

GC20/3 Guidance for firms on the fair treatment of vulnerable customers

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UK Finance is the collective voice for the banking and finance industry.

Representing more than 250 firms across the industry, we act to enhance competitiveness, support customers and facilitate innovation. We represent the full range of the industry from the largest lenders to the smallest, high street and challenger banks, building societies as well as non-banks and the regulated third-party administrators who service inactive lenders. Our members include those who are fully intermediated, fully online and those which provide services directly to customers.

The responses to the consultation questions provide a consolidated view of the members that UK Finance represents across product streams, including cards, consumer credit, payments, savings, mortgages, commercial finance, and cross-sector issues including data protection and economic crime.

Executive Summary

UK Finance and its members welcome the Guidance for firms on the fair treatment of vulnerable customers and appreciate the ongoing and constructive dialogue that has taken place since the publication of the initial consultation FCA GC19/3.

We would like to thank the Financial Conduct Authority (FCA) for responding to the points raised in our detailed submission to the first stage consultation and would like to highlight the following specifics:

- Members were unanimous in their support for the change in approach from distinguishing between ‘actually vulnerable’ and ‘potentially vulnerable’. Risk Management is at the core of a financial services firm’s purpose and by adopting the new ‘spectrum of risk’ approach, the FCA has provided much needed clarity on their intent and made it easier for firms to consider vulnerability at both a macro and individual level.
- We appreciate the inclusion of a clear statement that whilst firms should be proactive in providing opportunities for customers to express their needs, or the circumstances which may make them more susceptible to consumer detriment, frontline staff are not expected to diagnose vulnerability at an individual level, particularly if a customer shows no obvious vulnerability characteristics and does not volunteer the information when given the opportunity.
- We also welcome the:
 - clarity that firms are expected to culturally embed vulnerability into all areas of their business operations
 - simplification and reduction in the number of ‘Shoulds’ within the vulnerability framework which has been well received
 - amendments made to the drivers of vulnerability and the seven harms – which reflect emerging socio-economic trends
 - flexibility that outcomes-based regulation provides members that have differing approaches to vulnerability, reflecting the needs of their customer base and diverse operating models
 - clarification that firms are not required to translate communications

- inclusion of additional case studies and examples from the Financial Lives research which provide greater depth to a firm's understanding of what the FCA regards as good practice.

Building on the last point and taking into account the acknowledgement that an assessment of a firms' compliance with the Guidance will continue to evolve and to some extent be subjective – the FCA could give further thought as to how examples of good and poor consumer outcomes can be shared with Financial Services firms and other interested parties such as the Financial Ombudsman Service (FOS) on an ongoing and timely basis.

The Guidance sets out the expectation for all senior managers to be able to demonstrate the actions being taken to ensure that vulnerable customers are being treated fairly. We think that this is a sensible approach and agree with the FCA's decision not to link the Guidance to the Senior Managers and Certification Regime. Only by making this everyone's responsibility will firms deliver the cultural change that this policy is designed to achieve.

Recognising that significant progress has been made in refining the Guidance, a couple of issues remain which require further clarification and consideration in order for firms to effectively meet the expectations of this Guidance.

These are covered in detail within our response to the consultation questions, but the following risks are of particular concern to our members:

1. **Retrospective application of the Guidance:** to ensure consistent application and avoid retrospection risk, it is critical that the FCA **specifies a clear commencement date** for the Guidance. Although there is no implementation period, the FCA should clarify that it does not expect firms to have full compliance with the Guidance from day one and will take a proportionate approach which uses consumer outcomes as the baseline for supervisory activities.
2. **Regulatory Precedence and Interaction with Temporary Guidance:** the Vulnerability Guidance is a seminal cross-cutting policy which needs to align with all current and future regulatory requirements to be effective. **Precedence and alignment** must therefore be considered across the FCA's regulatory roadmap. The FCA has not sufficiently considered the **interaction between COVID-19 Temporary Guidance and the Vulnerability Guidance**, nor the enduring impact of the pandemic on firms. This will have implications on the implementation of the Vulnerability Guidance and consequences on evaluations of its success. The FCA should also consider the **precedence of sector-specific regulation to mitigate the risk of cumulative and conflicting requirements**, for example, definitions relating to Small and Medium Enterprises (SME) customers or within the *Authorised Push Payment Contingent Reimbursement Model Code for scams* (APP CRM Code). We recommend that the FCA **includes a section on these issues in Annex 4**.
3. **Regulatory Divergence / Financial Ombudsman Service (FOS):** this Guidance provides a reference point for many stakeholders and there is significant concern that the subjective nature of outcomes-based regulation will result in **regulatory divergence between individuals within an organisation and across regulatory boundaries**. Members are concerned that in determining the merits of a complaint and considering existing 'best practice', the FOS can set a **precedent by stipulating 'defacto' minimum expectations for all firms**. This would be contrary to the FCA's original intent which rules out the development of minimum standards. We ask the FCA to consider how its '**baseline**' and expectations can be **adopted by other regulators** and how **examples of good and poor practice** can be **shared on an ongoing basis** encouraging consistency and continuous improvement.

