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

Response from the Financial Inclusion Commission

29 September 2020

About the Financial Inclusion Commission

Financial inclusion remains a significant challenge for 21st century Britain, a nation which prides itself on being a global leader in financial services: 1.3 million people do not have a bank account, 16 million adults lack home insurance cover and 10.5 million UK adults would be unable to cover one month of living expenses if they lost their source of income.

Financial exclusion is a major contributing fact to vulnerability for millions of people, and vulnerability whether permanent or temporary leads to financial exclusion for millions of others.

The Financial Inclusion Commission (FIC) is an independent body of experts drawn from UK politics, financial services, businesses, the charity sector and academia. https://www.financialinclusioncommission.org.uk/

Our mission is to champion financial inclusion as a public policy priority. We work with policy makers and a wide range of stakeholders, to come up with practical policy proposals for government, business and civil society.

Response to call for evidence

The FIC welcomes the Financial Conduct Authority's (FCA) consultation on its Guidance for Firms on the Fair Treatment of Vulnerable Customers. Please note that we consent to public disclosure of this response. Please note also that the FIC has worked with Fair By Design on this submission so there will be some duplication of messages between responses.

For more information about this response please contact Liz Barclay or Martin Coppack, both FIC Commissioners via Commission@ukfinclusion.org.uk

Summary of recommendations

We make the following recommendations to the FCA in this response:

On equality and diversity considerations

- the FCA should explicitly act to advance equality of opportunity and eliminate discrimination, as per the requirement of the Public Sector Equality Duty
- the FCA should be more explicit about how it intends to work with the Equality and Human Rights Commission (EHRC) to ensure timely remedies where firms are found in breach of the Equality Act 2010
- the FCA should fund the EHRC to produce more specific, more detailed, and more practical guidance helping financial service firms to comply with the Equality Act 2010.

On the draft guidance

- the FCA should revert to the original aim for the vulnerability guidance (in GC19/03) to oblige firms to be more focused on ensuring that the outcomes experienced by vulnerable consumers are at least as good as those of other consumers. This, opposed to the aim of this guidance for “vulnerable consumers to experience outcomes as good as those for other consumers”
- the FCA should be explicit about how firms should act towards customers at risk of experiencing the ‘scarcity mindset’[1], including the negative effects of time-poverty, and financial insecurity
- the FCA, in collaboration with other experts, should emphasise the importance of inclusive design of suitable products and services, and in their guidance showcase how this can be taken on board by product/service design teams within firms
- the FCA should lead by example. If it expects firms to incorporate the principles of inclusive design, it should do the same applying inclusive design to its own work
- in agreement with the Money and Pensions Service (MAPS), we feel that firms should be encouraged to use a standard set of diagnostic questions, to engage with customers and ensure the product or service applied for is most suitable. This should be seen as the foundation for interaction with customers. The FCA should monitor this on an ongoing basis
- all customers should be provided with an ‘IF Things Go Wrong’ leaflet covering scenarios where (a) customers’ material circumstances change for the worse (e.g., job loss) (b) firms become insolvent or are closed down and (c) technical issues cause detriment to the customer
- firms should consider contributing grants to third sector organisations in return for forming partnerships and making referrals for customers requiring more specialist support. This is on the basis that some third sector organisations deplete resources through these partnerships, while firms save money by entering them. Such a move (to be monitored by the FCA) would rebalance these relationships to be mutually beneficial
- the FCA should be much clearer on how it intends to monitor, evaluate, and supervise firms, as well as impact-assess its own interventions on vulnerability
- the FCA should (as part of its supervisory requests) produce a clear document detailing the vulnerability outcome measures firms should be achieving
- the FCA’s evaluation work should be brought forward sooner than 2023
- the FCA should spend equivalent time describing what customers are vulnerable to, as to considering what is vulnerability
- the FCA should give some direction in the guidance for how firms can use data analytics tools and machine learning towards proactive identification of harm
- the FCA should set a specific challenge within its Sandbox on proactive identification of vulnerability
- the FCA should lead the way in collaboration with other regulators to develop strategies designed to reduce harm experienced by consumers across different markets
- the FCA should be transparent about what consequences firms will face if they fail to meet commitments set out in this guidance

[1] ‘Scarcity mindset’ describes a situation where someone has low “mental bandwidth” for a range of reasons (including stress, anxiety, depression, poverty and other factors), and whose decision-making capabilities suffer as a result.

