first understand vulnerable customers' needs, and the challenges they can face when using financial services, if they are to meet the FCA's ambition and ensure that outcomes for vulnerable consumers are at least as good as outcomes for everyone else.

In this section of guidance we have identified two particularly important areas, where additional clarity could help firms:

- The role of disclosure
- The role of specialist expertise.

The role of disclosure

We are delighted that the draft Guidance encourages firms to develop their understanding of vulnerability in "a range of ways", rather than relying exclusively on information that customers have disclosed. Relying on disclosure alone is not sufficient to understand the needs of vulnerable customers across a firm's customer base, but some firms do currently take this approach. The guidance could be more useful for firms if it was explicit about the limitations of relying on disclosure.

Many people do not feel comfortable disclosing information about their mental health to firms. Research with the Money and Mental Health Research Community found that just three in ten (31%) respondents had ever told a financial services provider about their mental health problems.[10] Sadly, mental health problems remain the subject of significant social stigma, so disclosure can be

[10] Holkar M and Evans K. Levelling the playing field. Money and Mental Health Policy Institute. 2017.

distressing and require serious courage. People who have had a negative experience of disclosure in the past, such as being asked to repeat sensitive personal details on multiple occasions before any action is taken, are often particularly reluctant to disclose again, even if this past experience was in another sector. Disclosure can be altogether impossible for the many people with undiagnosed mental health problems, who may not fully understand what they're experiencing. 36% of people with a common mental disorder have never received a formal diagnosis[11] - equivalent to more than three million people in England alone.[12] Although these people without a diagnosis are unable to disclose their condition, they may be experiencing exactly the same symptoms and challenges as people who know about their condition and can disclose it to a provider, and are at equal, if not greater, risk of detriment. It is vital that any approach to understanding vulnerability looks beyond disclosure to ensure the needs of this sizeable group are met.

While these limitations mean that firms cannot rely on disclosure alone to understand customers' needs, there is still a role for disclosure, and it is important that firms handle these interactions effectively and supportively. As highlighted in point 35 of the draft Guidance, there are steps that firms can take to create a more supportive environment for customers and encourage disclosure. In particular, firms should ensure that there are a range of ways for customers to share information about their problems and their needs. More than half (54%) of customers who have experienced mental health problems have serious difficulties using the telephone to contact firms,[13] but customers are often required to disclose information about their health problems by telephone.

We were particularly pleased to see the FCA highlight a firm proactively using data as a means of understanding and responding to consumer vulnerability in case study one. Proactive support could make a significant difference for vulnerable consumers who struggle to disclose their difficulties, such as many people with mental health problems. In addition to this broader guidance, we would like to see the FCA issue joint guidance with the ICO to help financial service providers understand how regulatory principles (including around data protection) could apply in the specific case of using financial data to identify customers who are struggling and offer proactive support, as we know that a lack of clarity is currently presenting a barrier to firms innovating in this area.

The role of specialist expertise

We welcome the FCA highlighting the role that expert organisations, such as charities, can play in helping firms to understand different aspects of consumer vulnerability. Expert organisations often

[11] McManus S et al. Mental health and wellbeing in England: Adult Psychiatric Morbidity Survey 2014. NHS Digital. 2016.
[12] Money and Mental Health analysis of Adult Psychiatric Morbidity Survey 2014 and ONS mid-year population estimates 2018.
[13] Holkar M, Evans K and Langston K. Access essentials. Money and Mental Health Policy Institute. 2018.

have detailed knowledge of the groups they represent and the difficulties they face, and can have a trusted relationship with vulnerable customers that firms may struggle to replicate.

However the process of gathering this insight is often resource-intensive for charities. People experiencing health problems or dealing with significant life events may be preoccupied by these issues and find it difficult to engage with research. Many vulnerable consumers also have particular accessibility and communication needs that must be met to allow them to engage in research. Expert organisations may also need to build trust and credibility, in order to persuade vulnerable consumers to engage with them and share information about their experiences with financial services.

The FCA and firms should recognise that developing and applying expertise about vulnerable customers can be a resource intensive process, and that charities often have limited resources to support financial services firms. While we welcome the recognition of the valuable role that many charities can play, and would welcome the further demand for this input that the guidance could drive, the FCA should recognise the need to adequately resource charities to meet this demand.. The guidance may be more useful to firms if it is clearer that firms should rely, in the first instance, on the research and best practice guidance published freely by many charities, including Money and Mental Health, and that firms seeking further support should not expect this to be provided free of charge.