4. **Distribution chains and outsourced functions:** We consider that existing Handbook due diligence requirements of third-party or outsourced functions are sufficient. Any **expectation to 'police' or 'approve' suppliers' vulnerable customer policies is unreasonable** and onerous to implement. Consideration must also be given to how vulnerable customer **data can be shared and liability determined across the supply chain** and clarity provided on these issues in Annex 4.
5. **General Data Protection Regulation (GDPR):** Data protection is a foundational pillar of this Guidance and firms approaches to managing vulnerability, members would therefore prefer that **Appendix 1 is incorporated into the main body of the Guidance**. Furthermore, they ask that the UK Regulators Network establishes a workstream to consider this issue further, given the use of data to enhance consumer protection continues to evolve. Consideration should also be given to **refining related 'identification' requirements to remove current ambiguities**. In particular, that use of data analytics is beneficial but not necessary and references to staff interactions in the Guidance are brought in line with Para 3.58 of the feedback statement. Our understanding is staff should be alert to and record signs of vulnerability but are not expected to probe for indications of vulnerability if they are not observed through conventional interactions – this should be **clearly stated in the Guidance**.
6. **Validity of the Cost Benefit Analysis (CBA):** Members consider that this CBA is fundamentally flawed and does not provide an accurate view of the impact on firms and investment required because:
 - a. a cumulative-impact analysis has not been provided
 - b. we do not see evidence that the FCA has undertaken a market assessment and notably the impact on Claims Management Companies (CMCs) appears to have been overlooked
 - c. the significant ongoing financial impact of the pandemic has not been assessed or quantified and
 - d. there are significant omissions including the impact of inclusion of third-party suppliers and anticipated increases in complaints/FOS referrals due to the litigious environment in which firms operate.

We ask that the FCA **reconsiders the analysis, including demonstration of proportionality**, as set out in the FCA *Approach to Advancing its Objectives*.¹

7. **Regulatory Burden:** firms overall and, in particular, the vulnerable customers teams are facing into a significantly challenging last quarter given the operational challenges involved in supporting customers in financial difficulty, managing the ongoing response to the pandemic and delivering the required changes to comply with this Guidance. Firms ask that the FCA **postpones the Duty of Care Consultation until 2021** and considers whether any other **regulatory initiatives can be put on hold** to reduce the regulatory burden on firms.

UK Finance and its members welcomes further engagement on the above issues, to ensure that the final Guidance is forward looking, unambiguous, implementable and consumer centric.

¹ <https://www.fca.org.uk/publication/corporate/fca-approach-advancing-objectives-2015.pdf>

Responses to consultation questions

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

We agree with the assessment provided on equality and diversity stating the Vulnerability Guidance will have a positive impact on consumer outcomes for individuals with some protected characteristics (e.g. age and disability).

Members understand their obligations to comply with all relevant legislation including the Equality Act (2010) and we are satisfied that the Guidance makes this sufficiently clear. It is important to recognise that this may only be possible where there are clear signs that the individual is protected by the Act, or for more 'invisible' protected characteristics (e.g. mental health), the individual discloses and provides consent to the recording of relevant personal information.

Furthermore, we agree that greater engagement with the Equality and Human Rights Commission (EHRC), and third-party organisations, may offer increased insight and guidance which could inform members' products and processes. UK Finance has regular engagement with specialist charities through bilateral engagements and the UK Finance Consumer Advisory Group.

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

The draft Guidance (as per GC19/3) was comprehensive, and UK Finance used the 'Shoulds' Framework to inform its response to supporting vulnerable individuals impacted by both the corporate failure of Thomas Cook and the COVID-19 pandemic. This demonstrates that the Guidance is flexible enough to adapt to a rapidly changing socio-economic environment.

It has also become clear that the COVID-19 pandemic has required a bespoke approach to business as usual (BAU) regulatory and operational requirements. This raises questions as to how the Vulnerability Guidance aligns with current and future temporary regulation.

Retrospective application of the Guidance

Members understand that the Guidance will be effective immediately once finalised. We ask that the FCA specifies a clear commencement date for the avoidance of doubt. We also ask that the FCA makes clear that, although there is no implementation period, the FCA does not expect firms to have full compliance with the Guidance from day one. This is especially important to avoid the risk that the Guidance is applied retrospectively.