- the FCA should use this opportunity to link the Senior Managers and Certification Regime (SMCR) explicitly to the fair treatment of vulnerable consumers by making senior individuals more accountable for firms' conduct towards them
- we recommend that the FCA should set a 'duty of care' in order to provide legal direction for authorised persons within firms to bring about fairness across all financial services markets.

On the cost benefit analysis

- in the full guidance the FCA should set out a high-level quantification of the benefits to customers as a result of their intervention on the fair treatment of vulnerable consumers
- the FCA should provide details of the ongoing costs of product design in the final version of its cost benefit analysis on vulnerability
- the FCA should anticipate increased costs for monitoring and evaluation. This is because we are recommending in our response that the monitoring and evaluation work take place earlier than in 2023 (2023 being the FCA's current plan).
- firms should be explicitly obliged to demonstrate outcomes for vulnerable consumers. The FCA should set out how firms do this and there should be penalties set and published for firms that do not comply with this
- the FCA should aim to identify, through its supervision of firms, what existing practices are leading to good or poor outcomes for consumers experiencing vulnerability
- the FCA should set rules for how mainstream financial services providers enact 'warm handovers' to alternative, affordable sources of credit (such as credit unions or CDFIs) when customers do not qualify for credit.

Any other feedback

- the FCA should acknowledge in its list of potential harms that the poverty premium is something to which consumers can be vulnerable
- the FCA should add consumers' exposure to the poverty premium as a question in the next version of the Financial Lives Survey
- the FCA should explicitly state that a firm not acting with appropriate levels of care is a key driver of vulnerability
- the FCA should make a distinction between domestic and financial abuse, and other harms to which someone might be vulnerable
- the FCA should create a set of standards for how non-financial data can be used in credit information and scoring reports (for example in credit and insurance markets)
- the FCA should explicitly endorse the view that financial services are essential and set out how this will change the regulation of these services.

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

At the moment the FCA approaches protected characteristics primarily from the point of view of consumer protection. This makes sense, particularly in the context of the FCA's consumer protection objective. However, being subject to the Public Sector Equality Duty (PSED) requires the FCA to be more ambitious in its expectations of firms and more ambitious in terms of its own work related to equalities – to actively promote equality of opportunity in line with PSED expectations. To date, very little has been published by the FCA on the impact of its policies in this area, which is not satisfactory.

The FCA says that: “We would not, for example, normally expect to use our rule-making, supervisory or enforcement powers to set standards in respect of, or to address, equalities issues, except where the conduct of a firm called into question whether consumers had been treated fairly under our rules.” While we accept that the equalities issues referenced here would typically fall under the remit of the Equality and Human Rights Commission (EHRC), it is not entirely clear how the FCA will work with the EHRC in the future as part of its regulatory work on vulnerable consumers and actively promote equality, as is expected of it as a public sector body. For this reason, **we recommend that the FCA should be more explicit about how it intends to work with the EHRC in order to ensure timely remedies where firms are found in breach of the Equality Act 2010 and be more explicit about its expectations of firms and the impact of its own policies in this area.**

As a first step, and to reinforce a recommendation made by colleagues at the Money Advice Trust, this could be partially achieved by **the FCA funding the EHRC to produce more specific, more detailed, and more practical guidance helping financial service firms to comply with the Equality Act 2010.**

In addition, the FCA should commit to the original intention of the Equality Act 2010: to approach the fair treatment of individuals through the lens of socio-economic inequalities. Doing so would enhance protection of consumers and would simultaneously help ensure that people with protected characteristics are treated as equal to anyone else. To that end, we recommend that the FCA should explicitly act to advance equality of opportunity and eliminate discrimination, as per the requirement of the Public Sector Equality Duty.

