

# Hot TopICS

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## **Finalised Guidance on the fair treatment of vulnerable customers**

The FCA has recently issued Finalised Guidance on the fair treatment of vulnerable customers (FG21/1), setting out the regulator's view of what firms should do to comply with their obligations under the Principles for Businesses and ensure they treat vulnerable customers fairly. The Guidance has evolved from the FCA's 'Occasional Paper' on vulnerability published as far back as 2015 and other research including the Consultation Paper on the fair treatment of vulnerable customers published in July 2020. The theme is therefore familiar to regulated firms.

Our Hot TopICS of August 2020 (please log-in to the Compliance Manual or request copy) outlined the main considerations and ways in which insurance intermediary firms could work towards meeting the regulatory expectations.

The regulator is driving improvements to bring about a practical shift in firms' actions and behaviour. But firms are expected to use their judgement to consider what the Guidance means for them and what they should do to make sure they treat all customers fairly.

Undoubtedly, the pandemic has increased the incidence and awareness of customer vulnerability. The Financial Lives coronavirus panel survey, carried out in October 2020, indicated that that 53% of adults displayed one or more characteristics of vulnerability.

This article highlights the main issues for insurance intermediaries seeking to embed good practice, based on the Finalised Guidance.

### **Overview**

The FCA's definition of a vulnerable customer is:

**'A vulnerable customer is someone who, due to their personal circumstances, is especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care.'**

The definition is not restricted to any group or type of people. Anyone can find themselves in vulnerable circumstances at any time and the guidance is relevant to firms serving retail customers, including some business customers, regardless of the firm's size or sector.

The FCA has summarised in general terms what firms are expected to do, i.e.:

- understand the needs of their target market/customer base

- ensure their staff have the right skills and capability to recognise and respond to the needs of vulnerable customers
- respond to customer needs throughout product design, flexible customer service provision and communications
- monitor and assess whether they are meeting and responding to the needs of customers with characteristics of vulnerability and make improvements where this is not happening

There are no hard and fast rules as to how firms should comply and the FCA's guidance does not specify a checklist of measures. However, firms should use the guidance to develop and update internal vulnerability policies and procedures.

Looking at the FCA's expectations in turn, there are a number of key considerations for insurance intermediaries.

### **Understanding the needs of the target market/customer base – 'Know your customer'**

Firms should have an awareness of the nature and scale of vulnerability that exist in their target market and customer base. As well as FCA publications, other organisations including charities, trade bodies and professional bodies have published relevant, free information on vulnerable consumers.

Speaking to customers and using internal data and research can also help firms to identify the vulnerabilities that may be present or predictable in their customer base. Information obtained through previous transactions or complaints may help firms to see where and how vulnerability needs to be addressed. With a better understanding of vulnerability, firms are better equipped to identify, adapt and monitor their strategies.

The characteristics of vulnerability are likely to be complex and overlapping. Vulnerability can be either a temporary or permanent state and it is generally driven by 4 key factors:

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

Taking these factors into account, firms should address the likely vulnerabilities and needs that will be encountered within the firm's target market for each different type of product and aim to provide a flexible, tailored response. Using a private motor policy as an example, any of the above types of vulnerability might be encountered, which might include for instance:

- Physical disability or health issues affecting driving and/or the ability to communicate through the usual channels
- Poor financial capability potentially affecting affordability
- Mental health or literacy issues affecting the ability to respond to questions and to understand important information about the policy terms and conditions
- Physical and emotional consequences of a serious RTA (in relation to a claim and subsequent insurance arrangements)

Anticipating these and other possible scenarios, firms are in a position to consider what steps to take.

### **Ensuring staff have the right skills and capability**

Firms need to embed the fair treatment of all customers, including vulnerable customers, across the workforce and all relevant staff (including product development, back-office and claims staff) should understand how their role affects the fair treatment of the vulnerable.

The response of frontline staff is crucial to the customer experience. They do not need to be experts, but they need sufficient training to have a proper conversation and to know what internal resources exist to respond to individual needs. They should be enabled to either use their authority and discretion to take a tailored approach to the situation and offer flexible solutions where possible or refer to a colleague who can.

Staff may be well versed on the relevant rules and procedures, but they should also possess suitable soft skills. Good communication skills and empathy are vitally important so that customers feel confident to disclose information about themselves and they see that the firm is working in their best interests.

Firms are also expected to consider what practical and emotional support they could provide to staff who are likely to encounter sensitive and emotive issues when dealing with customers.

