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27 September 2019

AFM Response to FCA Guidance Consultation GC19/3, The fair treatment of vulnerable customers

1. I am writing in response to this consultation paper, on behalf of the Association of Financial Mutuals. The objectives we seek from our response are to:
 - Comment on the issues raised in the consultation.
2. The Association of Financial Mutuals (AFM) represents insurance and healthcare providers that are owned by their customers, or which are established to serve a defined community (on a not for profit basis). Between them, mutual insurers manage the savings, pensions, protection and healthcare needs of over 30 million people in the UK and Ireland, collect annual premium income of £19.6 billion, and employ nearly 30,000 staff¹.
3. The nature of their ownership and the consequently lower prices, higher returns or better service that typically results, make mutuals accessible and attractive to consumers, and have been recognised by Parliament as worthy of continued support and promotion. In particular, FCA and PRA are required to analyse whether new rules impose any significantly different consequences for mutual businesses² and to take account of corporate diversity³.

¹ ICMIF, <https://www.icmif.org/publications/market-insights/market-insights-uk-2016>

² Financial Services Act 2012, section 138 K: <http://www.legislation.gov.uk/ukpga/2012/21/section/24/enacted>

³ <http://www.legislation.gov.uk/ukpga/2016/14/section/20/enacted>

4. We appreciate the opportunity to respond on this issue, and recognise the importance to firms of treating all customers fairly, and to go further to look after the interests of vulnerable customers.
5. The nature of the vulnerabilities FCA explores in this guidance are all relevant to members of AFM- and insurers more broadly- since by the nature of insurance, when a customer contacts a provider at a time after they have purchased a policy, it may be to inform the insurer of a change of circumstances, or to make a claim as a result of an accident, ill-health or loss for which they are insured or consider they may be. Insurers should therefore always be alert to the signs of vulnerability relating to the circumstances to which their customer has contacted to them.
6. We have responded to the specific questions raised in the consultation below, and would welcome the opportunity to discuss further the issues raised by our response.

Yours sincerely,



Martin Shaw
Chief Executive
Association of Financial Mutuals

Responses to the questions raised in the consultation

Q1: Do you have any comments on the aims of the draft Guidance?

The draft Guidance gives a useful overview and detailed issues for firms to consider. We consider that whilst it is helpful to tie the guidance back to the underlying FCA Principles, as the paper concludes the focus should be on instilling and maintaining the right culture that ensures all customers are treated fairly.

Q2: Do you have any comments on the application of the Guidance or its status as non-Handbook guidance?

Q3: Do you have any comments on the distinction between actual and potential vulnerability (Annex 1, Section 1)?

All of the drivers mentioned in the guidance for potential vulnerability are relevant to insurers, particularly as they will almost always be the cause of, or a factor in, the interaction with the customer. Hence, in circumstances where the signs of vulnerability may not be easy to spot, it is appropriate for the staff of insurance companies to be empathetic to the possibility that their customer may be vulnerable.

Another source of concern for insurers should be whether vulnerable customers receive equal access to insurance. For example, even where a pre-existing medical condition may change the terms on which an insurer can provide cover (or whether they do at all), the insurer should be alert to the possibility of seeking an alternative provider. The Access to Insurance Working Group, within which FCA is represented, is seeking to develop a signposting process for protection products which is designed to resolve any current shortcomings in approach.

We agree that the approach of developing non-handbook guidance is relevant, given the differences that applied across sectors and firms. FCA indicates there may be other ways for firms to comply with its rules in relation to this topic and the range of case studies, demonstrating good practice, are very useful in this respect.

Q4: Do you have any comments on our view of what firms should do to understand the needs of vulnerable consumers (Annex 1, Section 2)?

Q5: 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)?

Q6: 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 service and communications (Annex 1, Section 4)?

Q7: Do you have any other comments on the draft Guidance?

We agree that firms should understand the nature and scale of drivers of vulnerability, particularly in their target market, and the impact this might have on customers. In 2017 we sought to support members in this process, by running a range of workshops for customer-facing staff, and developing a draft vulnerable people's policy for them to adapt for their business (copy attached below). Alongside this and workshops we provided, we developed a series of infographics for our members, one of which is attached. We will consider whether and how to revise these alongside FCA's work.