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

First we want to draw a comparison between the stated aims of this guidance document, and the draft guidance preceding it. In GC20/03, the FCA states that one of the primary reasons for the consultation document is: “We want vulnerable consumers to experience outcomes as good as those for other consumers and receive consistently fair treatment across the firms and sectors we regulate”.

However, in GC19/03 the reasons were stated as: “we want…firms to be more focused on ensuring that the outcomes experienced by vulnerable consumers are at least as good as those of other consumers”.

We would suggest that this represents a significant change in aims. Namely, ‘as good as’ is less ambitious than ‘at least as good as’.. We recommend that the FCA should revert to the original aim for the vulnerability guidance to oblige firms to be more focused on ensuring that the outcomes experienced by vulnerable consumers are at least as good as those of other consumers.

<u>Understanding the needs of vulnerable consumers</u>

We are particularly glad to see due attention given to situational consumer capabilities in the context of vulnerability, especially with reference to ‘scarcity mindset’. The FCA accepts that the ‘scarcity mindset’:

> “can lead [consumers] to focus on certain factors at the expense of others, resulting in the purchase of unsuitable products. In the absence of a dedicated consideration of vulnerability, even business practices that are consistent with a well- functioning market could risk leaving vulnerable consumers disproportionately worse off.”

While this is very useful insight, we would hope to see the FCA explicitly set suggestions for firms in the full guidance, particularly on how they can maintain treating vulnerable consumers fairly and help reduce the chances of them experiencing ‘scarcity mindset’.

To this end we recommend that the FCA should be explicit about how firms should act towards customers at risk of experiencing the ‘scarcity mindset’, to reduce the chances of that experience, including those experiencing time-poverty and financial insecurity.

Skills and capability of staff, and taking practical action

The FCA suggests that firms “may want to consider options such as creating a product specifically to meet the needs of vulnerable consumers or taking an inclusive design approach”. We fully support and endorse a movement towards inclusive design, particularly in considering the needs of vulnerable consumers.

For the full guidance, the FCA should go further than encouraging firms to simply consider what inclusive design *could* mean for them. Instead **the FCA should lead the way in providing clear guidance for firms on how they can apply the principles of inclusive design to their work, across departments.** As part of this, the FCA should lead by example. We want the FCA to incorporate inclusive design principles into the way it sets regulatory policies, to ensure the design of those policies embeds expertise by experience (particularly experience of vulnerability).

Regulators need to ensure their policies are developed inclusively and lead to a system that encourages firms to serve people from all backgrounds, including socio-economic background.

Elsewhere the FCA states that firms should respond to the needs of vulnerable consumers “at all stages of the customer journey and this includes the sale of products and services.” We have emphasised the need to consider vulnerable consumers at the product/service design process. This is down to concern we have that designer biases have not always produced good outcomes for consumers who diverge from being a ‘typical consumer’ (if there is such a thing), let alone for vulnerable consumers.

On the other side of the coin the needs of vulnerable consumers should be considered at the Point of Sale.

Firms need to consider whether staff at the Point of Sale are skilled enough to identify signs of vulnerability. Reinforcing a point made by colleagues at the Money and Pensions Service, Point of Sale provides a useful touchpoint to identify possible vulnerability and avoid the risk of further detriment in the course of the product relationship. Due care is vital and firms must ensure it is considered in staff training.

We feel that firms should be encouraged to use a standard set of diagnostic questions, to engage with customers and ensure the product or service applied for is the most suitable. This should be seen as the foundation for interaction with customers. This has to be presented in a way that isn’t

patronising or could be perceived as paternalistic. The FCA should monitor this on an ongoing basis for improved customer outcomes.

We also echo MAPS' recommendation that **all customers be provided with an 'IF Things Go Wrong' leaflet covering scenarios where (a) customers' material circumstances change for the worse (e.g., job loss) (b) firms become insolvent or are closed down and (c) technical issues cause detriment to the customer.** This leaflet could provide the details of relevant support services such as the Money and Pensions Service website, the Financial Services Compensation Scheme, the Financial Ombudsman Services and others.