### **Spotting signs of vulnerability:**

Shortness of breath or signs of agitation, asking for repetition (a sign the consumer is not retaining information), as well as mention of disability or ill health are clear signals. Other manifestations of vulnerability, of which staff should be aware, that may negatively impact a customer's decision-making include:

- heightened stress levels due to difficult, or different, personal circumstances
- increasing pressures due to additional responsibilities
- increasing pre-occupation ('brain is elsewhere') limiting their ability to manage
- processing power and ability decreasing
- lack of perspective and not fully understanding the broader implications; being unable to make comparisons, or see the 'bigger picture'
- changing attitudes towards taking risks; people may become more 'reckless' and/or careless when under stress
- language barriers

Other triggers to look out for, especially where contact is remote, include payments missed or payments stopping suddenly and late or missed renewal. It is important to give the customer time to explain their circumstances fully and not to interrupt or appear impatient.

### **Positive interaction:**

Consumers may not want the label 'vulnerable' applied to them. Indeed, the guidance suggests that firms do not use this label in their interactions with consumers. Instead, they should focus on responding appropriately, such as being patient and empathetic, speaking slowly, clearly and taking time to explain. Vulnerable customers, should be confident that:

- if they disclose information about needs, they will not have to repeat it every time they make contact
- the firm will try to help them if they have financial difficulties
- if a carer or representative contacts the firm, their concerns will be listened to, even though the firm may not be able to divulge information to them
- a person with power of attorney or a third-party mandate, will receive consistent advice and treatment

Frontline staff should have the capability to recognise characteristics of vulnerability and where appropriate, be empowered to take steps, such as offering forbearance or revised payment options where affordability is an issue or moving away from prepared scripts to make customers feel at ease.

Staff should feel comfortable taking extra time or flexible steps in response to vulnerable customers' needs. They should know when information about a consumer's needs is relevant to future interactions and know how to record it, whilst complying with the applicable data protection requirements<sup>1</sup>.

The **TEXAS** drill is widely used by businesses to help ensure staff record the most relevant information about characteristics of vulnerability and how these characteristics affect support needs, while helping to meet data protection requirements. The steps of the model include:

- **T**hanking the customer for their disclosure
- **E**xplaining how their disclosed information will be used
- Depending on the basis on which the data will be processed either: **eX**PLICIT consent is sought Or **cheXs** ('checks') made to ascertain if the customer objects to data processing
- **A**sking the customer questions to find out key information to understand the situation better
- **S**ignpost to internal support, or to external services with specialised expertise (where this is appropriate)

Some vulnerable customers may need the help of a third party such as a friend, a family member, a care worker or a legal advisor. If the third party can correctly answer security questions, they should be enabled to conduct the call on the customer's behalf. Where the customer shows signs of vulnerability, such as difficulty understanding information about their insurance arrangements, they could be encouraged to provide a designated second contact at an early stage.

Failing to take vulnerabilities into account in relation to complaints (and, where applicable, claims) might not only frustrate a client but could also result in the firm having to account to the regulator or the ombudsman.

Vulnerable consumers may withdraw from the mainstream market and their problems may spiral if their needs are not met. On the other hand, they can be valuable customers if firms respond to their needs and treat them flexibly.

#### **Training:**

The importance of keeping training and internal policies and procedures up to date has been demonstrated by the Covid-19 pandemic - as many more customers moved up the vulnerability spectrum through physical illness, mental challenges and loss of income or employment.

Training, through role-play for example, can enable staff to be more comfortable in a variety of scenarios, including when customers' needs suddenly change. Sharing real life experiences with colleagues and management, including staff that work away from the frontline such as in product development and back office, can be part of a firm's training provision.

A firm's written vulnerability policy can be used as a basis for training and to help to raise awareness throughout the firm.

#### **Culture and responsibility:**

Firms are expected to embed the fair treatment of vulnerable customers into their culture, policies and processes. Their commitment to create and maintain a healthy culture should start at the top.

Although there is no prescribed responsibility for treating vulnerable customers fairly under the SM&CR, all senior managers have a statutory duty of responsibility and are subject to the Conduct Rules. They

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<sup>1</sup> Data protection issues are addressed in Appendix 1 of [FG21/1](#)

must do all they can to ensure the firm abides by the Principles for Businesses. In short, this means maintaining a culture in which all staff understand the need to treat vulnerable customers fairly and behave accordingly.

Firms may wish to designate one or more senior managers as being specifically responsible for the delivery and reinforcement of the firm's vulnerability policy.