Case study 3 is a useful example of a firm working with a charity to understand and better support vulnerable customers, but it might be improved by including details about the working relationship between the two organisations, as in case study 16. As currently framed, case study 3 could give the impression that charities are on hand to help firms understand vulnerable consumer groups, and assess relevant processes, without any cost.

We would also ask the FCA to encourage firms to publish (non-commercially sensitive) research which they conduct, to avoid duplication of effort. Most firms agree that vulnerability is not an area which should be governed by competition, and that firms should share a desire to achieve the best possible outcomes for vulnerable customers. As such, we would encourage the FCA continue to use their convening powers to provide space for firms to share their research and best practice, to help improve understanding and treatment of vulnerable customers across the sector.

Question 5: Do you have any comments on our view of what firms should do to ensure staff have the necessary skills and capabilities when engaging with vulnerable consumers (Annex 1, Section 3)?

We welcome the draft Guidance on what firms should do to ensure that their staff have the necessary skills and capabilities when engaging with vulnerable consumers. We are particularly pleased that the Guidance goes beyond encouraging staff to identify vulnerability, to seeking to understand the specific needs of individual customers and to respond appropriately. This means firms must go beyond training aiming to increase staff awareness of vulnerability, to really grapple with what different types of vulnerability may mean for customers, the potential detriment that may be caused, or which customers may be at risk of, and what specific steps should be taken to avoid this detriment or manage the risks.

In this section of guidance, we have identified two key areas where we feel further clarification would be beneficial:

- Emphasising the scale of vulnerability
- Ensuring that design staff understand vulnerability

Emphasising the scale of vulnerability

As statistics from the Financial Lives survey show, half of UK adults display at least one characteristic of potential vulnerability,[14] and transient vulnerability can affect us all at different points across a lifetime. It is essential that firms appreciate the scale of consumer vulnerability, if they are to prepare their staff appropriately. This section of the Guidance should emphasise the scale of vulnerability more clearly, and be explicit that, given this prevalence, all frontline financial services staff will encounter customers who are vulnerable in some way.

In order to respond effectively, all frontline staff should be made aware of the prevalence of consumer vulnerability, and that many customers who don't seem vulnerable and don't disclose a problem will actually be struggling in some way. While all frontline staff should be prepared to deal with vulnerable consumers, this is particularly important for staff who work with customers in financial difficulty. Low financial resilience is a key driver of vulnerability, and people in these circumstances are also more likely to also be vulnerable in other ways. Half of all customers in problem debt, for example, also have a mental health problem.[15] Firms should not be considered to be treating vulnerable customers fairly unless their collections staff are appropriately trained and are confident in dealing with vulnerable customers.

[14] Financial Conduct Authority. Understanding the financial lives of UK adults. Findings from the FCA's Financial Lives Survey 2017. FCA. 2017.
[15] Holkar M. Mental health and debt: A statistical update. Money and Mental Health Policy Institute. 2019.

Ensuring that design staff understand vulnerability

To be truly inclusive and minimise consumer detriment, firms should ensure that staff across their organisation - from leadership to the frontline - understand vulnerability. Ensuring that product and customer journey design staff understand consumer vulnerability, and how it affects the way that people engage with products and services, may have a particularly significant impact on customer outcomes. As recognised in the draft Guidance, decisions about product and service design can determine how well financial services work for vulnerable consumers, and can be a driver of detriment when certain consumers' needs aren't accounted for. The FCA should encourage firms to prioritise developing understanding of vulnerability among design staff. Without this clarification, we fear that firms may mistakenly think that training around vulnerability is only relevant to front-line staff, when this is not the case.

Question 6: Do you have any comments on our view of what firms should do to translate their understanding of the needs of vulnerable consumers into practical action on product and service design, good customer services and communications? (Annex 1, Section 4)?

We are delighted to see such a clear focus on product and service design in the FCA's draft vulnerability guidance. Many problems that vulnerable consumers currently face in financial services markets could be ironed out through more inclusive design, preventing significant detriment. The FCA guidance should also make clear that there may be a strong business case for designing in this way. By designing products and services that are easier for vulnerable consumers to manage independently, firms may cut costs associated with supporting customers and reduce complaints volumes.