With regards to referrals to third sector organisations, firms requested further information and clarity from the FCA on their "responsibility in developing good customer service to, and supporting, vulnerable consumers beyond referral to third party organisations or specialist agencies." The FCA points out that "while [third sector organisations] can offer valuable insight and services, consumer bodies and charities have limited resources and capability."

It is worth clarifying that the limited capability of consumer bodies and charities is primarily linked to limited resources, rather than limited skills in the sector. We are pleased to see some very good examples in this guidance of ways in which firms can engage and collaborate with charities.

In order to provide good value for charities and consumer bodies, **firms should quantify how much they save by partnering and referring to those third sector organisations.** This should be done with a view to donating the sum of that cost-saving to the charity or consumer body.

Evidence in the guidance of firms' relationship with Macmillan Cancer Support demonstrates that firms save money through these partnerships. **Firms should consider contributing grants to third sector organisations in return for forming similar partnerships and for making referrals for customers requiring more specialist support.**

This is on the basis that some third sector organisations deplete resources through these partnerships, while firms save money by entering them. Such a move (to be monitored by the FCA) would rebalance these relationships to be mutually beneficial.

Monitoring and evaluation

While we are glad of the progress that this guidance represents on thinking about vulnerability, it counts for little if it is not monitored, supervised, and evaluated properly, to assess impact and learn for the future.

We are pleased to see that the FCA has begun to describe what it requires from firms in order to monitor the degrees of success that firms will achieve in treating vulnerable consumers fairly. We are particularly pleased that this is outcomes focused, with the FCA planning to "evaluate what action firms have taken and whether we have seen improvements in the outcomes experienced by vulnerable consumers."

However, we are concerned that currently there is too little detail on the precise ways in which the FCA intends to monitor and evaluate firms for outcomes through its supervisory work. We are also concerned about the suggested timeframe for this evaluation work. In this draft guidance the plan is for this work to start in 2023. This is not soon enough.

We recommend that the FCA be much clearer on how it intends to monitor, supervise and evaluate firms, as well as to impact assess its own interventions on vulnerability. Doing this will identify successes and failures and identify whether future iterations of vulnerability work should focus on rules rather than guidance only.

To that end, **the FCA should (as part of its supervisory requests) produce a clear document detailing the vulnerability outcome measures firms should be achieving.** This would create certainty on expectations across all firms, to which they would be required to respond in a clear and consistent way. We anticipate that this will be helpful for firms considering where they should allocate staff supervision. We also anticipate that this will helpful for the FCA in order to monitor good practice effectively.

We also recommend that this evaluation work be brought forward sooner than 2023.

We welcome the FCA's work on 'harms' to which a customer can be vulnerable, rather than the focus being solely on a consumer's vulnerabilities. By doing this we can acknowledge the part played by firms themselves in creating harm or exacerbating vulnerabilities. This is a very important distinction.

However, we feel that the FCA should be more explicit on what harm, detriment, or disadvantage a customer is vulnerable to.

We echo a point made by the Money Advice Trust in their response that while the actual guidance for firms helps to consider most of 'what is vulnerability', it is not complete. It does not explicitly identify for firms 'what are our customers *vulnerable* to?'

The risk here is if a firm does not know what harms, detriments, or disadvantages a customer is vulnerable to, providing requisite support will be difficult.

In the updated guidance **we recommend the FCA spends equivalent time describing what customers are vulnerable to, as to considering what is vulnerability.** This will allow firms to consider their own processes and policies. It would also encourage reflection on whether firms are causing or exacerbating vulnerability, rather than just considering the vulnerabilities which customers may experience.

