



GUIDANCE FOR FIRMS ON THE FAIR TREATMENT OF VULNERABLE CONSUMERS

OCTOBER 2019

1. INTRODUCTION

- 1.1. Fair By Design welcomes the FCA's invitation to consult on the guidance for firms on the fair treatment of vulnerable consumers.
- 1.2. Please note that we consent to public disclosure of this response.
- 1.3. For more information about this response please contact Martin Coppack, m.coppack@barrowcadbury.org.uk Tel: 0207 632 9060.

2. ABOUT FAIR BY DESIGN

- 2.1. Fair by Design is a movement dedicated to reshaping essential services, like energy, credit and insurance, so they don't cost more if you're poor.
- 2.2. People in poverty pay more for a range of products including energy, through standard variable tariffs; credit, through pay day loans; and insurance, through post codes considered higher risk. This is known as the Poverty Premium.
- 2.3. We collaborate with industry, government, and regulators to design out the Poverty Premium.
- 2.4. Our Venture Fund provides capital to help grow new and scalable ventures to innovate in the market.
- 2.5. Fair by Design was conceived by the Joseph Rowntree Foundation and Big Society Capital. The Campaign is led by the Barrow Cadbury Trust, and the Venture Fund is managed by Ascension Ventures.

RESPONSE TO CONSULTATION ON GUIDANCE FOR FIRMS ON THE FAIR TREATMENT OF VULNERABLE CONSUMERS

1. Do you have any comments on the aims of the draft Guidance?

1.1. We welcome the aim of encouraging greater consistency in the treatment of vulnerable consumers by financial services firms.

1.2. We welcome the aim of making it clear to firms what that they should do to embed doing the right thing for vulnerable customers into their culture, so it permeates across the organisation from the Board through to frontline staff.

1.3. We congratulate the FCA for pursuing these aims.

1.4. However, we feel there is limited reference to how vulnerable consumers could be involved in the articulation of what good outcomes look like – there is a real need to ensure that lived experience drives strategies to tackle consumer vulnerability.

1.5. We also feel that there is a need to place more detailed emphasis on the role of product design as a means to prevent problems for vulnerable customers later on, during the customer journey. This is the least worked up area of the guidance yet is at the heart of many problems for customers in vulnerable circumstances.

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

2.1. Emphasis is placed on treating customers fairly principles. One of the biggest issues here is that the FCA has not clarified what fair means for different products and markets, in a way that can be readily be understood by firms (or consumer groups and customers). Vulnerabilities or common harms faced by consumers are at the heart of product design, for example, what is 'fair' when it comes to the creation of insurance products that are based on discriminating between different vulnerabilities – in a way that is not transparent to the customer (or to many professionals).

2.2. We would like the FCA to create a summary of every aspect of the Handbook that directly/indirectly relates to vulnerability.

2.3. We would like the FCA to consider in more depth and articulate better the relationship between consumer vulnerability, inclusive design and the Equality Act, including in terms of how they supervise this area. At present there is no reference to the Public Sector Equality Duty requirements of the FCA. Public bodies have to actively consider equality duties as a central (not peripheral) feature of their policy development process. There is a requirement for equality considerations to be given equal priority with other factors. We would welcome the FCA clarifying how it

balances its PSED with its regulatory approach – with particular reference to Principle 6, ‘a firm must pay due regard to the interests of its customers and treat them fairly’. See the EHRC’s Essential Guide to the Public Sector Equality Duty¹ and EHRC (2014) Meeting the Equality Duty in Policy and Decision-Making².

2.4. We would like the FCA to more clearly articulate the link between vulnerability and the SMCR. Greater clarity and detailed articulation would lead to greater likelihood of changing culture (as well as processes). This would ensure responsibility for this area is taken at the very top of organisations.

2.5. We would like to see the FCA itself to state who at the top of the FCA is responsible for consumer vulnerability – leading by example and ensuring an adequate approach to consumer vulnerability is taken by the regulator.

2.6. We would like to see the FCA to explain how it will embed its approach to supervising and enforcing this guidance. There is very little detail on this.

2.7. We at Fair By Design are currently pursuing the following objective with the support of a range of other consumer organisations and would welcome a conversation with you regarding this:

2.7.1. The CMA and regulators of essential services such as the FCA and Ofgem should adopt *inclusive design* strategies to:

- guide their approach to understanding the needs of all consumers – through evidence, research and market analysis – to help set their priorities, develop and implement interventions, and assess their effectiveness.
- guide their expectations of businesses to embed consideration of all consumers, including low-income consumers, when they design and deliver products and services.