This Guidance clearly sets out how firms should discharge their obligations under Principles 2,3,6,7 and 9, but it is also clear that the sector will need time and additional investment in order to deliver against the newly defined expectations. As recognised in the Guidance (paras 1.26 and 1.27), firms will be assessing how the actions suggested in the Guidance applies to them. Implementation of changes as a result of this assessment will take time. We ask the FCA to explicitly state that firms can set out themselves how long it may take to build towards full compliance with the Guidance once this assessment is complete. Alternatively, the FCA could set out what firms should have in place by a certain time, for example, to have completed the assessment and developed an action plan by 6 or 12 months from the commencement date.

This is particularly important as some firms have advised that FOS Complaint Handlers are already requesting evidence of compliance with the draft Guidelines on 'back book' cases and the CMC sector is actively looking for new opportunities to replace PPI income streams.

Equally, we ask that the FCA explicitly states that the Guidance does not apply in the following scenarios:

- complaint handling/decisions which apply to treatment of a customer before the Guidance became effective
- 'pre-Guidance' complaints where a customer subsequently discloses a vulnerability that was not disclosed/evident at the time that the interaction took place, or when the complaint was submitted and
- resolved complaints.

Regulatory Precedence and Interaction with Temporary Guidance

The FCA's ambition is to ensure that 'Vulnerability' is embedded into firms' culture. This will be achieved in two ways – through the firms' actions and the regulatory framework. To ensure consistency, it is important that the Vulnerability Guidance requirements are properly aligned and embedded into future regulation and Guidance.

GC20/3 sets out expectations and actions that firms may take to proactively identify and respond to vulnerable customers. However, temporary Guidance issued in response to the pandemic has set out that firms:

- are to accept self-certification by customers as to the impact of COVID-19 on their finances
- have limited ability to ask further questions and
- for the vast majority of customers, set out a single, blanket treatment in the form of an initial or subsequent full or partial payment deferral of up to 3 months.

Where vulnerability is already known or customers proactively identify as vulnerable, firms will respond to their needs. Firms have also offered a wide range of communication channels for customers who require support during the pandemic, not least, to manage volumes.

Chapter 1 of GC20/3 acknowledges the impact of the pandemic on vulnerable customers but has not considered the following issues:

- where firms have been required to adopt blanket approaches for customers (i.e. the cohort of customers receiving temporary COVID-19 related relief) or may do so in the future (e.g. further lockdowns), how firms are to discharge expectations set in GC20/3 alongside any temporary Guidance issued by the FCA or government
- the circumstances under which firms could deprioritise full implementation of GC20/3 due to the rapidly changing nature of the pandemic or in response to any further temporary Guidance the FCA may issue, in the same way firms have been offered flexibility in application of Handbook rules
- consequential impacts on third party providers and outsourced services (we note that the FCA has not completed a detailed analysis through a CBA on inclusion of supply chains in the Vulnerability Guidance) – for example, in the pandemic, lockdown/shielding restrictions have had an impact on capacity of suppliers, which may impact delivery of services tailored to vulnerable customers (one such example is provision of audio description services). Firms' operational resilience plans may not reflect scenarios of disruption of supply with a vulnerable customer lens applied to it.

In finalising GC20/3, we ask that the FCA sets out how the Vulnerability Guidance interacts with or overlays on top of temporary COVID-19 Guidance and recommend that the FCA includes a section on these issues in Annex 4.

Secondly, it is important that the alignment of sector-specific regulation and guidance is considered to mitigate the risk of cumulative and conflicting requirements. For example, the definition and identification of vulnerability as set out in APP CRM Code and The Banking Protocol should align with the expectations in the Vulnerability Guidance. As the APP CRM Code is currently under review by the Lending Standards Board (LSB), we ask that the FCA engages with the LSB to ensure clarity of expectations - due to the downstream impacts on law enforcement, FOS adjudications and scope of liability. It would be helpful for the FCA to incorporate a view on this point in the forthcoming Feedback Statement.

Similarly, there is conflict of expectations relating to the scope of the Guidance and applicability to businesses. For example, micro-enterprises with turnover up to €2 million and charities with income less than £1 million are in scope of the recent FG20/3 Branch and ATM Closure or Conversions. However, paragraph 2.30 of the Branch Closure Guidance states that the Vulnerability Guidance needs to be complied with—which potentially brings into scope all unincorporated companies irrespective of turnover/income (as per Vulnerability Guidance para 3.31). We ask that the FCA makes clear the order of precedence. We also ask that the FCA sets out in its Feedback Statement the steps that it will take to ensure internal coordination regarding regulation and guidance that impacts on compliance with the Principles and fair treatment of vulnerable customers.

Duty of Care

We note that the Duty of Care Feedback Statement and Consultation Paper is to be published in H2 2020. We think that the Vulnerability Guidance, in combination with existing regulatory and voluntary consumer protections already in place creates a strong framework for ensuring that customers are treated fairly. As per previous comments, we ask that this is delayed to reduce the regulatory burden on firms. We also ask that the FCA articulates in the Duty of Care Consultation Paper how any potential options to change the regulatory framework will impact on customer outcomes over and above the outcomes to be achieved from implementation of the Vulnerability Guidance.

