Consumer Strategy and Policy,
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

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AFM Response to FCA consultation GC20/3 on the fair treatment of vulnerable consumers

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; and
   - Set out some of the ways mutuals are seeking to support vulnerable customers.

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 staff[1].

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 businesses[2] and to take account of corporate diversity[3].

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 important issue, and recognise the thoughtful work FCA has devoted to this issue over many years. We agree with the main thrust of the consultation, and with an approach based on guidance rather than rules. We take the view that as AFM members are customer-owned and/ or community focused, they have an unambiguous commitment to treat all customers fairly: and the guidance and case studies provided in the FCA work will help them to articulate more clearly how they approach the provision of products and services to the more vulnerable.

5. The FCA research demonstrates that even before the pandemic nearly half of people displayed one or more characteristic of vulnerability. This reinforces the need for financial organisations to actively support the varying needs of all consumers. During the pandemic, we have all at times felt vulnerable, and this has emphasised the need for most organisations to push further, to dismantle elements of what they offer to customers to avoid prejudice or the risk of bad outcomes. However, as we explore later, there is a careful balance to be made by any insurer, particularly a mutual, in delivering a long-term strategy centred on serving the best interests of all customers- where in a mutual they are also the owners of the business. It would be wrong to assume all insurers should aspire to serve all elements of society, or to serve all people in the same way.

6. We have attached responses to the specific questions in the consultation, 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 consultation questions

Q1: Do you have any comments on our assessment of equality and diversity considerations of our proposed Guidance?

We recognise the range of potential harms set out in the consultation (as per paragraph 2.12). Our comments on the potential harms that vulnerable consumers may be more likely to experience are:

- On financial exclusion, the analysis that 3 million people with disabilities have been turned down for insurance or charged more, highlights the need for concerted action. AFM is proud to be involved in the cross-sector Access to Insurance Working Group, which was established with support from DWP and FCA, to identify how people with pre-existing medical conditions could be better served by insurance providers and distributors. Earlier this year, the working group launched an agreement on signposting, to help in circumstances where a provider could only offer cover on nonstandard terms, to provide the consumer with specialist advice.
- Some AFM members reported very positive feedback from their customers, by arranging for continued provision of employees available to speak by phone in the early stages of the pandemic lockdown. Where large organisations were insisting on customers completing online forms to get in contact, the capacity of small mutuals to keep phone lines open and to deal with customers empathetically was a distinctive illustration of how smaller mutuals support all their customers.
- For insurance companies, a majority of customers that make contact with their provider are likely to be vulnerable, even if only temporarily. This will include customers whose circumstances have changed, and this has triggered the need to make a claim, or else that the claim is as a result of a problem with health or a financial loss. Where most claims are made at a distance (by phone or online form) it is a sensible precaution to assume vulnerability until that is proven not to be the case.

We agree that firm culture is a primary factor in determining how a firm treats vulnerable customers. Culture determines how products are designed, developed and sold, and how policies and processes are created. Conversely, mis-selling or barriers for customers in raising administrative issues or complaints, may themselves illustrate where there are shortcomings in the culture of the organisation, and the leadership from the top.

We agree that that the proposed Guidance will not adversely affect any of the groups with protected characteristics, and also that it will result in positive outcomes for the characteristics protected under the Equality Act.

We would like to have seen more focus in the guidance on how firms interpret the Equality Act, as we believe the responsibilities under the Act are not understood fully across financial services. We understand the CII is seeking to provide a guide on the Act to the insurance sector, and we consider this will be valuable and provide a clearer framework in avoiding discrimination against people with protected characteristics.

Q2: Do you have any feedback on the updated draft Guidance?

The Guidance provides a comprehensive overview of the way that regulated firms should support vulnerable customers. The guidance is lengthy, but regular reference to good and bad practice also means that it is practical and acts as an effective basis for firms to interpret and revise their approach. It is worth noting that some of the case studies provided alongside the financial lives survey offer a more granular insight, and we have encouraged members to review these carefully[4].

At around 50 pages long, even firms that have a presumption of treating customers fairly may find they have significant gaps in their current capabilities. Indeed this is inferred from the initial costs in the CBA. Whilst FCA indicates the guidance should, once finalised, be implemented with immediate effect, with implementation costs of £700 million and annual costs of £450 million, we conclude FCA should be pragmatic about how quickly firms implement gap analysis and action plans.

One aspect that the consequences of living through the coronavirus pandemic has reinforced, has been the difficult trade-off (in a mutual organisation) of supporting the needs of existing customers and remaining open to business. Many protection providers concluded that their first priority lay in supporting their existing customer base, and as a result, in the challenging circumstances of adapting their business to working from home, diverting resources to customer service and claims handling and away from sales administration, the priority was to retain a sustainable and solvent business for the long-term benefit of their existing members/ policyholders. They also took defensive actions in their approach to underwriting, to reduce the unquantified risks arising from uncertainty about the scale and impact of the pandemic. That included broad tactics designed to reduce risk, such as removing short deferred periods, and some intermediaries have misinterpreted this as avoidance of taking on specific risks, such as people with pre-existing medical conditions.

