

Money and Mental Health's submission to the FCA's consultation on a new Consumer Duty CP21/36

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 thousands of people with personal experience of mental health problems. This written submission has been informed by the experiences of our Research Community, as well as our wider body of research.

Q1: Do you have any comments on the proposed scope of the Consumer Duty?

We support the proposed scope of the Consumer Duty. Regarding prospective customers, the examples provided in paragraph 2.5 of Appendix 2 are helpful, but the FCA could consider expanding upon these. This seems an area in which firms may reach differing definitions of who constitutes a prospective customer and in which situations. We would favour a broad understanding of this, recognising that harm can be caused, particularly to vulnerable customers, even through what firms might consider brief encounters with staff members or through engaging with information on a firm's website or in advertising.

Prospective customers are a group who firms should seek to understand better, as there may be important differences between them and their current customers. Carrying out research that stretches beyond their existing customer base and data, drawing upon the insights of consumer groups where relevant, would help firms to avoid causing harm in this way.

Q6: Do you agree with our proposal to disapply Principles 6 & 7 where the Consumer Duty applies?

Q7: Do you agree with our proposal to retain Handbook and non-Handbook material related to Principles 6 and 7 should remain relevant to firms considering their obligations under the Consumer Duty?

Yes, we agree with the proposed approach. Given the importance of the vulnerability guidance and the extensive consultation the FCA undertook in preparing it, messaging around this change should specifically emphasise its continued relevance. Of particular importance is the point made in paragraph 6.20, that vulnerability should be embedded in every part of the consumer journey.

That said, there remains a risk that retaining the information but without it being linked directly to an applied Principle is confusing for firms, or is overlooked by them. When the FCA comes to



review the effectiveness of the Consumer Duty, this should be a key consideration. One small step the FCA could take now, however, is to update the landing page and introduction to the vulnerability guidance, so firms can easily understand its continuing importance and how it relates to the Consumer Duty.

Q8: Do you have any comments on our proposed cross-cutting rules and the related draft rules and non-Handbook guidance?

The decision to remove “all reasonable steps” is understandable, and in the wider context of the Consumer Duty shouldn’t weaken its impact. Similarly, embedding consideration of vulnerable customers throughout their journey will hopefully lead to a more thorough approach to supporting such customers than a standalone rule. That said, when reviewing the Consumer Duty’s impact, whether such a step is needed should remain a potential option if it appears that vulnerable customers are not benefiting as expected.

We feel that the FCA could emphasise to firms that harm which is unforeseeable for some customers may be far more predictable for those with certain vulnerabilities. For instance, common symptoms of mental health problems include difficulty with memory, concentration and communication. Given the large proportion of the population who experience mental health problems, it is foreseeable that harm will be done if firms expect customers to remember key information provided only once, to pick out important details in long letters or to get in contact via a sole communication channel. Spelling this out clearly for firms would help to strengthen this protection.

Q9: Do you have any comments on our proposed requirements under the products and services outcome and the related draft rules and non-Handbook guidance?

We welcome the commitment in paragraph 7.9 to monitor the outcomes experienced by customers in vulnerable circumstances. While the sorts of analyses the FCA will consider in its monitoring and enforcement are outlined elsewhere, it would be helpful to be clear with firms what being “disadvantaged” would mean. As noted, vulnerable consumers are by definition at greater risk of experiencing harm. If vulnerable customers of a given firm fare a little better than vulnerable customers more generally, but still far worse than other consumers, would this be a firm that the FCA considers to be underperforming or praiseworthy? If a firm makes its complaints process more accessible to customers with mental health problems, leading to more complaints being logged but potentially no change in actual customer outcomes, how would this be treated? Underlining again the aim of the vulnerability guidance and firms’ requirements under the Equality Act would be helpful in ensuring this drives genuine and positive change for consumers in those circumstances, rather than unproductive debates about what is a good or bad result on a metric.

Q10: Do you have any comments on our proposed requirements under the price and value outcome and the related draft rules and non-Handbook guidance?



Paragraph 8.7 makes reference to firms' responsibilities under the Equality Act. The FCA could emphasise that indirect discrimination is an important part of the protections under that legislation, requiring firms to look at the customers of different products and the price they pay, rather than, for instance, more direct discrimination such as people being turned down for products due to having a mental health problem.

Paragraph 8.17 states that manufacturers must consider any characteristics of vulnerability in the target market. Focusing on the key question of "vulnerable to what?" should lead to better outcomes for consumers, with firms avoiding analysis that is divorced from the specific risks that people may encounter. For instance, customers with mental health problems may be at greater risk of impulsive spending or struggling to concentrate, which would mean they are at greater risk from products that lack the ability to place suitable limits on spending or that present vital information in long documents.

Q11: Do you have any comments on our proposed requirements under the consumer understanding outcome and the related draft rules and non-Handbook Guidance?

The change to consumer understanding strikes us a sensible shift, with the focus on what works for the customer rather than what the firm distributes. Paragraph 9.21, however, mentions that the FCA would "expect firms to ensure that the channel used for communication enables consumers to assess the options available to them and make decisions that are effective, timely and properly informed". A key point here relates to what is understood by "enables". A staff member in a firm who has never experienced a mental health problem may feel that the communications offered are effective because they are written simply. But if these are offered only through one communication channel or without follow-up, this may prevent many customers with mental health problems from being able to properly assess their options and make effective, informed decisions.