More broadly, we would encourage the FCA to make clear to firms that ensuring that their products and services work for customers with disabilities, or other characteristics protected under the Equality Act, is an existing legal duty. While we understand that the FCA does not wish to be responsible for enforcing the Equality Act, we would argue it has a public sector duty under the Act to do so, and as a first step should make absolutely clear to firms that making the types of adjustments outlined in these chapters of the Guidance is not a matter of best practice or 'should', but a preemptive legal obligation.

Product and service design

Point 66 of the draft Guidance raises an important point, that firms should think carefully about their target market when making product and service design decisions. This should help firms to ensure that they understand the likely prevalence of different types of vulnerability within this market, and have the resources and systems in place to provide adequate support. However, at this point, it may be helpful for the FCA to reiterate that any segment of consumers will contain people who are to some degree vulnerable, or who will become vulnerable across the life cycle of the product. Providing additional clarity here would help address the misconception that firms targeting certain demographics of consumer need not think about vulnerability when making design decisions.

The draft Guidance is right to highlight the importance of user testing with vulnerable consumers, particularly when firms are developing innovative features, or making changes that will affect large numbers of consumers. The Guidance should also encourage firms to involve vulnerable consumers in the idea generation phase of product development. This approach can help firms to address existing problems faced by vulnerable consumers, and ensure that innovation leads to more inclusive products and services.

Point 73 of the draft Guidance is crucial, and we welcome that the FCA has clearly set out that reviewing outcomes for vulnerable consumers will help firms to meet their Principle 3 obligations. Monitoring consumer outcomes, and how they are distributed, could also be considered essential for firms to meet their Principle 6 obligations and ensure that they are treating vulnerable consumer fairly. The FCA could further clarify this point by adding that a meaningful review should analyse quality of customer experience and risk of psychological detriment, as well as financial outcomes. These are essential dimensions of the customer experience and should not be overlooked in design processes. A process or product which results in a good financial outcome, but at a cost of significant psychological distress to the customer, is not a good holistic outcome.

While considering product and service design, we would also ask the FCA to charge firms with explicitly considering how well their onboarding processes, and credit application processes in particular, work for vulnerable customers. Not only does onboarding provide a good opportunity to encourage disclosure of vulnerability, but it could also avoid sales where the customer does not fully understand the product, particularly credit, and prevent serious detriment when the unsuitability of the product becomes apparent. We urge the FCA to provide further guidance on what good sales and onboarding practices which minimise risks to vulnerable customers would look like, especially in the online space. We have particular concerns that the rules set out in CONC are not being applied effectively online, and feel further clarification from the FCA through the Guidance could help prevent substantial harm to some of the most vulnerable consumers.

Customer services

Third party access

We are delighted that the FCA has included in the draft Guidance that firms should make customers aware of support opportunities, including the ability for friends and family to offer third party support. Third party access is a key element of specialist support for vulnerable consumers. Many people with mental health problems get help with financial management from family and friends, but existing tools to facilitate this are often seen as unsuitable, delegating excessive power to the third party and undermining privacy.[16] As a result, many people with mental health problems rely on risky workarounds to facilitate support, which can enable fraud and abuse. Across the UK, four in ten (43%) people who have experienced a mental health problem have let someone else use their credit or debit card, and one in five (20%) have let someone log in to their online banking.[17]

While improvements to legal mechanisms like Power of Attorney will take time, many people with mental health problems are at risk of harm now and their needs are not being met. FCA guidance should encourage firms to help address this harm by building systems that offer customers the ability to send simple alerts to a third party in response to pre-determined triggers, like a balance falling below a certain level, entering an overdraft, or spending above a certain amount. By facilitating limited information sharing, firms can enable customers to get support with financial management, without ceding excessive power or relying on risky workarounds.[18]

Specialist support services

Point 85 of the draft Guidance highlights the importance of firms' specialist support services being easy for vulnerable customers to access. Many firms have excellent specialist services, but the customers who most need this support often don't reach it. As the draft Guidance recognises, internal referral pathways can improve access. In addition, the Guidance should explain that firms can also improve access by:

- **Ensuring accessibility** - as recognised in the draft Guidance, many vulnerable customers have particular accessibility needs. Firms must ensure that specialist services are accessible by multiple communication channels, in order to work for their target audience.
- **Raising awareness** - one of the many reasons that people with mental health problems often don't disclose information about their vulnerability to firms is that they see no benefit from doing so. By rising awareness of specialist support services, firms can demonstrate

[16] Bond N, Evans K and Holkar M. A little help from my friends. Money and Mental Health Policy Institute. 2019.
[17] Murray N. Strength in numbers. Money and Mental Health Policy Institute. 2016.
[18] For further details see policy recommendations in Bond N, Evans K and Holkar M. A little help from my friends. Money and Mental Health Policy Institute. 2019.

their dedication to vulnerable consumers and increase customers' incentives to ask for help.