We appreciate that FCA has sought to address data protection requirements, as firms often highlight this as a key issue in dealing effectively with vulnerable customers. A particular issue highlighted by some of our members is in relation to temporary power of attorney, or dealing with representatives of customers when they are suddenly incapacitated and there is no clear legal basis on which the firm can rely in engaging with the representative.

The guidance, for example the illustration used at paragraph 130 and case study 15, indicates a firm can refer to legitimate interests as a means of providing information. In practice we think there might be a difference between registering an issue where consent is not possible, and processing that to pay a claim. Firms will need to develop a clear policy to give staff confidence on how best to deal with customers in these circumstances.

We agree that the skills of staff are vital in ensuring a vulnerable people's policy is executed effectively. As a result, AFM has developed a training portal in conjunction with a major provider of online training, which includes a specific module on 'safeguarding the vulnerable', which we encourage members to build into wider training plans.

Many of our members are working in imaginative ways to help support members with vulnerabilities: whilst for example customer-facing staff might first come into contact with a customer, where that customer has stress or

mental health issues, they will be aware of more specialist support services, including helplines or apps or links with relevant charities. As our members tend to be smaller organisations, they need to consider the proportionality of all options, and weigh this up against the likelihood of staff engaging with customers.

The box at the end of section 4ii offers a useful checklist of the issues firms should be exploring on customer service provided to vulnerable customers. We consider that where FCA (and CMA) have articulated quality of service requirements, for example to banks, consideration should be given to explaining how potentially vulnerable customers can access the right support.

One issue that arises for smaller organisations is having good access to market data, and whilst we agree with FCA's view that 'firms should understand the nature and scale of drivers of vulnerability present in their target market and customer base', the practicalities of tracing published data that is relevant is challenges. More clarity from FCA, or wider access to consumer data would be helpful, to supplement general demographic data: this might include an interactive tool, to provide examples of key indicators regarding the many different vulnerabilities that a firm's key demographic may experience (rather than for each firm to develop this for themselves).

Q8: Do you have any comments on how firms are expected to use and apply the Guidance?

Q9: 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 agree with the expectation that firms should consider for themselves how they apply the guidance. We would expect firms to consider the range of outcomes FCA is seeking to achieve, and explore for themselves to what degree those are relevant to their business, taking account of their product set and customers, and how they can respond in a manner that is proportionate.

In this respect, the factors raised in Figure 10 provide a helpful basis with which to measure any gaps in current practice and what extra action may be necessary. We consider that this information acts as a helpful complement to rather than the principles for business.

The extent to which the guidance enables firms to comply depends on current gaps in capability and the extent of extra work required: for some this might involve staff training and the provision of new support tools, for others compliance may involve procedure-writing or re-vamping customer

communications, whilst in some cases wholesale updates to products or reassessment of customers targeted and of existing books may be necessary.

One of our members commented that the IPID (insurance product information guide) is 'a great addition to the quote and new business packs and is easy to read and visually appealing'. Given that, they are considering how they might engage with charities and other third parties to enhance further the documentation and understand how vulnerable and potentially vulnerable consumers can best use it.

Q10: To inform our cost-benefit analysis, do you have any comments on what costs firms may incur as a result of this Guidance?

As highlighted above, the nature by which firms adapt to the guidance is likely to vary between and within organisations. Quantifying costs will vary enormously depending on the nature of remedial work required, or the degree to which the firm is able and willing to change.

It should be expected that in some circumstances, the scale of work necessary may be prohibitive for some organisations, and therefore the guidance may encourage market exit in some cases. Part of the costs-benefit analysis therefore needs to accept that whilst most outcomes for consumers will be positive, there is a risk in some cases of negative consequences.

We do not see this as a mutual-specific issue and have not quantified impact further. We are aware though that on 23 September a number of our members were approached to take part in a CBA survey which would commence on 30 September. We make the following observations:

- There is an obvious risk in initiating a cost-benefit review for proposals that are still at the consultation stage. Where FCA has raised questions in CG19/3, it is not clear how these might be incorporated into the survey, including of course whether the direction of the proposals remains intact post-consultation.
- Whilst the policy team might stress the survey is 'voluntary', in practice, AFM members, who are generally compliant and minded to support regulatory requests. However that means that at the current time some of our members are preparing responses to three FCA survey requests simultaneously, with a further request from PRA. For a survey to undertake this work thoroughly, they will need to undertake a significant amount of work: in cases such as these, where the outcomes FCA is seeking are difficult to quantify, the results will either be random guesswork, or suffer from spurious accuracy. We consider FCA should review its approach, to co-ordinate survey requests, to ensure a firm

receives no more than one request at a time. We also consider there is a scope to engage with trade bodies, particularly those that represent small organisations, to explore the content of surveys and the possibility of co-ordinated responses.