### **Responding to customer needs throughout product design, flexible customer service provision and communications**

Firms are expected to take the needs of vulnerable consumers into account at all stages of the product design, product selection and service design process, including idea generation, development, testing, launch and review.

Insurance and other financial services products are often distributed through complex chains. FCA guidance makes it clear that all firms in the chain must ensure consumers are treated fairly, irrespective of whether they design the product and service they distribute.

Insurance intermediaries may or may not design their own products. They will, however, select the products they wish to sell and the type of customers they target and are responsible, generally, for marketing, the sales process and customer service.

Firms are expected to consider what types of vulnerability may be encountered at any stage of the customer journey and anticipate how their product or service provision could affect the risk of harm. Where firms sell to a broad cross-section of people, some customers will be or become vulnerable. Some firms might actually target vulnerable consumers when they offer products such as travel insurance for people with specific medical conditions and term life cover for the elderly. Ideally, policies should not be rigid in how they are underwritten or sold and firms should be able to offer a range of options whereby customers can access clear and concise information. Customers may sometimes be forgetful or overly trusting and they should be able to rely on the firm always acting in their best interests.

Firms should not be quick to make assumptions about a customer's needs but take steps to encourage disclosure where they see clear indicators of vulnerability. Firms are not expected to go further than this to proactively identify vulnerability. In terms of real-time customer service, therefore, staff will need to use their best judgment to identify any particular needs as they arise, recognising that a customer's personal situation can change at any time. They should try to clarify customers' understanding at every stage, ask if any further explanations are needed and deliver information, taking the sensitive nature of the customer's circumstances into account.

Technology, such as voice analytical software, may be useful to assist with identification and monitoring. For online sales, firms could utilise targeted questions, FAQs and online chat facilities to make it easier for people to disclose relevant information. Based on a customer's responses, systems could be geared to flag-up when intervention by a live customer service advisor is appropriate.

Some firms make a public statement (via their website and other means) on vulnerable customers, telling customers to make the firm aware of their particular circumstances and how the firm intends to respond, such as by:

- immediately making a record of the information given
- providing additional opportunities for the customer to ask questions

- seeking confirmation throughout the process that the customer has understood all the information that is provided
- asking whether the customer has anybody on hand to assist them
- providing information about any specialist support services that might be available
- making arrangements to contact the customer and/or their assistant at a more convenient time
- offering the opportunity for the customer to go away and give the matter further consideration
- providing information in an alternative format
- if unable to help, signposting them to suitable alternative options, where possible

Firms should also consider the needs of vulnerable consumers with regard to their complaints processes and consider how they can support vulnerable consumers to complain and get redress.

### **Communications:**

FCA guidance says that firms should ensure communications throughout the life cycle of a product or service are clear and provided to vulnerable consumers in a way that they can understand, this includes:

- marketing
- point of sale
- post-contractual information
- information about changes to the product or service
- complaints processes

Firms should therefore consider the needs of vulnerable consumers in their target market and customer base when designing all communications. In addition, firms should be able to clarify if a vulnerable client understands the key terms and conditions of any agreement.

Ideally, there should be a range of effective communication channels that a customer can choose from that best suits them. If needs cannot be accommodated within standard communications, firms are encouraged to provide different formats where it is proportionate to do so, particularly for essential documents.

The aim is to give customers consistent, high quality service rather than selling them a policy which the customer may not understand or afford.

### **Monitoring, assessing and improving**

The FCA says it will be taking a 'proportionate approach' to monitor firms' treatment of vulnerable customers and hold them to account if they breach the Principles. Firms are therefore expected to have, and be able to demonstrate, a process by which they can assess whether they are responding to the needs of customers. This is likely to involve:

- producing and regularly reviewing management information (MI) appropriate to the nature of their business, on the outcomes they are delivering for vulnerable consumers
- putting in place systems and processes that support the delivery of good customer service, including systems to note and retrieve information about a customer's needs
- implementing processes to evaluate where they have not met the needs of vulnerable consumers, so that they can make improvements

Firms should periodically review their products, services and communications to check whether they still meet the needs of vulnerable consumers in their target market and customer base, and do not unintentionally disadvantage them.

Good quality MI - such as sales and renewal data, file reviews, customer feedback, training and competence records, complaints (including root cause analysis) and discussions around the relevant experiences of staff - can assist firms' understanding of their business and of their customers generally. Some firms may also use mystery shopping or focus groups.