Underlining the importance of testing is helpful, but seems undermined by the reference in paragraph 9.38 to being "likely to be understood by the average customer". While much of the other text in the document emphasises the importance of considering the needs of a variety of consumers, particularly those who are vulnerable, the concept of an "average" customer seems to risk that message becoming muddled. This could lead to firms' thinking and testing being judged by a model of an average consumer, who may not have vulnerabilities. Changing "average" to "a range of common consumer types" - or similar language that reflects more fully the diversity of likely consumers that firms will make contact with - may be a helpful prompt to firms to take a broad rather than narrow view of its audience. Alternatively, the FCA could encourage a universal design approach, with firms thinking not of the "average" consumer but of people who may face the greatest challenges in engaging with materials. While this may be a challenge, particularly with more complex products, a starting position of making communications understood by as many people as possible feels more in keeping with the rest of this document than the concept of an average consumer.



Q14: Do you have views on the desirability of the further potential changes outlined in paragraph 11.19?

On the proposed change in paragraph 11.19, further references to diversity and inclusion seem helpful, although from the brief outline the specific aims and intentions of such a change are harder to discern. To ensure that an addition leads to concrete changes from firms, rather than more tokenistic gestures, the FCA should ensure this is accompanied by detailed examples of what it considers to meet these aims. For instance, whether it relates to staff in companies and being able to draw on lived experience of different characteristics, or more effective research and testing of communications, or a broader ambition for inclusion that leans towards financial inclusion.

Q15: Do you agree with our proposal not to attach a private right of action to any aspects of the Consumer Duty at this time?

As we set out in our previous response, we understand the FCA's decision not to push ahead with a private right of action at this time. Nonetheless, being able to hold companies effectively to account can be a powerful tool for change. But with the complexity and expense this can entail, our view is that a sector with a confident, well-resourced regulator effectively monitoring and enforcing sufficiently high standards is the most reliable route to better outcomes for consumers. Private and collective routes to redress, however, should be made easier and more affordable to access. To achieve this, the FCA and the Financial Ombudsman Service should use all of their existing powers to reduce waiting times and make the process accessible for customers with mental health problems. The FCA should also make the case to the government that effective redress is an important part of a healthy financial services market, and that the current weaknesses in the system do damage.

Q16: Do you have any comments on our proposed implementation timetable?

Given the scale of the change the FCA intends to deliver through the Consumer Duty, the proposed timetable and the iterative approach seems sensible. The FCA should nonetheless be clear with firms that change where required should begin immediately, and the lead-up to full implementation will still include active monitoring and proportionate enforcement action where harmful breaches are evident. Doing so will avoid providing an unintentional signal to firms that such behaviour prior to full implementation is acceptable or will not be punished. The FCA could prioritise action on breaches of existing rules and guidance, including that related to vulnerable customers, during this period, rather than focusing on whether firms are meeting their new requirements under the Consumer Duty.

Q17: Do you have any comments on our proposed approach to monitoring the Consumer Duty and the related draft rules and non-Handbook guidance?



We broadly support the proposed approach to monitoring as set out, and the types of information highlighted strike us as useful. Paragraph 14.23 provides a helpful reminder to firms of the importance of collecting information on outcomes for consumers in vulnerable circumstances or those with protected characteristics. While firms should do so, the FCA should remind firms that not all vulnerabilities or protected characteristics will be obvious or recorded. There are a number of steps firms can take to address this, including drawing on research and analysis of national datasets which provide broader information on the kinds of characteristics more common among, for example, people in debt. Particularly relevant for mental health problems is making a concerted and considered effort to increase disclosure, by creating multiple opportunities and pathways through which people can share relevant information, thinking through how design and language can encourage that and reassure people about what will happen to that information.

Paragraph 14.14 states that the FCA would expect a firm's board to regularly consider a report of its compliance with the Consumer Duty. We acknowledge that there may be challenges in requiring firms to publish all of the information that is likely to be contained in such reports. We also recognise that simplifying compliance with the Consumer Duty down to outcomes on a handful of metrics underplays the scale of change the FCA is seeking to deliver. But without regular public publications, analyses and metrics of how firms are performing, and what changes are coming about as a result of the Consumer Duty, it will be difficult for consumer groups and other stakeholders to identify where progress is being made and where more needs to be achieved, or at least where more information is required. As it stands, the balance of risk appears tilted towards a situation in which some firms take the Consumer Duty seriously, and others don't, but beyond enforcement action from the FCA it will be tough to discern which is which. While the FCA wants to drive improvements from firms, consumer awareness of and support for this shift is likely to be harder to achieve without some regularly published information.

Q21: Can you suggest any other examples you consider would be useful to include in the draft non-Handbook guidance?

From Money and Mental Health's perspective, the example below paragraph 8.28 on a customer with mental health issues is helpful. We would also suggest adding examples similar to those we have provided in response to Q8, of when harm may be foreseeable for some customers but not others.

The link to the vulnerability guidance in paragraph 8.27 is likely to draw more firms attention, but given the general feedback on the value of examples, explicitly mentioning that the guidance provides many practical case studies that firms should review may help to increase their interest even more so.