The guidance therefore provides a helpful way of interpreting firms' obligations to customers, as well as in ensuring they meet the requirements of the Equality Act. But it remains of paramount importance to insurers that regulation recognises the role of the Board of a firm in setting its strategic path. The challenge for FCA is to determine how it can facilitate an effective market that meets the needs of vulnerable customers, without

4 https://www.fca.org.uk/publication/research/case-studies-financial-lives-experiences-vulnerableconsumers.pdf

distorting the strategic purpose of firms. For examples, some AFM members make a virtue of providing cover for 'impaired lives', but that should not mean that all insurers should aspire to do the same.

The work by the Access to Insurance Working Group on improve signposting is a valuable development this year, in ensuring that if a particular insurer or intermediary cannot place business on standard terms (for example due to a preexisting medical condition), then there is capacity to refer the customer to a specialist adviser who can better support the customer.

The Principles are a relevant starting point for developing the guidance, and we agree with the way they have been interpreted as a template for developing the guidance, along with the six consumer outcomes. These of course apply to the way all customers are dealt with, but are particularly useful in understanding how well a firm treats vulnerable consumers.

The introductory chapter refers to the way FCA assesses a firm's culture. We broadly agree with the key drivers of behaviour in paragraph 1.22 of the guidance, though we also note that measuring culture is difficult in firms: most assessments focus on the inputs to culture, such as purpose, governance and incentives, and less on outcomes. The complexity of those inputs is well illustrated by the Leadership style analysis completed by FCA/ Ivey in summer 2019. In a presentation last year to AFM's Risk Forum, Dr Roger Miles contrasted this approach with Netflix Culture (freedom and responsibility): 'people do better work if they understand context; so minimize rules'[5].

In our experience, a key driver of both behaviour and culture is business model; new research to be issued in September, by AFM and other trade bodies representing mutuals, social enterprises and employee-owned businesses, highlights the significantly different attitudes of employees depending on the nature of business ownership. Whilst ownership also aligns with purpose, governance and leadership, it also clearly highlights the potential for conflicts of interest in privately (and publicly owned) businesses, between serving the best interests of owners versus customers.

In our research, 87% of employees of PLCs considered their employer was primarily in business to maximise profits, compared to 27% in mutuals, and whilst 68% of employees of PLCs believe they put the customer first, this rises to 90% in mutuals[6]. In a competitive marketplace, there is space for large profit-focused, cost-conscious PLCs, and smaller, customer-orientated mutuals, but the regulatory framework needs to recognise the validity of both and not create barriers to success for smaller organisations.

5 https://financialmutuals.org/files/files/DrRM%20-%20AFM%20-%20Assg%20Culture%20PACK%20EDIT%20v1_2%203-Jun2019%200945.pdf

6 'Rebuilding business for success' is due to be launched on 29 September 2020

The flowchart on pages 70 and 71 of the document provides a useful basis for firms to undertake a gap analysis, to compare their current approach with one that meets the expectations of the Guidance. It is helpful as well that the case studies in subsequent chapters draw out in a practical way how firms can interpret the approach within their business.

We note the suggestion that firms should explore the use of internal and external research "to identify the vulnerabilities that may be present in their customer base". The guidance suggests ONS statistics can help determine the characteristics or circumstances of consumers in the firm's target market. We agree in theory, though aggregated data may be ambiguous, and in insurance, overuse of aggregate data risks some customers being excluded/ red-lined (for example, people living on flood plains before Flood Re was developed, or individuals with inherited genetic problems before the insurance moratorium was developed). In addition, the data is likely to be more difficult to interpret for small organisations with a widely dispersed customer base, or where product sales are intermediated. A more appropriate response is to retain relevant information on each customer to assess indicators of vulnerability.

We agree that a key area is in supporting employees and providing relevant training and support. AFM seeks to support members with appropriate material: this year that has included an online webinar as well as access to AFM's training portal. We have trialed part of CII's inclusive communications training and hope to launch that with members in the Autumn. These complement previous work, including a roadshow on treating vulnerable customers well, infographics on the scale of vulnerability, and a draft vulnerability policy. We are exploring further support to members, based on the published guidance, and are looking at other initiatives, such as Mental Health UK's report on 'Affording protection: mental health and insurance' and Fair by Design's research project with the Institute and Faculty of Actuaries on understanding 'the causes, extent and impact of the poverty premium in the insurance sector'.

An aspect of the first draft of the guidance which was causing issues for our members was in relation to temporary incapacity (for example via hospitalisation or a temporary mental condition), and whether organisations could confidently liaise with a third party who did not have formal or lasting power of attorney. We note in the guidance the link in paragraph 4.53 to the guide written with the Office of the Public Guardian (OPG) and UK Regulators Network (UKRN). This provides useful guidance to firms on how to recognise and deal with an attorney, but it doesn't reflect the more ad hoc or emergency circumstances where an unregistered individual seeks to provide assistance to an incapacitated policyholder. Firms generally seek to be helpful in these circumstances but are also mindful of the risk of misrepresentation or fraud and may find it difficult to receive adequate evidence to support their customer. This is addressed in paragraph 4.54 of the guidance, though we would value extra guidance in this area from FCA on the balance between supporting the customer and the risk to the business.