Scope of the Guidance

The clarification on whether the scope of the Guidance applies to businesses is helpful, as is the acknowledgement that sole traders, partnerships, and incorporated businesses all require different approaches. Given the significant diversity of products, services and providers of commercial financial services in the UK, which provides a competitive environment of benefit to SMEs, we would expect the FCA to understand the need for firms to take a flexible and tailored approach to how they interpret and apply the Guidance and Principles, where appropriate.

As noted above, to ensure regulatory consistency with current and future SME regulations, we ask that the FCA considers how the Vulnerability Guidance definition aligns with other SME focused regulation which generally utilises a 'turnover' banding to define which cohort of customers are in scope (e.g. Microenterprise €2million or SME €25million).

Supervision and enforcement

Recognising there will be a need to act within the spirit of the Guidance and that individual cases will require a level of supervisory judgement, we welcome the FCA's emphasis within the draft Guidance itself (Annex 4) that supervisors will apply the FCA's flexible and proportionate approach in its activities.

We understand that consideration is being given to baselining firms' current position, which will facilitate supervisory activities and the planned 2023 policy evaluation.

Paragraph 19 of the CBA states that the starting point will be "*the activity that firms already undertake to treat vulnerable customers fairly*". Recognising that firms all have different vulnerability approaches and investment strategies, some members believe that the starting baseline against which both firms and the effectiveness of this policy should be judged is not 'activity' but the consumer outcomes set out in Paragraph 1.9 of Annex 4.

Evaluation of progress against outcomes would provide a level playing field for all firms irrespective of levels of investment and operational approach and would also drive consistency. As previously stated, timely communications on trends and good/poor outcomes would be beneficial and support continuous improvement across the industry.

Members have requested further detail on the basis and timing for the FCA baseline, as this will directly influence the way in which firms develop their processes, Q&A monitoring, and evidence compliance.

Firms are also mindful that the FCA will not be the only organisation using the Guidance to opine on the fair treatment of vulnerable consumers. FOS has an important role to play in ensuring consumers are treated appropriately and they will need to consider the requirements when deliberating the merits of a complaint. However, given the subjective nature of outcomes-based regulation there is significant concern that regulatory divergence will occur between supervisors and adjudicators within an organisation and across regulatory boundaries.

The Guidance (para 3.25) confirms that FOS will have regard to rules and Guidance issued by the FCA when it considers what is "fair and reasonable", but it is clear from a recent exchange of correspondence between the FCA and FOS that the breadth of information considered when reviewing the merits of a complaint is much more extensive:

*"...in deciding what is fair and reasonable in the circumstances of an individual complaint, we must take into account **relevant law; regulators' rules, guidance and standards; codes of practice** and what the ombudsman considers to have been **good industry practice** at the time. We do not make decisions with the benefit of hindsight."*

[Source: [FOS reply to FCA re Complaints Handling during the Coronavirus Pandemic](#) 16 April 2020]

In using the extensive guidance, codes and industry best practice (which have been developed over recent years - often with no input from firms) in the determination of a complaint, the FOS has the ability to set a precedent, effectively setting 'defacto' minimum expectations for all firms and potentially placing smaller firms at a competitive disadvantage. It is also possible that such a precedent will not align with the original intent of the Guidance, which specifically rules out the development of minimum standards and helpfully recognises that firms will adopt different approaches to meeting the requirements based on a range of factors which could include reliance on legacy systems, brand integration and that their approach will continue to evolve over time.

It is therefore critically important that there is clear alignment (aims, interpretation and expected outcomes) between the supervisory approach of the FCA and other regulatory bodies such as the FOS, Competition and Markets Authority (CMA) and Payment Systems Regulator (PSR) unless there is a legitimate reason not to (e.g. differing objectives and remits). Regulatory alignment from the outset

will help minimise the risk that other regulators will make judgements on cases that do not align with FCA expectations or reflect the spirit of this Guidance.

Consideration must also be given to how evolving FCA expectations can be documented and time stamped, creating a searchable audit trail for future reference by all relevant stakeholders (e.g. firms, FOS, and CMCs). Again, this will help minimise the risk that CMCs may exploit the inherent subjectivity associated with outcomes-based regulation which could give rise to increased levels of Data Subject Access Requests (DSARs) and CMC Complaints.

To minimise the risks associated with regulatory divergence, we ask that the FCA:

- continues to refine the Guidance making the requirements as clear and specific as is practically possible
- considers how to ensure that the FCA's 'baseline' and expectations are taken into account by other regulators
- conducts an engagement programme with FOS and other relevant regulators, in the same way that the vulnerability policy team are working to embed understanding of their expectations and consistent application across the FCA

Data Protection

In order to cleanly navigate the GDPR rules when building an approach to support vulnerable customers, it is vital that firms have a clear idea as to the regulatory expectations of the FCA. Overall, the updated Guidance is reasonably clear in this regard.