We endorse the changes that the FCA has made regarding the definitions of 'actual' and 'potential' vulnerability. We agree that it is much more helpful to consider vulnerability as a "spectrum of risk". We are particularly pleased to see the FCA clarify through an example of what this looks like:

> "[I]f a consumer loses their job or falls ill they are more likely to have different or additional needs to other consumers. If these needs are not met, they may be vulnerable to harm. If their resilience or capability is also low they may need more support and the risk of harm if they do not receive it is likely to be greater."

We endorse the way in which the FCA has considered use of proactive identification. We feel there is a place for proactive identification in this discussion. There is value in firms being proactive to understand the needs of vulnerable consumers. We are concerned that across markets there is too much reliance on consumers needing to self-disclose vulnerabilities to their providers.

As the UK Regulators' Network put it: "self-disclosure has its limitations. Evidence suggests that consumers who don't perceive themselves as being vulnerable or who move in and out of vulnerability are less likely to volunteer this information. This means that consumers who need support may not always get it."[2]

Firms currently collect a range of data on customers and have the capabilities for monitoring trends and assessing how different customers use products. We know these tools are deployed to upsell other products to customers. We would like to see them be used better to identify harms in the future, to ensure remedies can be delivered to customers in a timely fashion.

To that end we are pleased to see the FCA show leadership on helping firms develop skills on using machine learning in data analytics, through its Regulatory Sandbox.

Going a step further, **we recommend the FCA should give some direction in the guidance about how firms can use data analytics tools and machine learning for proactive identification of harm.** While there are no obligations set on firms currently in the guidance, the FCA should still lead by example and present options available for what 'good' looks like. Furthermore, **we recommend the FCA should set a specific challenge within the Sandbox on proactive identification of vulnerability.** This challenge will be set for innovators within firms and among the start-up community.

In relation to proactive identification, it's worth reflecting on this said by Daniel Gordon, Senior Director, Markets, at the Competition and Markets Authority:

> "The current structure of consumer regulation looks market by market, despite the fact that each regulator is talking at the same people. [Regulators] need to come together and identify those who are the most vulnerable"[3].

In our view it should not just be firms engaged in proactive identification of customer vulnerabilities, but regulators should work in collaboration to develop strategies designed to reduce harm experienced by consumers. Proactive identification should be a crucial part of such a strategy.

We recommend that the FCA should lead the way in formally entering strategic collaboration with other regulators to engage in proactive identification of customers experiencing vulnerable circumstances. This strategic collaboration would maximise the resources of each regulator to improve the outcomes of consumers at risk of harm.

Finally, we feel that the guidance is missing any information on a clear set of consequences for firms if they fail to meet the needs of consumers experiencing vulnerabilities.

To that end, **we recommend that the FCA should be transparent in the final guidance about what the consequences will be for firms failing to meet the needs of consumers experiencing vulnerabilities.**

<u>Other obligations relevant to the treatment of vulnerable consumers</u>

The FCA points out that "Some respondents felt that the Guidance should be linked to the Senior Managers and Certification Regime (SMCR) to ensure that Senior Managers are accountable for the fair treatment of vulnerable consumers." In response, the FCA says:

"Staff, from senior management through to frontline staff and relevant back office staff, can influence outcomes for vulnerable consumers. Firms should ensure that all relevant staff have the

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[2] https://www.ukrn.org.uk/wp-content/uploads/2020/09/UKRN_Literature-Review_200320.pdf (p.3)
[3] Said at a meeting of the APPG for Poverty, 13 November, 2018.

appropriate skills and capability, as well as support from appropriate systems and processes, to understand and take into account the needs of vulnerable consumers in their work".

We don't feel that this adequately addresses the question set out by respondents to GC19/3. While senior managers can influence outcomes for vulnerable consumers, and should obtain the appropriate skills and capabilities to take the needs of vulnerable consumers in their work, the question remains: should they obliged to? And should they be accountable for meeting the needs of vulnerable consumers?

We reflect on the success of the SMCR. A UK Finance report[4] that evaluated the SMCR found that the rules introduced more than three years ag,o to improve governance and culture at banks post the financial crisis, have led to a "meaningful and tangible change in culture, behaviour and attitudes." 93% of respondents agreed that the SMCR had induced change for the better.