At different stages in the policy life all customers may be vulnerable to a greater or lesser extent. Some may be more vulnerable than others due to say mental capacity, physical disability, etc., but others may be vulnerable in the particular circumstances that they are needing to make contact (suffering from an illness, suffering stress, financial hardship, bereavement etc). That transient nature means firms have to consider carefully how they record vulnerability. To illustrate some of the difficulties this exposes firms to:

- If you identify someone as vulnerable, how frequently should you review this?
- If the flag on the customer database is set by someone in a call centre, who notes that someone is confused and repeating themselves, is this a short-term issue (due say to current medication) or an indication of loss of mental capacity?
- How do you validate this, how do you re-test it? Just because someone was confused when they contacted you last year does not mean they remain confused.
- How would a customer/ member feel if they learned that they had been labelled as vulnerable? Would that leave the company exposed to future complaints or data protection issue, when their priority had been to support a customer in time of need.
- On the other hand, some vulnerabilities will not decrease over time and it would be right that such cases are permanently flagged as vulnerable to ensure appropriate treatment when dealing with that customer. Keeping the data relevant and correctly interpreting the statistics appears to be a significant task but unless the data is kept fresh and current (however that is achieved) is going to make any metrics very difficult to use and interpret.

Q3: Do you have any feedback on our cost benefit analysis?

We consider that the illustration of the causal chain, in figure 1 within the CBA, provides a very helpful description of the outcomes expected from the Guidance, and the nature of interventions and actions from firms that will help achieve them.

We note that responses to FCA surveys have demonstrated the significant work already undertaken by firms to treat vulnerable customers fairly. The costs are estimated as £1.4 billion; it is not clear whether this is an extrapolated figure or based purely on the respondents to the survey, but either way it is a significant commitment. We note FCA has disregarded these costs for the purposes of the CBA, but the validity of this will depend on whether the initial costs are extrapolated. We consider that firms that are already more active in meeting the needs of vulnerable customers are more likely to have responded to the survey, so we do not think it is safe to assume all firms are at a similar level. This means the gap between where some firms are now and where they are expected to be, is potentially greater than assumed and this should be factored into the CBA.

The CBA estimates that the costs of implementing the guidance, for a firm with between 50 and 249 employees will be on average £63,800 on a one-off basis, with annual costs of £33,300. Whilst the analysis shows costs for a smaller band of less than 50 employees, we think this is not particularly indicative: many AFM members operate with between 20 and 50 employees and will have significantly more compliance work compared, for example, to a small intermediary firm.

With regards to customer benefits, we acknowledge the range of benefits set out by FCA. These are appropriate, and supported by various forms of evidence. On the basis of the range of benefits set out by FCA that is needed to balance the costs of compliance (a range of between £50 and £180 a year per vulnerable customer), we accept that for very many customers that range of benefit is achievable/ realistic. Our experience of supporting customers through the pandemic indicates that firms can make meaningful differences to the value of products offered, or the nature of service provided, that can readily create tangible benefits to those customers (and in turn to the firm offering them).

We note that the cost benefit statement does not include consideration of the effects of the proposals on mutuals: as per the first page of our response there is a formal obligation on FCA to take account of this in all its work (not just formal CP consultations).

That said, we do not expect the nature of the cost benefit analysis for mutuals to be materially different to other firms, excepting that, compared to insurers as a whole, mutuals tend to be smaller organisations, with more limited resources, and a more closely targeted customer base.

Q4: Do you have feedback on what we should prioritise when monitoring firms' treatment of vulnerable consumers?

We consider that FCA's monitoring must to be proportionate to size and potential scale. We encourage FCA to avoid the approach of 'supervision by survey', which has been a growing tendency for the regulator in engaging with small organisations in recent years. Understanding the high-level issues like purpose, governance and leadership is more likely to be successful if it is conducting by firm visits and employee interviews.

Q5: 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?

We agree on the need for qualitative management information to help firms to monitor their actions to support vulnerable customers. The examples on page 100 of the document are a good starting point, though they tend to focus more on the inputs than the outputs/ outcomes, which makes analysis of the data more difficult and ambiguous.

For small organisations that may be restricted in the range of data they have access to, reacting to customer endorsements and complaints is particularly useful, and is less likely to be interpreted ambiguously (for example, an increase in complaints or lapses may be the result of a range of factors).

Q6: Do you have any other feedback on our proposals?

Given the long timescales in FCA developing this guidance, and delays in its release, as well as the significance of the issue, we are disappointed FCA has provided a relatively short period for responses, compounded by the consultation's release over the summer season. That has meant our response has been more superficial and less evidence-based than we had planned. Given the time FCA has devoted to this issue, and the extra protections that are being afforded to consumers during the pandemic, it is not clear why the consultation period was not run over a more reasonable period.