However, we remain uncertain as to what level of proactivity in identifying vulnerability is expected. Para 3.58 in the Feedback Statement states *“Whilst we expect firms to understand the needs of vulnerable consumers, the Guidance does not place obligations on firms to proactively identify individual vulnerable consumers through staff interactions or the use of data analytics.”*

In relation to ‘data analytics’, we note that paras 4.19 and 4.39 in Annex 4 present use of analytics to detect signs of vulnerability online as potentially beneficial actions that firms could take. Our understanding is that these kinds of actions are not considered necessary by FCA but are potentially positive.

In relation to ‘staff interactions’, the implication of para 3.58 of the Feedback Statement is less clear. While para 3.58 says that FCA *“does not place an obligation on firms to proactively identify individual vulnerable customers through staff interactions”*, we note that the Guidance itself seems to place this obligation/expectation on firms. The Guidance states in several places that firms should be watching for signs of vulnerability and that this information should be recorded, where it is relevant to future treatment of the customer (paras 1.35, 1.45, 3.16 and 3.17). We presume that this means, in sum, that firms and their staff should be alert to signs of vulnerability and should record these, but that staff are not expected to probe for indications of vulnerability if they do not observe such signs through conventional interactions.

We ask that the FCA confirms our understanding within the main body of the Guidance in Annex 4.

We also suggest that FCA should make clearer, perhaps with more examples, in what kinds of situations it would expect firms to direct customers to a third party and how this interacts with GDPR. Sections 4.56 - 4.59 in particular could be expanded on.

Appendix 1 provides a helpful summary of key GDPR provisions and we have outlined below a small number of suggestions to clarify some points:

- A key factor in the validity of consent and explicit consent under GDPR (and according to the Information Commissioners Office (ICO) Guidance) is that the consent needs to be 'freely given'. Where the firm would need to collect or process data despite a refusal to give consent, the consent would not be valid. In this scenario, the firm should consider an alternative basis for processing. Paragraph 12 and/or 19 of the Annex should mention this important detail. Alternatively, paragraph 12 could, when directing firms to the ICO guide on consent, reference the section on 'freely given consent'.
- Bullet 3 of paragraph 12 should mention that beyond the firm and third parties, wider societal benefits are also relevant to assessments of whether to rely on 'legitimate interests', as per ICO guidance.
- Bullet 3 of paragraph 13 suggests that data processing is contrary to the individual's interests, but this is not always the case, as recognised in the ICO Guidance. We recommend amending this bullet to read: "*Balancing test: does the individual having opposing interests that override the legitimate interest?*"
- The Annex could be more explicit that the 'safeguarding economic wellbeing' provision in Schedule 1 of the Data Protection Act (DPA) is not only applicable in 'third party' scenarios. We suggest amending paragraph 22 of the annex as follows: "*Paragraph 19 of Schedule 1 can be relevant in varied situations. These situations could include third parties sharing and recording health data where consent from the customer is not possible, for example.*"
- In addition to the 'economic wellbeing' derogation, processing of special category data could also in some cases be justified on the basis of DPA Schedule 1 paragraph 10 (processing necessary to prevent unlawful acts – relevant in some cases to protecting customers at heightened risk of fraud) and paragraph 20 (insurance). We recommend mentioning that these paragraphs could also apply in Appendix 1, along with 'economic wellbeing'.

Given the importance and central role that data will play in a firm's approach to identifying and meeting the needs of vulnerable consumers, Appendix 1 should be incorporated into the main body of the Guidance and supplemented by appropriate case studies e.g. how vulnerability should be recorded for an unincorporated business which may have more than one party to the account.

The above comments demonstrate that data protection continues to be an area where firms seek greater clarity, in order to feel confident that they are achieving an appropriate balance between protecting vulnerable consumers and protecting their data. We note the FCA has suggested that further clarity is provided by relevant Trade Associations, and UK Finance will continue to engage with the ICO in this regard. However, recognising the cross-sectoral application of the GDPR regulation, increasing regulatory and political focus on Vulnerability, coupled with an emerging trend that 'data' should be used to deliver enhanced consumer protection and societal benefit – we would strongly recommend that the UK Regulator Network establishes a workstream to consider future Vulnerability Data Recording and Application.

Distribution chains and outsourced functions

Chapter 3, para 3.33 and Annex 4 extends the application of the Guidance to all firms in a distribution chain carrying out regulated activities. We note that the FCA has set out that firms should consider which areas of the Guidance are applicable to them, and members agree with the FCA's intent.

Greater clarity is required on which parties would be regarded as in scope of the end to end supply chain and whether the intention is to include suppliers, intermediary distributor relationships and specialist third party organisations, which the FCA expects firms to sign-post/hot-key customers to if appropriate.