As a result, we are convinced of the potential for the SMCR to influence meaningful change on treating vulnerable consumers fairly. **We recommend the FCA should take this opportunity to link the SMCR explicitly to the fair treatment of vulnerable consumers by making senior individuals more accountable for firms' conduct towards them.**

For the same reason, **we recommend that the FCA should set a 'duty of care' in order to provide legal direction for authorised persons within firms to ensure fairness across all financial services markets.** Through setting a 'duty of care' the FCA would ensure a consistency of practice for the protection of all customers, including those who are experiencing vulnerabilities.

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

We welcome the opportunity to give feedback on the FCA's cost benefit analysis (CBA), particularly because there is no statutory requirement in the Financial Services and Markets Act 2000 for a cost benefit analysis on guidance.

Our overall assessment of the CBA is that there is a greater emphasis on the costs, rather than on the perceived benefits to firms. We are concerned by the potential unintended consequences of this. In our view this will undoubtedly impact the level of consideration firms give to the matter, especially as we enter another period of uncertainty for all businesses, and in the context of already-realised losses during the pandemic.

The FCA gives us an indication for why there is more emphasis on costs to firms than on benefits: "it is not reasonably practicable to quantify [the extent of the benefits to customers]". It may be that the FCA doesn't wish to quantify the savings per customer because this might imply that savings need to be passed on by firms to customers. However, given that there are existing methods for quantifying these savings we feel it would be worth calculating them and publishing them for all relevant stakeholders including the third sector.

We recommend that in the full guidance the FCA should set out a high-level quantification of the benefits to customers as a result of their intervention on the fair treatment of vulnerable

[4] https://www.ukfinance.org.uk/system/files/SMCR%20-%20Evolution%20and%20Reform.pdf (p.8)

consumers. This will have the benefit of providing firms with an indicative assessment of customer gains.

Proving that there is a way to quantify this for customers, the FCA cites the following in their feedback statement:

> "over 3,700 people have been referred from a large retail bank to Macmillan's financial guidance service (or vice versa) for further assistance. Out of these referrals, over £485,000 in additional support has been given to people in need since the partnership was initiated in 2017. This illustrates that if the firm had not been able to signpost the vulnerable person to the additional support provided by Macmillan's Financial Guidance Service, the customer may have had to take on these costs themselves, equating to £131 per customer".

We feel that replicating a methodology similar to this would achieve clarity on what the benefits stand to be for consumers.

We are interested to find out more about how the FCA has estimated that monitoring and evaluation will be cost-free. This would seem to imply that monitoring and evaluation might be minimal. If that is the case, we don't think this would be sufficient. Furthermore, design costs are assumed to be a one-off, rather than an ongoing cost, and that these costs will be cheaper for a large firm than for a medium sized firm.

We are concerned that there are no assumed ongoing costs identified for product and service design. In our view this contradicts the principles of inclusive design. These principles require ongoing iterations as a means of refining the problem which design sets out to solve. This would require costs (though we work on the assumption that these costs will pay for themselves in the long-term as a result of reducing the poor outcomes of consumers experiencing vulnerability).

What is curious is that the FCA seems to accept the premise that product and service design requires ongoing iterations. For example, where the FCA states: "To ensure products and services meet the needs of vulnerable consumers in their target market or customer base, firms should take such needs into account at all stages of the product and service design cycle."

On the assumption that considering the needs of vulnerable consumers at all stages of the product and service design cycle would imply costs, we recommend that the FCA should provide details of these in the final version of its cost benefit analysis.

The FCA calculates that for training and development, and product and service design, one-off costs are larger for firms with 50-249 employees than those with 250-999, and 1000-9999 employees. On the assumption this is true, it concerns us that paying these one-off costs could become less viable for smaller firms. There is therefore a risk that firms could cut corners.