The MI firms collect to monitor the original FCA outcomes for 'Treating Customers Fairly' could be used and enhanced to monitor the outcomes being achieved in relation to vulnerable customers. The MI should be:

- available to the appropriate individuals
- reviewed by those individuals
- acted upon where necessary at the appropriate level

It is important to involve the staff affected by the findings, to agree what action should be taken, decide who will be responsible for action and set realistic timescales. All such activity should be accurately recorded, both for business and compliance purposes.

## What to do?

The onus is on firms to create and maintain a culture that enables them to identify vulnerability and avoid any potential for harm to vulnerable customers. All firms in the distribution chain need to consider the potential impact - positive and negative - of all products and services and embed a consistent approach across all operations through the product lifecycle. The action taken to comply will depend on the firm's size, the market it operates in, the products it offers and the characteristics of its target market and customers.

**Whilst the range of possibilities and scenarios on vulnerability is vast, it is helpful for firms to address some key issues, including:**

- having a high-level policy on vulnerability in place and, possibly, appointing a vulnerability 'champion'
- providing training to ensure all staff understand the firm's policy on the treatment of vulnerable customers and feel comfortable handling various scenarios
- empowering relevant staff to employ a range of measures to respond to vulnerable customers' needs and to feedback information to management on how customers' expectations have (or have not) been met
- updating training as customer needs change – for example, to ensure staff understand the impact of coronavirus on insurance customers
- enabling staff to record and access information that will be required to respond to a vulnerable consumer's needs in future dealings, subject to DPA requirements
- providing clear and flexible means of communication for all customers
- where reliant on third party providers and outsourcers, ensuring they also have policies and procedures in place to treat vulnerable consumers fairly
- where relevant, providing appropriate signposting for customers to obtain further help
- when reviewing MI, ask: "Are we delivering the desired outcomes?" not "Is the process working?"

## Further information

FCA video: <https://www.fca.org.uk/firms/treating-vulnerable-consumers-fairly>

FCA Financial Lives Survey: <https://www.fca.org.uk/publications/research/financial-lives>

Personal Finance Research Centre: Vulnerability – a guide for debt collection:

[http://www.bristol.ac.uk/media-library/sites/geography/pfrc/pfrc1701-21-steps-vulnerability-and-debt-collection-\(web\).pdf](http://www.bristol.ac.uk/media-library/sites/geography/pfrc/pfrc1701-21-steps-vulnerability-and-debt-collection-(web).pdf)

Money Advice Trust: Vulnerability; GDPR & Disclosure:

[https://mcusercontent.com/9cb0f2aff0f6b056d8b12dc24/files/97a795e2-994e-4bf5-8550-67b9cda2dcda/GDPR\\_Vulnerability\\_Overview\\_Guide.pdf](https://mcusercontent.com/9cb0f2aff0f6b056d8b12dc24/files/97a795e2-994e-4bf5-8550-67b9cda2dcda/GDPR_Vulnerability_Overview_Guide.pdf)

ABI Addressing customer vulnerability resources: <https://www.abi.org.uk/products-and-issues/Its-public/issues-in-long-term-savings/vulnerability-guide/>

ABI and BIBA Code of Good Practice regarding support for potentially vulnerable motor and household customers at renewal:

<https://www.abi.org.uk/globalassets/sitecore/files/documents/publications/public/2016/vulnerable-customers/abi-biba-code-good-practice-support-potentially-vulnerable-motor-household-customers-renewal.pdf>

### Signposting – organisations that may provide information and support

Money Advice Service: [www.moneyadviceservice.org.uk](http://www.moneyadviceservice.org.uk)

MIND - <https://www.mind.org.uk/information-support/coronavirus/coronavirus-and-your-wellbeing/>

National Debt Helpline: <https://www.nationaldebtline.org/about-us/?>

Samaritans: <https://www.samaritans.org/>

Alzheimer's Society: <https://www.alzheimers.org.uk/>

The Royal National Institute of Blind People (RNIB): <https://www.rnib.org.uk/>

Action on hearing loss: <https://rnid.org.uk/>

**If you would like any help or information in relation to this update or any FCA-related compliance issues or ICS Services, please contact your usual ICS representative or Head Office on 01892 539600 or [admin@insurancecompliance.co.uk](mailto:admin@insurancecompliance.co.uk) and we will be happy to discuss further.**

The above information is a summary of certain matters which will affect the majority of firms conducting Insurance Mediation and reflects ICS's views at the date of publication. Each firm's requirements are individual, and rules are regularly changing; it is therefore important that you always seek specific advice from ICS before acting on anything contained in this publication.

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