Members request:

- a definition of ‘complex distribution chain’, as some firms may have thousands of third parties within its supply chain (for example, in the mortgage market, where a firm may have a relationship with thousands of brokers) and
- the FCA to set out that oversight of treatment of vulnerable customers in distribution chains will be proportionate, particularly where suppliers may be required to comply with the Guidance in their own right, or alternatively may have multiple regulated clients.

We are concerned that the Guidance, as drafted, sets expectations on firms to ‘police’ or ‘approve’ the vulnerable customer policies of firms within their distribution chains. This is an unreasonable expectation and would prove overly onerous to implement. Due diligence as required under Senior Management Arrangements, Systems and Controls (SYSC) and the Responsibilities of Providers and Distributors for the Fair Treatment of Customers (RPPD) are sufficient. Where the FCA expects to see changes to firms’ outsourcing policies including due diligence and quality controls, we ask that the FCA makes this clear in Annex 4.

It would be useful for the FCA to state some of the tools and current methods used to manage onboarding and monitoring and evaluation of third parties and suppliers, including use of the Helios system. These may include standard third-party management systems and existing management information (MI), quality control and quality assurance processes (for example, evaluation of customer feedback, review of outsourced customer assessments such field agent reports or debt counselling reports).

Firms would appreciate additional clarification on how they should share data on vulnerabilities within the supply chain, to avoid either of two potential issues:

- customers being alarmed that a firm knows about a vulnerability that they shared with their broker in confidence or
- customers face detriment because firms are unaware of vulnerabilities disclosed to brokers.

The Guidance, as drafted (para 4.25 to 4.28), could be read to apply only to the distribution of products at point-of-sale. It would be useful for the FCA to confirm that post-sale services and supports provided through third parties are not included in the Guidance (for example appointment and use of field agents or receivers of rent).

More specifically, if a firm relies upon inaccurate third-party information and then, fails to deliver a good outcome where responsibility for the failure lies.

Firms need to understand what gaps and harms the FCA are seeking to remedy, where they need to be making changes, and under what circumstances it is within their ‘gift’ to demand changes to customer processes (without constraining supply or limiting competition). For example, many firms rely on the Post Office for provision of services and more recently for cash distribution to vulnerable people. What is the expectation of firms to manage a supplier in such situations where the service provider may dictate the terms due to the number of firms that they service?

We note that the FCA has not completed a detailed CBA on the inclusion of supply chains. The absence of such a CBA would be incompatible with the FCA’s policy to produce one for Guidance with “*an element of novelty which may be in effect prescriptive or prohibitive such that significant costs may be incurred*”² given the substantive increases in costs (e.g. investment in the development of

² See box 1, [How we analyse the costs and benefits of our policies](#).

vulnerability data sharing pipelines and robust oversight) that application of this part of the Guidance is expected to entail.

Members believe that this is a significant 'new addition' to the Guidance and note that the next iteration will be 'Final Guidance'. Should there be substantive changes, we recommend further consultation on this section.

Consumer Behaviour and Responsibility

Members appreciate that individuals will have differing levels of financial capability, however it can be quite challenging to ascertain the level to which an individual has 'understood' all relevant points of a verbal or written communication.

Our interpretation of the Guidance is that firms should take reasonable steps to ensure that the communications are provided in a clear manner, e.g. by putting things into 'plain English', provision of covering letters which explain mandatory communications and provision of links to FAQs/pop-up explanations in digital journeys. Firms are not expected to evidence an individual consumer's understanding of the information communicated. We would ask that the FCA confirms our understanding in the Guidance.

Furthermore, members note that there are occasions where a consumer with full mental capacity may make what would be regarded as a 'poor decision', e.g. continued authorisation of a suspected fraudulent payment, disregarding advice and warnings provided by frontline colleagues. In this scenario, the legal requirement to pay away funds on the instructions of a client can undermine the firm's ability to protect the customer and it should be acknowledged in the Guidance that firms cannot always influence consumer behaviour or prevent consumer detriment. The FCA acknowledges that firms can only take reasonable steps to identify and respond to vulnerability and members feel that the final Guidance should be more explicit that in cases such as these, consumers have to take some responsibility for their own actions.³

The FCA has stated that firms need to culturally embed vulnerability into their organisational DNA, but the same is also true with consumer behaviour. We think that there is a role for the FCA to engender trust in firms' commitment to responding to vulnerable customer needs, including through consumer information and campaigns to encourage customers to disclose vulnerability or seek additional support from a firm.

Customer Communications

Members are committed to providing communications in alternate formats (Braille, Large Print, Audio etc), as required under the Equality Act and they welcomed inclusion of an explicit statement making it clear that firms are not required to translate communications.

Firms will take a proportionate approach to tailoring the format of communications to meet the full suite of characteristics of vulnerability, however it would be helpful if the FCA could elaborate on the types of collateral that would be classified as 'key documents' - so that these can be prioritised and processes can be put in place where appropriate.