We feel this gives credibility to the view that the FCA should set more rules, as well as guidance (or, to put this another way, set more 'musts' rather than just 'shoulds'). Additionally, we think it highlights the importance of setting a specific challenge within the FCA's Regulatory Sandbox on proactive identification of vulnerability (see our previous recommendation on this above). Innovators on the sandbox programme addressing vulnerability could create low cost ways for smaller firms to implement the vulnerability guidance.

Finally, in relation to costs of this guidance to the FCA itself, the FCA says:

> “We do not anticipate a significant increase in costs for the FCA. The proposed Guidance will build on our existing supervisory approach and will be taken forward within existing resources, see Chapter 1 in GC 20/3 for more information.”

We recommend that **the FCA should anticipate increased costs for monitoring and evaluation. This is because we are recommending in our response that the monitoring and evaluation work take place earlier than in 2023 (2023 being the FCA’s current plans).** We also recommend that activities associated with monitoring and evaluation are increased to ensure effectively that firms are complying with what is expected of them in this guidance.

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

Firstly, we reiterate an earlier point that the FCA should be much clearer on how it intends to monitor and evaluate its own interventions on vulnerability; to assess whether future iterations of vulnerability work should be rules-based rather than guidance. We also want this evaluation to be brought forward sooner than 2023.

The draft guidance currently states that:

> “We will monitor how firms respond to our Guidance through our supervisory work. Firms will need to be able to demonstrate how their culture, policies and processes ensure the fair treatment of all consumers, including those who are vulnerable.”

Since the FCA states that their expectations of this guidance are “to improve outcomes for vulnerable consumers”, **we recommend that in the final version firms should be explicitly obliged to demonstrate outcomes for vulnerable consumers. The FCA should set out how firms do this. There should be penalties set and published for firms that do not comply with this.**

In particular, **we recommend that the FCA should identify through its supervision of firms what existing practices are leading to good or poor outcomes for consumers experiencing vulnerability.** This will help identify evidence for good practice that can be shared and will also allow the FCA to assess its own regulatory impact.

Similarly to Fair By Design, we would be particularly keen for the regulator to warn firms against the following practices (on the grounds that it disadvantages consumers, many of whom will be vulnerable): 1/ online switching as the primary means of obtaining good deals; 2/ over-reliance on digital tools in order to use the product well; 3/ complicated language/communication in product/service information.

We know that consumers experiencing vulnerabilities are more likely to hold a product for a greater period of time without switching. According to the Financial Lives Survey 23% of people with mental health problems avoid switching because they find it overwhelming. As a result, vulnerable consumers may be more likely to pay a higher price than other consumers. Also, people aged 65 and over are more likely to pay a higher price than other consumers for services such as home insurance and savings accounts.

For credit providers, **we recommend that the FCA should set rules for how mainstream financial services providers enact ‘warm handovers’ to alternative, affordable sources of credit (such as**

credit unions or CDFIs) when customers do not qualify for credit. This should be done on the principle that banks have a duty of care to customers even if they cannot provide a service to them on a particular occasion. Once set, this is also something on which we think the FCA should prioritise when monitoring firms' treatment of vulnerable consumers.

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?

The FCA states that firms should:

- understand the nature and scale of characteristics of vulnerability present in their target market and customer base.
- understand the impact of vulnerability on the needs of consumers in their target market and customer base, and how this might affect the consumer experience and outcomes."

We agree with the above. In order to collect this information effectively firms must do three things in our view:

- carry out process evaluations (evaluations to determine whether activities have resulted in certain outputs) in order to identify how products and services are being used by consumers experiencing vulnerability, to determine how to modify those products and services if they are not meeting those consumers' needs
- embed inclusive design principles and a culture of engaging expertise by experience[5] to understand more about vulnerabilities. This is in order to assess and make necessary adjustments to products and services to avoid exacerbating or creating harm for consumers experiencing vulnerability
- carry out outcomes evaluations of consumers experiencing vulnerabilities to ensure your products and services are working well for them and are fit for purpose.

We recommend that the FCA should set rules on how firms report this information back to the regulator.