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

3.1. As Andrew Tyrie recognised, in his speech ‘Is competition enough’ at the Social Market Foundation, all consumers, regardless of income, can be time-poor, and therefore vulnerable to paying more.³ The guidance does not consider that consumers who are time poor – and therefore potentially vulnerable – could move into actual vulnerability, as the result of the behaviour of firms.

¹ https://www.equalityhumanrights.com/sites/default/files/psed_essential_guide_-_guidance_for_english_public_bodies.pdf

² <https://www.equalityhumanrights.com/en/publication-download/meeting-equality-duty-policy-and-decision-making-england-and-non-devolved>

³ <http://www.smf.co.uk/andrew-tyrie-keynote/>

3.2. For example, The FCA’s recent work on insurance demonstrates that consumers experience a loyalty premium within the insurance industry where people who are vulnerable or on lower incomes are more likely to pay more.⁴

3.3. We agree that a distinction can be drawn between actual and potential vulnerability, although in some ways this can be considered academic. It is essential that firms take a broad approach rather than a narrow, legalistic one. The aim should be to have good outcomes for all customers. As human beings we are not perfect, or even standard, and we don’t lead perfect lives. An ‘inclusive design’ approach should be taken to ensuring that customers are treated fairly.

3.4. We also believe there should be a greater emphasis on firm practices and products rather on consumer circumstances per se.

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

4.1. We are pleased to see low and erratic income as an example of a driver of vulnerability as well as wider examples under the ‘resilience’ heading. The drivers illustrated are helpful although consideration should also be given to the creation of common harms faced by consumers.

4.2. Financial exclusion is mentioned within your consultation document and the FCA’s own vision for consumers states: ‘Where markets are working well for consumers we will see:

- *Fair treatment and fair risk pricing mean consumers are not unduly excluded.*
- *All consumers can access basic financial services.*
- *The needs of all consumers, including vulnerable consumers, are taken into account.’⁵*

4.3. However, currently the guidance does not state how it relates to the first two of these bullets. As vulnerability and inclusive design are central to the above clarification should be made here as to how this vision can be achieved.

4.4. People in vulnerable circumstances are very often experiencing vulnerability across markets, which makes cross-sector regulatory approaches absolutely crucial. As Daniel Gordon of the Competition and Markets Authority noted in 2018: “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”.⁶

⁴ <https://www.fca.org.uk/news/press-releases/fca-sets-out-potential-remedies-tackle-concerns-about-general-insurance-pricing>

⁵ <https://www.fca.org.uk/publication/corporate/approach-to-consumers.pdf>

⁶ <http://www.appgpoverty.org.uk/wp-content/uploads/2018/11/Minutes-162F102F18-evidence-session-on-consumer-protection.pdf>

- 4.5.** As low and erratic income, as well as general financial resilience, are recognised as key drivers of vulnerability within your guidance we would like to see the FCA working with other regulators and the CMA to ensure low income and the poverty premium is at the heart of future work to protect consumers. The central role played by the FCA in addressing matters of affordability is also recognised within its Occasional Paper on financial inclusion, Access to Financial Services in the UK.⁷ However, matters of affordability are, arguably, the ones that are on the periphery of discussions on vulnerability. This can no longer be the case if product design is to feature as a key part of consumer vulnerability guidance.
- 4.6.** The CMA held a roundtable on this issue last year, where it was recognised that there is a need for more granular data to build an appropriate evidence base for better understanding the experiences of consumers on low incomes, as well as the extent of the poverty premium experienced across products and services. There was agreement that this should include quantitative research but also qualitative research that captures the experiences of consumers on low incomes and their views.⁸
- 4.7.** As low income and the poverty premium is experienced across a range of products and services it was recognised that the CMA has a critical role to play here. Fair By Design contributed to the above roundtable and the FCA was in attendance. We are aware of work that has been done since the CMA roundtable around measuring the poverty premium, which has been commissioned by the CMA.⁹ We would welcome a conversation about this and the need for further work to address this priority.
- 4.8.** In addition, Fair By Design is supportive of a cross-sector sandbox programme which involves regulators in essential services markets, including financial services (the Financial Conduct Authority); energy (Ofgem); water (Ofwat); and the Competition and Markets Authority. A cross-sector sandbox environment would begin to address an important gap for firms: shared learning of lessons that are relevant across the market, and expertise to address consumer vulnerability at the product design stage.¹⁰
- 4.9.** Fair By Design can provide subject matter expertise for this type of programme, ensuring that the pursuit of positive customer outcomes is a core part of the culture of firms. We do this by looking at how good business models interconnect with a commitment to reduce the poverty premium faced by low income consumers, as well