³ As envisaged by the FCA's duty under [section 3B\(1\)\(d\)](#) of the Financial Services and Markets Act 2000.

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

We note that there is no statutory requirement in the Financial Services and Markets Act 2000 (FSMA) for a CBA on Guidance. Furthermore, section 138I(8) of FSMA provides the FCA with the ability to opt out of producing estimates of costs and benefits where “*costs and benefits cannot reasonably be estimated*” or “*it is not reasonably practicable to produce an estimate*”. The FCA has not realistically portrayed the costs of implementing this Guidance given the breadth of firms that this Guidance will apply to, the differing starting points of firms, and limited demonstration of causation in the analysis.

We do not think that this CBA provides a sufficient basis for the Guidance as the FCA has not demonstrated that it can reasonably estimate the novel costs and benefits in its entirety. Overall, costs to address vulnerable customers are not easily separated from normal business activity. We acknowledge the limitations to the CBA identified by the FCA in Annex 3 and put forward that there are further limitations that requires articulation and more fulsome analysis.

Our comments above on the interaction between the FCA’s temporary, COVID-19 related Guidance and this Guidance also applies here. The FCA has not provided a cumulative-impact analysis nor given due consideration to the live external environment that firms will be responding to for the foreseeable future, including the period during which the FCA will be engaging with firms on implementation of this Guidance.

The response by UK’s banking and finance sector to the pandemic, which has been wholly targeted at supporting vulnerable customers, has had significant financial ramifications, particularly indirect costs. This has included granting over 2 million mortgage payment deferrals, more than 1 million payment deferrals on credit cards, over 700,000 payment deferrals on personal loans and over 26 million overdraft buffers applied to primary current accounts. The sector has further responded to vulnerable customer needs, including but not limited to, making Section 75 changes; implementation of changes to impairment provisions; additional shoring up of the debt advice sector through an injection of £14.2 million; establishment of bespoke helplines; costly changes to payments processes to mitigate health risks; and made physical adaptations to branches to ensure that essential services can continue face-to-face.

The FCA has not made compelling arguments on why it is not reasonably practical to estimate changes to pre-pandemic estimates. The FCA should acknowledge that the assumptions made to underpin the CBA are no longer valid, or a reasonable reflection of the potential impacts of the Guidance. Furthermore, changes to the Guidance such as the introduction of Supply Chain Management and potential increased costs associated with complaint handling/FOS referral fees may not have been factored into firms’ financial assumptions and this could impact the FCA’s CBA analysis.

We are surprised at the FCA’s justification for the exclusion of CMCs from the sample of firms because the consideration of vulnerability is already embedded in their rules. We consider vulnerability to also already be embedded into other parts of the Handbook, including MCOB, COB and CONC.

It is unclear from the section on indirect impacts whether the FCA has considered whether implementation of this Guidance might constrain supply. We do not see evidence that the FCA has undertaken a market assessment and we think it essential that the FCA sets out considerations of this nature to ensure that there are not any unintended consequences on competition.

We question the attribution of benefits to customers. The FCA has made clear that the purpose of the CBA is to identify the incremental costs and benefits that arise from the novel elements of the

Guidance. However, the FCA appears to have attributed benefits arising from actions firms have or might take and consumer behaviours that have or may change that are not solely attributable to this Guidance or novel interventions (Chapter 3, para 51). Furthermore, there would need to be demonstration that firm action was targeted only at customers who are vulnerable and not their customer base as a whole (e.g. interventions in response to reducing the effect of the loyalty penalty, product switches to benefit from interest rate changes or increased customer engagement as a result of communications campaigns).

We ask that the FCA articulates more clearly the novel actions that they have identified that firms may take to deliver the required savings of £50-£180 per customer per year. Without robust justification, we do not think that this figure should be used in analysis that provides a basis for this Guidance. Instead, we would caution against calculating the cost/benefit per vulnerable customer as this can be wholly misleading. We do not think that this approach corresponds to the spirit of the Guidance and firm-level cultural change being sought.

Overall, we do not think that the Guidance should be predicated on this CBA. We ask that the FCA reconsiders the analysis, including demonstration of proportionality as set out in the *FCA's Approach to Advancing its Objectives*⁴

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

This Guidance is designed to deliver improved consumer outcomes and greater consistency across firms. Monitoring should therefore be structured around these two key priorities and the requirements in the 'Shoulds Framework'. It is important and essential that those leading monitoring exercises of firms' treatment of vulnerable customers have a fulsome understanding of this Guidance and appreciation of both where the industry and individual firms are at.

Firms' approaches will continue to evolve, therefore, it may be appropriate for the FCA to have a phased approach to its supervisory activity.