Recording customer needs

Systems that record customer needs are crucial to reduce the need for repeated disclosures, and to enable firms to provide consistent support across a range of interactions with a customer. We are concerned that firms are increasingly unclear of how they should be recording data about vulnerabilities under GDPR, and that this may be leading to inconsistencies in the treatment of vulnerable customers. The FCA, together with the ICO, should issue further Guidance on this issue to ensure firms are aware of best practice and regulatory expectations.

It is also important to remember that recording a need is not the same as meeting it. The draft Guidance should be clear that recording vulnerability without taking steps to address or manage any potential detriment is not sufficient. The Guidance should go further to encourage firms to build tools or offer other adjustments that address particular customer needs, so that frontline staff can offer practical support when a customer discloses vulnerability, or one is suspected.

For customers with mental health problems, common symptoms such as increased impulsivity, reduced attention span and memory problems can have a profound effect on their financial capability and behaviour. Firms can help meet these needs by developing tools and settings to help with money management, such as proactive budgeting nudges and control settings that customers can enable when well, to protect themselves from harm when they are unwell and less able to engage in financial management or to control their spending.

Communications

Channel choice

We are delighted that the draft Guidance clearly advocates that firms should offer customers a range of communication channels. Three quarters (75%) of customers with mental health problems have serious difficulties engaging with at least one commonly used communication channel, such as the telephone, email or letters.[19] Restricted channel choice can seriously undermine consumers' ability to use their financial products and services, and to deal with problems or ask for help if something goes wrong.

The approach the FCA set out in point 100 is likely to be particularly effective for customers with mental health problems. By offering all customers a range of communication channels, firms can

[19] Holkar M, Evans K and Langston K. Access essentials. Money and Mental Health Policy Institute. 2018.

ensure that vulnerable customers have an alternative choice when they are struggling with a certain channel, without having to disclose any information about their difficulties. This is a good example of universal design - a way that firms can meet particular needs of vulnerable customers, while also improving their service for other customers who value choice.

Accessible information

We are pleased to see the FCA offering firms clear guidance that firms should consider the accessibility of their communications to customers, and that this is not a case of creating separate versions for customers who have disclosed vulnerabilities, but fundamentally considering all communications through this lens. We would urge the FCA to amplify this message in the final Guidance to ensure that customers with undisclosed or undiagnosed vulnerabilities are not placed at additional risk of detriment due to misunderstandings of products and services.

In addition to the content of communications, the FCA should add detail to the Guidance to ensure firms take steps to help vulnerable customers find relevant information. Firms often have vast collections of support resources and provide customers with information across multiple channels. However, some people with mental health problems report feeling unable to find what they're looking for, sometimes experiencing "information overload" and being overwhelmed. These difficulties can be particularly acute when people are unwell and experiencing symptoms like reduced concentration span or low motivation, and can be exacerbated when firms include too much content onto a letter or a page.

Even when finding the right information isn't an issue, access barriers can remain. Symptoms of mental health problems often affect our information processing abilities, which can make it more difficult to understand information, particularly if it uses jargon or contains lots of details that aren't presented in a meaningful way. Firms' terms and conditions and insurance policy documents are often highlighted as particularly difficult to understand. The FCA should make clear to firms that failing to provide information in a way which customers can easily understand is a breach of Principle 7. The bar for supervision of this principle must be a reasonable; not the reading expectations of an FCA employee, but those of a busy consumer, with average literacy levels and other things going in their life, including potential vulnerabilities.

Minimising psychological harm

In addition to the risk of harm caused when customers are unable to communicate with firms and manage products appropriately as a result, we would urge the FCA to explicitly consider the psychological harm caused by inappropriate communications, and challenge firms to improve practice. While there is rarely one single factor that drives people to take their own life, there is a strong statistical link between financial difficulty and suicide. People in problem debt are three times as likely to have thought about suicide in the past year, and even after controlling for other factors like age, gender, employment and experience of traumatic events, they have approximately 1.8 times the odds of thinking about suicide in the last year.[20]

Our analysis suggests that aggressive or insensitive behaviour by creditors, and particularly the way that they communicate with customers in problem debt, can contribute to suicide risk. When communications from firms makes customers feel hopeless and trapped, this can drive suicidal ideation. However, good practice can directly challenge these feelings, offering hope and reducing the risk of suicide.