Q11: 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?

Q12: Do you have any analysis you could share with us of the positive outcomes for vulnerable customers resulting from the implementation of activities or processes in place aimed at achieving better outcomes for vulnerable consumers?

We referred previously to work undertaken by AFM to support members in this area, and would expect that amongst firm-level responses you will receive specific examples of outcomes.

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Q13: 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 consumers fairly?

Where the application of the Guidance is consistent with the clearly defined obligations established under the FCA principles, we consider it is appropriate for FCA to take action where firms fail to respond fairly and sensitively to the needs of all customers, including vulnerable ones, taking into account the appropriateness and proportionality of any actions expected.

Q14: Do you have any comments on our intention to monitor the effectiveness of the Guidance?

We think it is important FCA undertakes this assessment in a flexible and proportionate way. For large organisations, have fully developed processed and procedures may be appropriate, whilst for smaller organisations, the approach may rely on the culture of the organisation and unwritten rules for engagement with customers rather than fixed rules.

Q15: Do you have any comments on the potential additional policy options?

Q16: Should we consider any further additional policy options?

Q17: Do you agree that proposing to issue guidance is the most effective means of achieving our aim at this stage?

Q18: What are your views on whether proposing new rules or guidance at this stage would add to the effectiveness of our intervention? Where possible, please provide supporting evidence for your answer.

The general risk of producing complementary or companion documents is that they failed to be maintained in the same way, or that the editing means important nuances in the original text or missed out or misinterpreted. We have seen examples in the past where this has created unhelpful consequences and would prefer not to see additional policy options pursued at this stage.

Likewise, we see that the production of different summaries of obligations for different sectors risks inconsistency in approach and interpretation. At this, still early, stage in the development of FCA thinking, we consider FCA should strive for a single definition and only consider how that evolves between sectors at a later stage. We also consider firms should be actively considering for themselves what elements to apply and to what degree, and sector specific requirements will dilute that important thought process.

On the whole, we do not, by way of example, consider that the approach is likely to be inherently different in a mutual organisation compared to a non-mutual, though the avoidance of external owners, and the recognition of customers and members, makes it easier to align the organisations behind the best interests of customers.

OUR VULNERABLE PEOPLE'S POLICY

For the purposes of this policy, vulnerable people are customers and prospective customers whose ability or circumstances require us to take extra precautions in the way that we provide our services. We will take all reasonable measures to ensure that the risks of harm to welfare are minimised and that all people are treated fairly.

Recognising a vulnerable consumer

When engaging with customers it is often difficult to recognise a vulnerable consumer because unless it is a face-to-face conversation it will not be possible to see many of the characteristics, such as body language and facial expressions, which may identify whether the customer requires additional information and guidance to enable them to make an informed decision. For this reason, it is critically important to listen carefully to all customers and to identify those who may be classed as vulnerable. Characteristics that may indicate a vulnerable customer include:

- An inability to hear or understand what is being said.
- Repeated questions of a similar nature.
- Comments or answers which are inconsistent with the discussion or which indicate they have not understood the information which has been provided.
- Verbal confirmation that they don't understand or that they require the assistance of somebody else to help them decide.

What to do if we are engaging with a vulnerable consumer

Just because somebody is vulnerable does not automatically mean that they are unsuitable for the products and services that we supply. As soon as we think we may be engaging with a vulnerable customer we should immediately make a record of this, that confirms with data protection rules, and ensure we adhere to this policy.