The assessment of a firm's culture, as per para 1.22 in the Guidance is a sensible starting point for monitoring. As per comments made above, setting how firms will be measured or monitored against the outcomes to be achieved should be a key priority for the FCA. This could include:

- Extent to which firms are delivering on the 6 consumer outcomes (per paragraph 1.32) taking into account customer base size/scale/characteristics and complexity of business model
- Culture and commitment of the senior leadership team
- Assessment of the organisation's strategic review process
- Staff training and support to identify and suitably equip staff to handle vulnerability appropriately
- Robustness of the recording and monitoring to ensure good consumer outcomes

At a thematic level, given the current socio-economic environment, we would expect supervisory teams to prioritise a review of firms' strategic and operational approaches in supporting customers in

⁴ as per para 2.6 in the FCA's approach to advancing its objectives 2015 <https://www.fca.org.uk/publication/corporate/fca-approach-advancing-objectives-2015.pdf>

financial difficulty, particularly those exiting a payment deferral and requiring further support or those newly impacted by the pandemic.

In order to deliver on the 'consistency' objective, we reiterate that it is critically important that the FCA ensures that there is uniformity in interpretation and application of the Guidance across all supervisory teams.

Members appreciate that monitoring activities support continuous improvement and would encourage supervisory teams to adopt a constructive and pragmatic engagement approach wherever possible, enabling firms to review/discuss supervisory findings and providing time for firms to implement and demonstrate improvement.

Finally, as stated earlier in our response, the establishment of a mechanism for continuous, timely sharing of good and poor practice is critical to the ongoing achievement of the policy objectives within a rapidly changing market. UK Finance would welcome a regular bilateral meeting with the FCA Policy and Supervisory Leads to facilitate this information flow.

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?

Members are committed to developing the appropriate systems for monitoring and tracking their own performance.

Should the FCA wish to introduce metrics or collect information regarding effectiveness of policies and processes relating to vulnerable customers, we ask that the FCA incorporates these into existing regulatory reporting requirements. Should these requirements be novel, we ask that these costs are incorporated into the CBA.

As with other aspects of a firm's approach to vulnerability, data recording systems will differ across firms and those that rely on 'more traditional' technology platforms may have more limited capacity to drive 'consumer insight' due to availability of driver/need data.

If the FCA is minded to include enhanced vulnerable customer reporting in the regulatory reporting suite, members would appreciate clarity and early sight of the requirements (data, reporting periods, and submission deadlines) so that they can be built into the scope of the MI business requirements from the outset and adequate time can be factored into enable required systems development to be completed.

We think it necessary for firms to collect data to demonstrate changes in customer outcomes, as per the aims of the Guidance. However, where outcomes are achieved through existing activities, we do not think that there should be separate or additional data collection required.

It would be useful for the FCA to set out what evidence firms should collect or have available to demonstrate achievement of fair treatment of vulnerable customers. Alternatively, the FCA should specify that firms are able to determine their own framework to measure outcomes.

Focusing on a particular customer cohort is not advisable as this would not capture all customers who are at risk of detriment; does not recognise that they are not a homogenous group and that therefore they will be vulnerable to different harms in different situations at different times.

To support and reinforce the cultural step change, firms understand that they may need to embed collection of 'vulnerability' data into BAU processes and risk management frameworks. However, to accurately assess performance, members would appreciate further clarity on how to 'define a good vulnerability outcome'.

6. Do you have any other feedback on our proposals?

Regulatory Burden and Co-ordination

We acknowledge that the FCA had paused work on Duty of Care and plans to conduct its review of how the industry is adapting to meet the needs of older customers in 2023 line with the evaluation of this Guidance which has been welcomed by members.

We note that at the same time as this Guidance being finalised and coming into effect, firms will be simultaneously preparing to implement other vulnerable customer related requirements including Breathing Space, Interest-only changes (CP20/13), Access to Cash requirements, Branch Closure proposals, Open Banking implementation, and Strong Customer Authentication, whilst also managing customers who may require continued support due to being impacted by COVID-19 or are newly impacted as the effects of the pandemic continues to be felt.

Given the increased resource likely to be dedicated by firms to supporting customers in continuing financial difficulty, managing the emerging second spike and delivering the required changes to comply with this Guidance in Q4 2020, FCA should postpone the Duty of Care Consultation until 2021 and consider whether there are other initiatives on its roadmap that could be deprioritised to reduce the impact of regulatory change on firms.

Finally, we acknowledge that the FCA have set out a timetable of engagement with firms in 2021 and 2022, however we consider that proactive supervisory work should factor in implementation of vulnerability related regulatory changes taking place at the same time and the ways in which firms will be continuing to respond to the effects of the pandemic. We also suggest that, as part of its engagement with firms over the next two years, the FCA considers whether there are elements of the Guidance that require further clarification or amendment and commits to making relevant changes in 2023.

If you have any questions relating to this response, please contact Fiona Turner (Fiona.Turner@ukfinance.org.uk).

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