Money and Mental Health response to the FCA's consultation on 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We are pleased to see the progress of the FCA's draft guidance for firms on the fair treatment of vulnerable consumers, and to provide additional feedback. In this document, we respond to questions 1, 2, 3, 4 and 5.

Background

- In any given year, one in four people will experience a mental health problem,[1] and over a lifetime this rises to nearly half the population[2]. 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.[3]
- People with mental health problems are more likely to be living on low incomes or in insecure work,[4] and can experience a range of difficulties accessing the benefits system, which can make it harder to claim entitlements[5].
- 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.[6] As a result, it is estimated that people with mental health problems pay up to £1,550 more per year for essential services than people without mental health problems.[7]

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[1] McManus S et al. Adult psychiatric morbidity in England, 2007. Results of a household survey. NHS Information Centre for Health and Social Care. 2009.
[2] Mental Health Foundation. Fundamental facts about mental health. 2016.
[3] McManus S et al. Mental health and wellbeing in England: Adult Psychiatric Morbidity Survey 2014. NHS Digital. 2016.
[4] The Mental Health Taskforce. The Five Year Forward View for Mental Health. 2016; Braverman R, Bond N and Evans K. The benefits assault course. Money and Mental Health Policy Institute. 2019; Bond N and Braverman R. Too ill to work, too broke not to. Money and Mental Health Policy Institute. 2018.
[5] Bond N, Braverman R and Evans K. The benefits assault course. Money and Mental Health Policy Institute. 2019.
[6] Holkar M. Seeing through the fog. Money and Mental Health Policy Institute. 2017.
[7] Rogers C, Poll H and Isaksen M. The mental health premium. Citizens Advice. 2019.

- People with mental health problems are three and a half times more likely to be in problem debt as those without, and half (46%) of adults in problem debt also have a mental health problem.[8]
- 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.[9]

Question 1: Do you have any comments on our assessment of equality and diversity considerations of our proposed Guidance?

Money and Mental Health are pleased that Chapter 1 of the Guidance highlights the Equality Act and the obligations it places upon firms with regard to vulnerable consumers. The Equality Act is a key consumer protection measure that applies to many vulnerable consumers. We are concerned, however, that awareness and understanding of these obligations remains low among financial services providers. To help firms understand and comply with their Equality Act obligations, we recommend that the FCA works with the Equalities and Human Rights Commission to produce practical guidance on the steps firms must take. We also recommend that the FCA proactively highlights Equality Act compliance as part of its supervisory work, and supports firms to understand what is expected of them.

Question 2: Do you have any feedback on the updated draft Guidance?

We are delighted that the updated Guidance has addressed many of the concerns we raised in our response to GC19/3. Across the Guidance, restructuring of the chapters, new case studies and further explanation of central concepts have combined to clarify the issues under discussion and should mean firms better understand their responsibilities and the actions they should take.

Below, we consider the five chapters of the Guidance, drawing attention to the changes that we feel are particularly important, as well as topics that we feel require further attention before the Guidance is finalised.

1. Introduction

We welcome the changes to the structure of the first chapter of the Guidance, which have made the FCA's expectations of firms considerably clearer. The added emphasis on the definition of key terms in paragraph 1.31 should make it easier for firms to navigate this content and respond accordingly. Similarly, the summaries of actions firms "should" take in relation to each chapter of the Guidance adds clarity and should leave firms in no doubt about what is expected of them.

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[8] Holkar M. Debt and mental health: a statistical update. Money and Mental Health Policy Institute. 2019.

[9] Bond N and Holkar M. A silent killer: Breaking the link between financial difficulty and suicide. Money and Mental Health Policy Institute. 2018.

We also welcome the FCA's decision to move away from a distinction between actual and potential vulnerability, which risked confusing firms. We feel that the approach to vulnerability in the updated text is much clearer, setting out the consumer outcomes that firms should strive to achieve and emphasising the role firms should play in mitigating harm for vulnerable consumers.

While the Guidance is now easier to understand, its application by firms remains the key issue. The FCA has stated that it wants this Guidance to lead to improvements in how vulnerable consumers are treated by financial service providers and for vulnerable consumers to experience outcomes that are at least as good as those of other consumers. We understand the FCA's decision to use a principles-based approach to achieve that, allowing firms flexibility rather than requiring them to implement any specific action from the Guidance.

But in order to marry these twin aims of improvements for vulnerable consumers and flexibility for firms, we feel that effective supervision and enforcement are essential. The updated Guidance lacks sufficient detail on how the FCA will supervise and enforce compliance in this important area. We recommend that FCA supervision and enforcement work focuses on the six consumer outcomes that firms should strive for, as outlined under Principle 6. This would be consistent with the FCA's principles-based approach while enabling the FCA to monitor the impact of steps taken by individual firms and assessing the extent to which this Guidance achieves its goal.