The FCA should encourage firms to minimise the psychological harm caused by their collections processes, by providing further Guidance on:

- **Tone and content of communications** - stark warnings and excessive detail can be overwhelming and cause customers to disengage, but through careful design firms can create communications with prominent offers of support, that encourage help-seeking.
- **Volume of contact** - firms should recognise that the debt they are collecting may be one of many for the customer. What seems a reasonable level of contact in isolation may quickly become overwhelming for a person with multiple problem debts.

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

We welcome that the FCA has set out which regulatory principles, and other requirements, each section of guidance is likely to be relevant for, and explained why. Firms have asked for clearer guidance about how their regulatory duties apply with respect to vulnerable consumers, and this approach should provide additional clarity.

To make the guidance even more useful for firms, the FCA could suggest how the guidance might relate to regulatory principles at a more granular level. For instance, as in point 73, setting out where a specific sub-section of the guidance may be particularly relevant to a regulatory principle. Clearly, this would not be a substitute for firms interpreting their regulatory duties, but it would be useful guidance that could help firms to understand how and why different parts of the guidance are important.

We are pleased to see the FCA including Guidance on how firms should monitor and evaluate their activities to understand the needs of vulnerable customers, ensure that staff have the skills and capabilities needed, and translate this understanding into practical action. We believe further articulation of good outcomes by the FCA would help achieve consistency in the extent to which

[20] Bond N and Holkar M. A Silent Killer. Money and Mental Health Policy Institute. 2018.

firms monitor the effectiveness of their work to protect vulnerable consumers, and make it easier to hold firms to account when they do not take appropriate steps to improve practice.

Question 9: Do you have any views on the extent to which the Guidance will enable firms to comply with their obligations under the Principles and achieve better outcomes for vulnerable consumers?

We welcome the draft Guidance and believe it could help firms to comply with their existing regulatory obligations. However we have significant concerns about whether the Guidance carries sufficient weight and is sufficiently specific to encourage the worst firms to substantially improve practice, which is essential if the FCA are to achieve their aim of consistently improving the outcomes achieved by vulnerable consumers. While the FCA argue that the Guidance does not provide any additional regulatory requirements, the FCA's own decision to issue the Guidance and conduct cost-benefit analysis around its implementation suggests that the FCA are aware these regulatory requirements are not being consistently met. Without adequate enforcement, we worry that this Guidance will not achieve the improvements needed. In the final Guidance, we would ask the FCA to be more specific about the fact that this Guidance is introduced because firms are not consistently meeting existing regulatory requirements, and to take steps to enforce these rules where they are not being followed.

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

This Guidance should not incur any additional costs to firms, as it does not add any additional regulatory burdens. If anything the Guidance should cut costs to firms, by clarifying regulatory expectations and making it easier for firms to understand their existing responsibilities, cutting compliance costs. We are unclear about why the FCA feel the need to conduct cost-benefit analysis, and fear this may make firms believe that costs are an excuse not to comply with existing regulations, rather than a cost of doing business in highly regulated markets.

If a firm feels that they need to incur costs to meet their regulatory duties, after reading the Guidance, this should not be characterised as an additional cost created by the Guidance. Rather, this should be seen as the cost of the firm adapting to non-compliance with existing regulations. If the FCA does believe that the costs of complying with this Guidance are unsustainable for firms, this is a damning indictment on the FCA's own rules and the degree to which these have been enforced over time.

Where a firm is not complying with their regulatory duties around vulnerability, this is likely to be imposing costs on vulnerable consumers, and may be causing financial and psychological detriment. If the FCA does choose to include the cost of firms rectifying non-compliance in its cost-benefit analysis, it should balance these costs against the costs to vulnerable consumers of historic and continued non-compliance. In particular, this should include a valuation of consumer time, in the way that firm time is included by default.

In addition, many of the suggestions made by the FCA in the draft Guidance are also requirements under the Equality Act 2010. Again, firms should already be doing more to ensure compliance with this law. It is not clear how the FCA would determine which costs are 'additional' given the overlap between the Guidance, existing regulatory obligations and firm's existing duties under the Equality Act.

