Front of mind
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FCA Recent Guidance on Vulnerability

This article provides an update on the latest developments on vulnerability, including the FCA's recent guidance for firms on the fair treatment of vulnerable customers.

The FCA now defines vulnerable customers as "customers who, due to their personal circumstances, are especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care". As a result, it would be wise that firms ensure that this definition is the basis for their policies and procedures in going forwards. It identifies four key drivers of vulnerability:

1 Health (defined broadly to include conditions or illnesses that affect a person's ability to undertake daily tasks). This could include physical and mental health issues.
2 Life events (such as bereavement, a loss of employment and relationship breakdown).
3 Resilience (a customer's ability to withstand financial or emotional shocks, with a lack of resilience potentially being caused by inconsistent income, over-indebtedness or low savings).
4 Capability (including the consumer's level of financial knowledge and confidence in managing money).

The FCA calculates that more than half of the UK's adults (53pct) have characteristics of vulnerability. It will come as no surprise, given its length and severity, that the pandemic has increased this figure and reversed a trend of falling levels of vulnerability (51pct in 2017, 46pct in February 2020, and 53pct in October 2020).

The Covid-19 impact is clearly demonstrated in the FCA's latest Financial Lives Survey. The survey shows that 20 million adults have seen their financial position worsen due to the pandemic (with 8.5 million over-indebted), that over 25pct of employees were furloughed at some point between February and October 2020, and that the number of adults with low financial resilience increased by 35pct in the same period. That said, the uneven impact of the pandemic is such that the financial health of the UK's consumers after the crisis is likely to be varied. For example, it has recently been reported that the pandemic has created over six million "accidental savers" who have retained employment but reduced outgoings as a result of lockdowns.

The FCA's guidance on vulnerable customers

The protection of vulnerable customers is a "a key focus" of the FCA in that it wants to ensure that firms treat them fairly and that they experience outcomes that are as good as those experienced by customers who are not vulnerable. The FCA suggests that firms focus on six areas and so it is important that firms update the vulnerability processes to reflect these changes:

1 Understanding customers' needs: Firms should seek to understand the nature and scale of their customers' potential vulnerabilities, and the impact of that vulnerability on their financial needs.
2 Skills and capability of the firms' employees: The fair treatment of vulnerable customers should be embedded across the workforce, such as through training. Firms should ensure that employees are able to identify the types of harm vulnerable customers are likely to face. For example, employees that handle sales calls should be able to identify phrases and behaviours that suggest customer vulnerability and then to direct the customer to appropriate resources (such as specialist teams within the firm or third parties).
3 Product and service design: Vulnerable customers should be considered at all stages of product and service design (for example, firms should consider the positive and negative impacts of a proposed new product on them).
4 Customer service: Customer service processes should enable vulnerable customers to disclose their needs, and firms should be able to respond flexibly (including by making customers aware of the support available).
5 Communications: Firms should ensure communications are understandable by all consumers and take into account the needs of vulnerable customers (by

providing, for example, a choice of multiple communication channels).

6 Monitoring and evaluation: Firms should monitor and evaluate whether they have met the needs of vulnerable customers. This will include producing and reviewing management information on the outcomes being delivered to them.

The FCA's expectations of firms has broadened. For example, the FCA suggests that staff should be on the lookout for shortness of breath, signs of agitation and references to a customer taking medication (which would ordinarily be seen as medical issues rather than those that might concern a bank).

The FCA's guidance does provide helpful clarification of the indicators of vulnerability. There is no doubt though that it is likely to remain the case that vulnerability will not always be easy to identify and the question will involve an elements of judgement by firms (and particularly by their sales staff and call handlers).

Once a firm has identified vulnerable customers, the guidance does not direct them to take a particular course of action. Instead, the FCA states more generally that it expects "vulnerable consumers to experience outcomes as good as those for other consumers" and that firms should provide a "level of care that is appropriate given the characteristics of the customers themselves". Each vulnerable customer will be different and have different needs so that the FCA's guidance is purposely flexible so that it covers a wide range of circumstances.

What about enforcement?

The main weaknesses identified by the FCA so far in the enforcement cases within the banking and finance arena relate to identifying vulnerable customers and act flexibly to provide appropriate solutions, but also to the broader importance of ensuring that the firms' control framework and culture assists it to treat these customers fairly. The scope of an FCA investigation can extend from the harm suffered by certain vulnerable customers to a more comprehensive review of a firm's systems and controls.

What can we learn from current enforcement cases?

Below, we have set out some key tips learnt from the enforcement cases to support firms with their implementation with the FCA guidance as follows:-

1 Identify your vulnerable customers: Firms should be able to identify vulnerable customers. The FCA appears to see this as a broad and holistic process, requiring them to investigate their customers' individual circumstances to obtain sufficient information about them and to "understand" and "explore" the reasons why they might be experiencing financial difficulty. A firm's understanding should also be tailored to the particular market in which it operates. For example, if your customers credit profile has a poor or non-existent credit history or had experienced financial difficulty in the past, the FCA states in one example that firms would need to have a deeper understanding of customers and their financial circumstances.

2 Keep records of information about your customers' vulnerability: The FCA expects firms to keep records of customers' vulnerability, so that staff who review or interact with customers can understand their history and also offer them appropriate solutions. For example, in arrears cases, the reason customers were in arrears must be recorded. We have seen fines where firms have not identified the reason why the customer is in arrears and then tailored the forbearance solution accordingly.

3 Offering appropriate and flexible solutions for vulnerable customers: This should take into account their circumstances, which include offering appropriate forbearance options and other solutions to clear arrears. For example, if a customer is vulnerable for some reason, a longer term payment proposal might be necessary as we have seen the FCA fine firms where firms have not been flexible enough and only granted short payment breaks where it was clear from the customer's circumstances, especially when clearly vulnerable that a longer forbearance plan would be a much better outcome.

4 Communicate with your customers: These methods should be tailored to their vulnerabilities. For example, firms have been fines where automated customer communications system do not take vulnerability into account.

5 Ensure that staff and call handlers have the necessary experience and expertise: Firms must have staff to manage workload, staff that have the right level of experience and expertise and are adequately trained on vulnerability. Firms must have adequate escalation processes for referring vulnerable customers to supervisors, specialist teams or third parties in circumstances where the call handler lacks the capacity or experience to assist them.

6 Have sound monitoring of customer interactions and provide adequate management information: Firms should have strong monitoring processes and adequate management information to enable senior management to understand how vulnerable customers are being treated with monitoring to consider the customer's treatment as a whole.

7 Management, oversight and other processes to be appropriate: Systems and controls are important to be implemented to ensure that vulnerable customers are treated fairly. Many enforcement cases has highlighted firms inconsistencies of approach between different departments, insufficient control and oversight of staff, lack of clarity within the firm as to the respective responsibilities of different functions as well as management not having appropriate seniority and experience, and inadequate IT systems.

8 Culture: Firms should make share that they embed a customer focused approach with emphasis on good customer outcomes and escalation.

Other regulatory action taken to protect vulnerable consumers

In March 2020 the FCA stated that it expects firms to offer payment deferrals to consumers in financial difficulty (both in respect of mortgages and unsecured consumer credit) and that firms should consider the needs of vulnerable customers.

In summary

Vulnerable customers will remain an important aspect of regulatory policy and will remain a significant element of conduct risk. This is unlikely to change especially since Covid-19, which has created more vulnerable customers. ■

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