⁷ <https://www.fca.org.uk/publications/occasional-papers/occasional-paper-no-17-access-financial-services-uk>

⁸ <https://www.gov.uk/government/publications/vulnerable-consumers/consumers-on-low-incomes-summary-of-stakeholder-roundtable>

⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/782513/natcen_report.pdf

¹⁰ <https://fairbydesign.com/wp-content/uploads/2019/10/FCA-Cross-Sector-Sandbox-Fair-By-Design-FINAL.pdf>

as wider positive outcomes for consumers in vulnerable circumstances. Fair By Design does not do this work alone. We work in partnership with a number of additional organisations, including, but not limited to, the following:

- Toynbee Hall
- Gingerbread
- Christians Against Poverty

5. Do you have any comments on our view of what firms should do to ensure staff have the necessary skills and capabilities when engaging with vulnerable consumers (Annex 1, Section 3)?

5.1. Our main comment here is that more emphasis and guidance should be placed on ensuring those staff who have an impact on consumer outcomes, but are not customer facing, are trained and exposed to people who ‘are not like them’. For example, senior staff and product design staff may not come into much day-to-day contact with people on low and erratic incomes. This can prove problematic as decisions are made with ‘standard’ consumers in mind – such as consumers with greater financial resilience, and with greater capabilities than large parts of the UK population. This is a cultural problem for firms and, arguably, regulators. There is a need to guard against decisions being made sterile, academic environments, sheltered from the realities of customers trying to engage with products and services that have not been designed with them in mind.

5.2. Fair By Design currently works with Toynbee Hall and Gingerbread to ensure lived experience of low income consumers informs our work, which is essential if we are to represent and understand their needs. Fair By Design has a Venture Fund that provides capital to help grow new and scalable ventures to innovate the market. We require firms we invest in to consult with people with lived experience of poverty and low income to ensure their needs are fully taken into account in the product design process. By working in this way new products and services are created that address the poverty premium. We would be happy to discuss this model with you.

5.3. In addition, the process of creating these new products and services helps us to understand better the capacity for the market to address the injustice of poor people paying more, as well as what changes are needed in wider regulatory and social policy. Again, we would be happy to discuss this with you.

6. Do you have any comments on our view of what firms should do to translate their understanding of the needs of vulnerable consumers into practical action on product and service design, good customer service and communications (Annex 1, Section 4)?

6.1. Product and service design

6.1.1. We have documented our thoughts on product design throughout our response.

6.1.2. We welcome the FCA's guidance that firms should consider the characteristics and needs of vulnerable consumers in the design stage¹¹. Inclusive design principles can:

- guide an approach to understanding the needs of all consumers (through evidence, research and market analysis), to help set priorities, develop and implement interventions, and assess their effectiveness.
- guide expectations of firms to embed consideration of low-income consumers when they design and deliver products and services.

6.1.3. We would welcome a conversation with you regarding this because, at present, it is unclear how the FCA itself integrates this approach across all of its functions – so it is better able to articulate its expectations of firms, as well as be a regulator that better meets the needs of all types of consumers. Affordability and fairness are key aspects here for discussion.

6.1.4. We feel that at present, the product design section of this guidance is the least detailed. The FCA has not sufficiently articulated what it means by inclusive design and what fair looks like for different products where discrimination of vulnerabilities is at the heart of the product and market, for example, insurance. This means there will be a continued focus on other areas, such as customer service, where the root of many problems (product design) are not addressed as well.

6.1.5. Where harm is caused unintentionally, the FCA could provide greater guidance on the requirement to ensure the needs of all types of consumers are considered. We have written about this above.

6.1.6. We encourage the FCA to consider accessibility standards as they develop this area. Examples include:

- Web Content Accessibility Guidelines (wcag) 2.1 <https://www.w3.org/tr/wcag21/>
- Cognitive and Learning Disabilities Accessibility Task Force (Coga TF) of the AG WG and APA WG <https://www.w3.org/WAI/GL/task-forces/coga/>
- Money and Mental Health Policy Institute Accessibility Standards <https://www.moneyandmentalhealth.org/setting-the-standards-minimum-standards-and-best-practice/>

6.2. Customer service

6.2.1. In addition to staff not being *penalised* for taking extra time and constructive steps to help vulnerable customers there should be *positive incentives* to reward best practice in meeting the needs of such customers.

¹¹ Annex 1, para 67

6.2.2. More generally, there is a need to consider more fully the need for firms to create environments where disclosure is encouraged by customers in vulnerable circumstances.