Compliance is a significant cost for many financial services firms. In order to comply with high-level regulatory principles, firms need to interpret how they apply in the specific context that they are operating in. By clarifying its expectations, and providing detailed guidance on different ways that firms can meet the needs of vulnerable customers, the FCA should drastically cut the cost of firms complying with vulnerability regulation. Firms will still need to interpret their regulatory duties, but detailed guidance should make this far simpler. We believe the cost-benefit analysis could be put to good use to demonstrate the business case for further investment in supporting vulnerable customers, but as currently set out, we do not believe the evidence compiled will achieve this goal as the benefits of improvement are likely to be widely distributed and difficult to measure.

Question 11: Do you have any examples of activities or processes that are in place, or could be established, to ensure the fair treatment of vulnerable consumers?

Money and Mental Health has developed extensive guidance for financial services firms on practices which could help firms to better meet the needs of customers experiencing mental health problems. As examples, we would encourage the FCA to review our report *Access Essentials* and our best practice hub. Further ideas are also provided in our Mental Health Accessible Standards. While the full detail is not currently publicly available, we would be delighted to talk the FCA through these Standards in greater detail.

Question 13: Do you have any comments on the role of the Guidance in holding firms to account about how they comply with their obligations under the Principles in treating vulnerable customers fairly?

Clarifying and bringing together firms' obligations under the FCA's Principles and Handbook in the Guidance should help firms to understand what they are expected to do to treat vulnerable customers fairly. However without greater clarity on the steps firms must take and the outcomes that customers should expect, we remain concerned that this will not succeed in improving practice at the bottom of the market. In particular, we remain concerned that the continuous use of 'should' (rather than 'must') through this document, and emphasis that the Guidance offers only a range of ways in which firms could meet their regulatory obligations, could leave some firms with the impression that improving practice is optional, not essential.

Given this lack of clarity, we would like to see further information from the FCA about how this Guidance will be supervised and enforced. It may be that further work to identify existing Handbook content and Principles which relate to this Guidance, and consolidating this material, provides some insight on this matter. In any case, we would ask the FCA to be more explicit in the final Guidance about the consequences for firms if they do not take steps to ensure that the outcomes that vulnerable customers achieve are at least as good as those obtained by customers who are not vulnerable.

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

We are pleased to see the FCA committing to monitoring the effectiveness of the Guidance. This will help us understand if further action is needed. However to do this, we believe the FCA will need greater clarity on the outcomes it expects to see, and measure, from firms who are treating vulnerable customers fairly.

We would also welcome greater clarity from the FCA on what steps they will take if this monitoring indicates that the Guidance is ineffective in driving the desired change in firm behaviour. The draft Guidance does not provide adequate information about how this Guidance will be supervised or enforced, and without this we fear firms will continue to take these obligations, which the Guidance notes are not new but rather derive from existing Handbook rules and the Principles, as optional extras.

Question 15 - Do you have any comments on the potential additional policy options?

We believe that the FCA's proposal to set out in one document all the relevant existing requirements in the Handbook that impose obligations on firms in respect of how they treat vulnerable customers would be helpful. This would collate all of a firm's obligations together in one place, with the regulatory detail necessary to confirm for firms that improving practice towards customers in vulnerable circumstances is a matter of compliance risk and accordingly should be prioritised.

Question 16- Should we consider any further additional policy options?

In addition to the policy options set out in the draft Guidance, we would urge the FCA to embed requirements around the fair treatment of vulnerable customers explicitly within the Senior Managers and Certification Regime. We understand that the accountability this programme creates within firms can play an important role in raising the profile of regulatory issues which may otherwise be neglected. We would expect every firm to have a Senior Manager who is explicitly responsible for the outcomes of customers in vulnerable circumstances, and held to account on acting with due skill, care and diligence in supporting these customers.

We believe the FCA's aim of ensuring that customers in vulnerable circumstances experience outcomes 'at least as good' as those of other customers is also a powerful principle, which may, if formalised, offer an alternative to a legal Duty of Care. We would be keen to see the FCA explore this in further depth in the coming months.

Question 17 - Do you agree that proposing to issue guidance is the most effective means of achieving our aim at this stage?

We believe that Guidance can achieve the FCA's aims of improving outcomes for vulnerable consumers and driving greater consistency of outcomes across the market if:

1) Greater clarity about the expectations on firms is provided, including through clearer explanation of how the Guidance relates to existing Handbook rules and the Principles
2) Due consideration is given to how the Guidance will be used in supervision and enforcement
3) Duties towards vulnerable customers are embedded within the Senior Managers and Certification Regime.