2. Understanding the needs of vulnerable consumers

We welcome the distinction the updated Guidance makes between recognising vulnerability in individual consumers versus a firm's target market and customer base. While both crucial and complementary exercises, the ways in which vulnerability is recognised and responded to in these contexts will in practice be very different. As we note below, the revisions to Chapters 3 and 4 help to clarify this distinction and make clearer firms' responsibilities.

We are pleased to see the emphasis on the nature, scale and impact of vulnerability in the updated Guidance. We feel the focus on impact should assist firms in understanding how they can prevent harms from occurring at all, rather than treating them as inevitable (as the helpful case studies illustrate). Directing firms' attention to their role in shaping outcomes and preventing harms - rather than dwelling primarily on the prevalence of vulnerabilities among their customer base - is key to delivering fair outcomes for vulnerable consumers.

3. Skills and capability of staff

We welcome the updated Guidance's focus on the role that staff throughout a firm can play in improving outcomes for vulnerable customers. The broad definition of "relevant" staff helpfully underlines that it is not only front-line staff who affect the experiences and outcomes of vulnerable customers. The enhanced references to leadership and the role a firm's culture can play is also particularly welcome.

On encouraging disclosure, it is welcome that the updated Guidance recommends that staff be actively aware of potential vulnerabilities and respond with appropriate support. We feel, however, that the Guidance could go further in helping firms to understand that disclosure should not be the only or even the main way in which it recognises or responds to vulnerability among its customers. In particular, we feel this chapter of the Guidance would benefit from a greater emphasis on the prevalence of vulnerabilities and how products and services meet the needs of vulnerable customers, rather than relying on reactive responses to disclosure.

The prevalence of vulnerabilities

While Chapter 1 acknowledges that nearly half of the population have at one least characteristic that may make them vulnerable, reemphasising the prevalence of vulnerabilities again in this chapter would help to underline that all front-line financial services staff will encounter customers who are vulnerable in some way, whether or not it is apparent. This knowledge should inform both the emphasis placed on the issue by firms and staff but also help to remove the stigma that certain vulnerabilities, including mental health problems, can still attract.

How products and services meet the needs of vulnerable customers

The prevalence of vulnerabilities and the fact that many customers will not or cannot disclose means that only tailoring behaviour or offering support when vulnerabilities are obvious risks failing to meet the needs of many consumers. Pre-empting relevant risks that consumers may not be able to disclose will help prepare both front-line staff and others across the firm, including design staff. Drawing attention to the importance of standard practices and processes being mindful of the needs of vulnerable customers in this section would also help to avoid creating the impression that when a customer does not wish to discuss specific vulnerabilities that this represents the end of the action that staff should take or the responsibility on firms.

4. Taking practical action

We welcome the FCA's continued commitment to encouraging firms to adopt an inclusive design approach when developing products and services. This will be of substantial benefit to the many people experiencing mental health problems which affect their financial circumstances and capability, but which they are unable or unwilling to disclose to financial services providers.

Recognise harm can be caused by a lack of flexibility, as well as in initial product choices

We agree with the stance set out in 4.4. When firms design products and services that don't take the needs of vulnerable consumers into account, there is a risk that vulnerable consumers can suffer harm as their needs may not be met from the start. However, we would urge the FCA to encourage firms to consider how consumers' needs and their risk of harm can change over time. Reinforcing the importance of flexibility, both in product design and customer service, in reducing the risk of harm should a customer become vulnerable after a purchase has been completed is also key. This is captured well in the subsequent detail from 4.9 onwards, but could be clearer upfront in this section.

Give greater visibility to vulnerability in sales processes
We are pleased to see the FCA explicitly acknowledge the need to consider vulnerability in sales processes in 4.11 and 4.12, and refer to this risk in 4.30. However, we believe vulnerability around sales should be given greater prominence throughout the guidance.

Money and Mental Health evidence suggests that during credit sales processes, people experiencing mental health problems are at particular risk of taking out products that do not meet their needs. In a survey of 5,500 people with mental health problems, we found that 59% had taken out a loan where they wouldn't otherwise have done so during a period of poor mental health, and 48% were unable to weigh-up the advantages or disadvantages of the loan.[10]

Unless they have reason to suspect otherwise, lenders must assume that a customer has mental capacity. At present, though, we believe that the steps taken to understand customer behaviour and identify potential signs of vulnerability in online credit sales environments are insufficient. We ask the FCA to include additional case studies or detail in this section of the guidance to clarify that firms should take care to offer appropriate support to consumers in these environments. This should include encouraging firms to offer additional support to consumers in online credit sales journeys where data indicates that the consumer is hesitating or making repeated errors in form-filling.