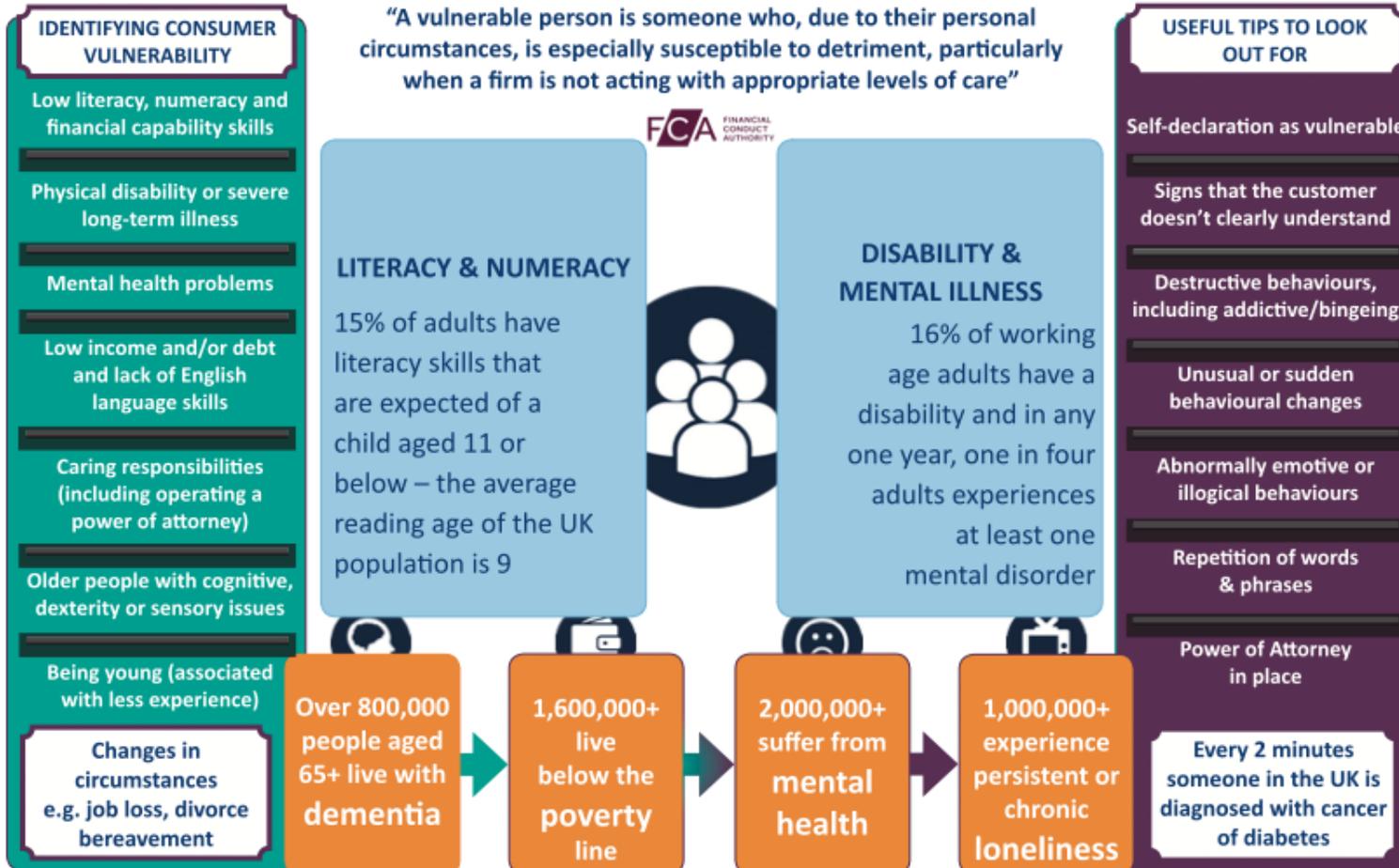
When speaking to a vulnerable customer we will:

- Remain patient and empathetic; do not rush the customer, interrupt or appear impatient.
- Provide additional opportunities for the customer to ask questions about the information we have provided.
- Continuously seek confirmation that they have understood the information provided.
- Refer them to someone with more specialist training if the customer is happy.
- Ask if there is anybody with them who can assist them, and offer them the opportunity to have a family member or friend present during the conversation.
- Offer them the opportunity to complete the transaction after a period of further consideration.

If we think the customer does not understand the service which is being offered to them we will not proceed with the transaction and inform them that we will write to them with further information about the product or services they are seeking.

THE SCALE OF UK VULNERABLE CONSUMERS IS SIGNIFICANT & GROWING...

“A vulnerable person is someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care”



(Source for all figs ONS, Age UK, Family Resources Survey, DMA, NHS)