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

The FCA has considered harm in relation to the following: financial exclusion, difficulty accessing services, disengagement with market/partial exclusion, inability to manage a product or service, over-indebtedness, buying inappropriate products or service and exposure to mis-selling, scams and financial abuse.

While we agree with the FCA focusing on these harms, **we recommend that the FCA should acknowledge in its list of potential harms that the poverty premium[6] is something to which**

[5] We define this as a team of people with lived experience using their voices to change and improve the system.

[6] The extra cost that households on low incomes incur when purchasing the same essential goods and services as households on higher incomes

consumers can be vulnerable. We feel the poverty premium is distinct from those other harms listed.

One further commitment the FCA should make is to modify future versions of the Financial Lives Survey to feature a wider set of harms to which a consumer can be vulnerable. **We recommend that the FCA should add consumers' exposure to the poverty premium as question in the next version of the Financial Lives Survey[7].**

Drivers of vulnerability

We endorse the emphasis added by the FCA on the part that firms potentially play as a driver of vulnerability.

As it stands, the FCA has identified 4 key drivers which they state "may increase the risk of consumer vulnerability":

- Health: health conditions or illnesses that affect the ability to carry out day-to-day tasks
- Life events: major life events such as bereavement, job loss or relationship breakdown
- Resilience: low ability to withstand emotional or financial shocks
- Capability: low knowledge of financial matters or low confidence in managing money (financial capability). Low capability in other relevant areas such as literacy or digital skills

These drivers place too much emphasis on the shortcomings of individual consumers and do not take into account vulnerability caused by firms acting improperly or without due care for consumers.

Elsewhere, in summarising what vulnerability means, the FCA hints at this more contextual definition where it states that a

> "vulnerable consumer is somebody who, due to their personal circumstances, is especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care."

Furthermore, the FCA states:

> "Firms should understand how vulnerability can be perpetuated or exacerbated by the actions, or inaction, of the firm itself. For example, if a consumer loses their job or falls ill and is not offered appropriate forbearance measures on their mortgage, this could lead to greater stress and anxiety. In turn, this could lead the customer to take actions that may create more harm (for example borrowing money from other sources such as credit cards or high cost loans) in an attempt to address the payments shortfall."

We recommend that the FCA should explicitly state that a firm not acting with appropriate levels of care is a key driver of vulnerability.

Domestic abuse reporting

In its reporting of harms, we recommend that the FCA should make a distinction between financial abuse and other harms to which someone might be vulnerable. The characteristics of domestic and financial abuse are different to such an extent that it is vital they are considered on their own.

[7] A comprehensive survey of consumers in the UK carried out by the FCA https://www.fca.org.uk/publications/research/understanding-financial-lives-uk-adults

Financial data

The FCA states in the guidance that firms "may find data particularly useful to understand their customer base and to identify characteristics of vulnerability in individual customers so they can offer support proactively." We endorse this view.

However, because being vulnerable increases the risk of facing financial exclusion, we recommend that **the FCA should create a set of standards for how non-financial data can be used in credit information and scoring reports (for example in credit and insurance markets).** This would ensure the FCA is on the front foot when lenders are relying on many more, and much more complex, types of data that often have a much less apparent relationship with creditworthiness.

This will also enable the regulator to identify whether data is being used by firms in a discriminatory way, and in a way that exacerbates vulnerability/causes harm.

Financial services as an essential service

Finally, we are very pleased to see reference by the FCA that

> "Financial services are … increasingly being recognised as essential, especially when they are the gateway to other services."

We fully agree with this statement. In our first report, Improving the Financial Health of the Nation (March 2015), we said:

> "Financial inclusion is about ensuring that every adult in the United Kingdom is connected to the financial 'mains', just as he or she is connected to mains electricity or mains water."

Financial services (such as a bank account) are 'gateway services' and have long been considered essential, while not being regulated formally as essential. **We recommend that the FCA should explicitly endorse the view that financial services are essential and set out how this will change the regulation of these services.** This should be also be done with explicit reference to how it will affect the outcomes of vulnerable consumers using essential financial services.