Products sold through intermediaries in distributed chains
We are pleased that the FCA has clarified that where products are sold through intermediaries in distributed chains, all firms must ensure consumers are treated fairly.

Spotting vulnerability
We are pleased that the Guidance specifies that firms should be able to spot signs of vulnerability. We are concerned, however, that page 28 of the updated Guidance suggests that this is not the case: "the Guidance does not place obligations on firms to proactively identify individual vulnerable consumers through staff interactions or the use of data analytics". This apparent contradiction may cause confusion among firms, and lead to an inappropriate reliance on consumer disclosure, which would lead to an under-identification of customers who would benefit from additional support. We

[10] Mackenzie P and Holkar M. Money on your Mind. Money and Mental Health Policy Institute. 2016.

recommend that the FCA add further detail in this section to specify that this includes during routine digital interactions, including sales channels.

Money and Mental Health research suggests that a majority of customers (68%) think it would be useful for financial service providers to help spot financial problems as they develop and offer proactive support when things go wrong (66%).[11] While there are concerns about the privacy, practical and emotional implications of firms using data to identify potential signs of vulnerability, this approach could offer a valuable opportunity to offer timely support to vulnerable customers. We would ask that the guidance is clear that firms should consider a wide range of prompts, including those visible in data, to identify vulnerabilities, rather than relying excessively or exclusively on disclosure. This is particularly important with regards to the sales processes discussed above, to ensure firms are meeting the requirements of CONC in online lending environments.

We feel that 4.39, referring to customers "concealing" information is inappropriate and should be removed. While some customers may choose not to disclose information to their financial services providers, this may be for a wide range of reasons including psychological distress or trauma, or because they are unaware of their vulnerability. This sentence could be seen as undermining much of the other good practice the FCA encourages elsewhere in the guidance, including inclusive design and proactive support.

Third party support

We are concerned that the FCA appears to continue to misunderstand the Mental Capacity Act and cases where third party support may be appropriate. For example on p26 the FCA refers to cases where customers "need someone to make decisions for them", and paragraph 4.51 of the updated Guidance states that "some vulnerable consumers rely on others to make some decisions on their behalf". Mental capacity is not binary, and the Mental Capacity Act makes clear that a person should not be treated as unable to make a decision unless all practicable steps have been taken to encourage and support them to do so. It is critical that the FCA provides leadership to firms in this complex area by demonstrating its own understanding of the concept of mental capacity, and not simply referring to substitute decision-making as the default. Instead, the FCA should use language around supported decision-making, and refer to third party access as supporting this process, in line with the Mental Capacity Act.

Specialist support

Our response to GC19/3 noted that while it is welcome that firms are encouraged to engage with relevant charities, there is a risk that this places an undue expectation or burden upon charities.

[11] Alpin K and Holkar M. Data protecting: Using financial data to support customers. Money and Mental Health Policy Institute. 2019.

We therefore welcome the additional information provided in the case study on 3.8 on the paid-for training offered by the charity.

Systems to record customers needs

We are pleased to see the inclusion in 4.61 of the Guidance that firms should "have systems and processes that allow customer service staff to record and access information that will be required in future to respond to vulnerable customers' needs." People with mental health problems frequently tell us that having to repeat information is distressing. However, we would ask the FCA to provide further clarity to firms in this area that recording diagnoses or information about the nature of a person's vulnerability is unlikely to be sufficient. While this may already be inferred from the focus on the consumers' needs in the guidance, making this explicit would help encourage firms relying on inappropriate diagnosis-driven flag systems to focus on ensuring customers receive the support that they need with the specific challenges they face, accepting that different people may experience the same condition in very different ways.

5. Monitoring and Evaluation

We welcome the additional detail that the FCA has provided on types of management information that firms may wish to collect. Good use of management information is key to understanding outcomes for vulnerable consumers and ensuring that they are fair.

The FCA could improve Chapter 5 of the Guidance by being more explicit about the consumer outcomes it expects firms to monitor and evaluate. Earlier in the guidance, the FCA sets out the six consumer outcomes it expects firms to strive for, under Principle 6, but these outcomes are not mentioned in Chapter 5. The FCA should be clear that for all firms, monitoring and evaluation should include some analysis of these key consumer outcomes, but that firms may take different approaches or collect different types of data in doing so.

Question 3: Do you have any feedback on our cost benefit analysis?