6.3. Communications

6.3.1. We strongly believe firms should offer a choice of multiple channels of communication, mitigating against, for example, digital exclusion and nervousness of some customers using either postal services or telephone services.

6.3.2. Communicating with customers requires staff to be able to fully understand the products they offer. We would like to see greater clarity on the FCA's expectations for communicating to customers *useful* information on products that are not currently designed and offered in a transparent way. For example, how many staff can really judge how fair and what characteristics have been used to discriminate (against a customer) by using algorithmic calculations in insurance. This makes it difficult to provide useful feedback to customers in vulnerable circumstances on next steps. A similar point can be made in offering useful information on why a customer has been declined a credit product, a point made in the FCA's Occasional Paper on Access to Financial Services in the UK.¹²

6.3.3. We welcome firms proactively checking that customers understand communications. Rather than simply providing clear information there should be a greater emphasis on firms ensuring the customer understands a product/service.

7. Do you have any other comments on the draft Guidance?

7.1. Greater use of consumer outcomes throughout the guidance would be helpful and would help structure different elements within each section.

7.2. We have sympathy for firms trying to navigate data protection considerations in this area. We encourage the FCA to work in partnership with the Information Commissioner's Office to provide joint guidance.

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

8.1. We return to previous comments above on the need for the FCA itself to fully implement consumer vulnerability and inclusive design across all of its functions so it is better able to articulate how this guidance should be used and applied. Greater transparency here would be helpful for all. It would also add clarity to what

¹² <https://www.fca.org.uk/publication/occasional-papers/occasional-paper-17.pdf>

'fairness' is across products and markets if the FCA is to rely on TCF principles as core drivers for implementing this guidance.

8.2. We reiterate our call for more information around the supervision and enforcement model for this guidance. This would help us provide more tailored comments to this question.

9. Do you have any views on the extent to which the Guidance will enable firms to comply with their obligations under the Principles and achieve better outcomes for vulnerable consumers?

9.1. Please see comments above (especially section 2).

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

10.1. We would like more information on how you will approach this so we are able to make a considered response. We are concerned that areas of great importance to vulnerable (and indeed all) consumers are not given the weighting needed to be fair. For example, time is a factor we believe the FCA places a monetary value upon for firms in its cost/benefit analysis. However, what value is currently placed on time for customers? In other essential services industries this is taken into consideration. Consumers value time very highly and it is a key driver of vulnerability. One simple example of where other essential services industries have taken into account the value of consumer time is the use of free telephone numbers which are regularly used by energy and communications firms, to make time a little bit cheaper for customers. (Although this does not mitigate wider implications for people of having to spend their time engaging in the market.)

11. Do you have any examples of activities or processes that are in place, or could be established, to ensure the fair treatment of vulnerable consumers?

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

13. Do you have any comments on the role of the Guidance in holding firms to account about how they comply with their obligations under the Principles in treating vulnerable consumers fairly?

13.1. Please see comments above in sections 2 and 8.

14. Do you have any comments on our intention to monitor the effectiveness of the Guidance?

14.1. We are pleased to see mystery shopping listed within the guidance and would encourage the use of mystery shoppers from a wide range of backgrounds, including in terms of socio-economic status.

14.2. We would like to see clearer/more guidance on how this section relates to those working in product design.

15. Do you have any comments on the potential additional policy options?

15.1. The guidance does not contain anything on expectations for firms to work across sectors, to build on best practice and devise an approach to tackle where a vulnerable consumer in one regulated sector is experiencing bad outcomes in a range of sectors. Please see comments above, especially section 4.

16. Should we consider any further additional policy options?

16.1. Following the FCA's discussion paper on a duty of care we would encourage the FCA to be as transparent as possible on how they came to the decision they did, contained within their feedback statement. Greater clarity on how the FCA intends to meet the same outcomes of a duty of care via other means at its disposal would help in the area of consumer vulnerability.

16.2. We encourage the FCA to work with the CMA and other regulators of essential services such as Ofgem in adopting *inclusive design* strategies to:

- guide their approach to understanding the needs of all consumers – through evidence, research and market analysis – to help set their priorities, develop and implement interventions, and assess their effectiveness.
- guide their expectations of businesses to embed consideration of all consumers, including low-income consumers, when they design and deliver products and services.

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

17.1. Please see comments above which address this question. This guidance as it stands will not be enough to achieve your present aim. We are ready to work with you to help you achieve this aim.

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

18.1. Please see comments above which address this question. This guidance as it stands will not be enough to achieve your present aim. We are ready to work with you to help you achieve this aim.