As highlighted in our response to GC19/3, we believe that there is a logical contradiction in the FCA stating that this Guidance does not add any additional regulatory burden to firms but still imposes additional costs. 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 understand that the benefits to consumers the FCA hopes to achieve are harder to reliably quantify than the estimated cost to firms of implementing improvements. However, we are concerned that this contrast could give the impression that any benefits are abstract or uncertain, and discourage firms from investing in improvements. To counteract this risk, the FCA should clearly frame the costs in the CBA as the cost of reducing current harm for vulnerable consumers. The FCA should also strengthen the section on "the description of harm" in the CBA, as this is not a complete or compelling description of the harm that vulnerable consumers currently face in financial services markets. The FCA should highlight the psychological harm that poor treatment of vulnerable consumers can cause.

We also feel that the range of required savings in paragraph 51 of the CBA, while illustrative, is inaccurate and could be confusing. As noted in paragraph 53, the 5% figure from the University of Bristol study captures only one key indicator of vulnerability as perceived by staff in a particular setting, rather than an estimate of the prevalence of consumer vulnerability. It is also unclear why in paragraph 50 the FCA has chosen an estimate of 20% to estimate the lower bound of the required savings range. As repeatedly stated in the Guidance, Financial Lives 2020 found that 46% of adults display one or more characteristics of vulnerability. All of these consumers could benefit if treatment of vulnerable consumers improves, so the FCA should use its 46% estimate to calculate a break-even figure. The potential benefits of improving treatment of vulnerable consumers are huge and the FCA should not downplay this.

Question 4: Do you have any feedback on what we should prioritise when monitoring firms' treatment of vulnerable consumers?

We welcome the FCA's recognition of the lack of clarity in GC19/3 on how firms' response to this Guidance will be monitored and enforced, and recognise that the FCA has made some progress in this draft towards clarifying these issues. We welcome the clarification that senior managers can expect to be asked about the actions they have taken, as set out in paragraph 1.35 of GC20/3.

To help firms track the actions they are taking to meet this guidance, and the FCA to evaluate progress, we suggest that firms should be encouraged to undertake gap analysis against this guidance, and set out a plan for improvements. This approach would best allow firms to meet the vision of iteration and continuous development and learning set out by the FCA in Figure 3, and would ensure the Guidance drives ongoing improvement as our understanding of the challenges faced by vulnerable consumers deepens.

In particular, we would suggest the FCA should prioritise scrutinising firm's actions around:

- Product design. There is a risk that firms will delay taking action in this vital area and focus purely on new product offerings, leaving customers who are using products which are no longer on sale (which may be because they are vulnerable and less likely to switch) more exposed to harm. The FCA should ensure its supervision assesses where firms have made changes to both front and back book products to improve the flexibility and service offered to vulnerable customers.

- Levels of disclosure, to assess whether firms' actions are succeeding in supporting customers to make their needs known. If levels of disclosure do not rise, this may suggest a policy-practice gap or other cultural challenges at the firm.

Question 5: What types of information do you envisage it would be necessary for firms to collect, to assess the effectiveness of their policies and processes in respect of vulnerable consumers?

In order to adequately assess the effectiveness of firms' policies and processes, quality information gathered repeatedly will be crucial. While data will be more readily available and valuable in some sectors than others, we would recommend that all firms collect, monitor and act upon information on complaints and disclosures.

Complaints

While firms are likely to already be monitoring the complaints they receive, viewing complaints through a vulnerability lens provides an opportunity to understand how well their products and services meet the needs of vulnerable customers. Though analysing complaints data should not represent the full extent of a firm's information collection on vulnerability and harm, particularly as it is likely to reflect a small and potentially unrepresentative portion of customers, it can still provide insights into current practice and room for improvement. Firms' complaints process should allow them to understand:

- The proportion of complaints in which customers explicitly mention vulnerabilities
- Whether negative outcomes and harms raised are linked to vulnerabilities
- Issues commonly raised in complaints which vulnerable customers may be more exposed to, for instance problems with unclear terms and conditions or accessing support.

Data on these experiences should help firms to analyse whether proactive steps taken are proving successful in preventing harms, as well as identifying where further change or action is needed.

Disclosure

Disclosure should not be viewed by firms as the sole method of identifying vulnerable customers, or of understanding their experiences in using a firm's products or services. That said, the disclosure of vulnerabilities provides an important opportunity to firms. There are a number of potential uses of this, including to help understand how likely it is that groups are under-identified, relative to national or market data. This can be used to reflect on how well firms' efforts to encourage disclosure are working, the routes through which it was received and the customers that current efforts are likely to be missing. Similarly to complaints, cross-checking this information with the level of negative outcomes should be key to a firm in designing products generally, as well as specific interventions designed to improve outcomes for vulnerable customers.

Alongside complaints and disclosures, firms should also be proactive in seeking the views of vulnerable customers. This could include surveys of customers, comparing the satisfaction of customers with known vulnerabilities to that of customers without. Where proportionate, user testing of new and existing products can be an invaluable tool in understanding where a product or service is at risk of failing to meet the needs of vulnerable customers or actively causing harm.