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## Podcast 6 – Key takeaways from the Financial Conduct Authority’s finalised guidance for firms on the fair treatment of vulnerable customers

### Background/Introduction

**JO:** Welcome to the latest episode in the Allen & Overy podcast series “In Credit”. My name is Joanne Owens and I’m counsel in Allen & Overy’s financial services regulatory group. I’m joined by senior associate Victoria Ferres [“Hello”] and also associate Sophie Skeet [“Hello”].

In this episode, we are going to focus on the recently published FCA finalised Guidance on the fair treatment of vulnerable customers (FG21/1) from 23 February. For that reason, we are also joined today by Claire Haydon an executive director in our A&O Consulting team to talk about governance and conduct risk considerations. Claire—thanks for agreeing to speak to us.

**CH:** Thanks Jo, no problem.

**JO:** Vulnerability is hardly a new area for regulator focus, but the guidance does clarify the FCA’s expectations on the fair treatment of vulnerable customers. It also aims to drive improvements in the way that firms treat vulnerable consumers, ‘so that they are consistently able to achieve outcomes that are as good as those for everybody else’.

**CH:** Yes, as we know, the FCA has undertaken a huge amount of work in this area and it is one that will remain on the FCA’s priority list for years to come.

**JO:** Agreed – we have already spoken about some of this work in previous podcasts, for example our episode on access to cash. For now, let’s dive into the February guidance by looking at some of the high level points. Victoria, shall we kick off by taking a look at how the guidance defines a vulnerable customer?

### Scope and application

**VF:** Sure, the definition is broadly what you would expect. The finalised guidance defines a vulnerable customer as 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 interesting part is the fact that firms might not cause vulnerability but certainly, in the FCA’s view, have the power to exacerbate it through poor treatment.

**SS:** Linked to the idea of firms taking responsibility is the fact that this guidance applies to all firms subject to the FCA’s Principles for Business, regardless of sector. Vulnerability is a consideration in the provision of financial services even outside the consumer credit space. The guidance also captures the supply of products or services to retail customers who are natural persons, even if a firm does not have a direct client relationship with that retail customer. That does seem to have quite broad implications. Would the guidance therefore apply to firms manufacturing wholesale products, bond issuers for instance, where another party distributes the product to retail customers?

**VF:** I think so! It really emphasises the importance of defining the target market for any retail product. While we’re on definitions, we should also note that retail customer has the same meaning as retail client in the FCA Handbook glossary. Natural persons clearly includes individuals but may also include some businesses or charities who are not incorporated, for example, sole traders and some partnerships. The guidance uses vulnerable consumer and vulnerable customer interchangeably, so we have taken the same approach in this podcast.

**SS:** To be honest, I found the guidance quite long and heavy so is there any help on how it should be used?

### How to use the guidance

**JO:** Unfortunately, there aren't really any shortcuts. Like other FCA guidance, this paper does not provide firms with a checklist of required actions. Instead, it sets out ways in which firms can comply with their obligations under the Principles to treat vulnerable customers fairly. It aims to make clear what the standards set by the FCA's principles mean for firms so that firms can understand what is expected of them.

I'd also add that the FCA expects the guidance will apply to firms in different ways due to the significant differences across and within sectors. For some, the whole guidance may be relevant and for others only certain chapters may apply. What this means in practice is that firms will need to exercise their judgement when deciding what the guidance means for them having regard to their size, sector and market, products and services and the characteristics of the target market and customer base.

**SS:** One thing I noticed was that the FCA has included some definitions to aid the interpretation of the requirements included in the guidance. Where a firm "must" implement a requirement, this means that action is mandated by a Principle or a rule. If a firm "should" implement a requirement, the FCA thinks a firm ought to consider a course of action in order to comply with a Principle, but that does not necessarily mean that they should follow a detailed or prescribed course of action. If a firm "may" implement a requirement, the action described is only one of several ways of complying with a Principle.

**CH:** What's useful too is that each chapter in the guidance includes "How firms can put this into practice" boxes which illustrate exactly that, i.e. how firms can put the actions described in the guidance into practice. In addition, the guidance uses case studies to provide examples of good and bad practice which the FCA has seen through its own work or through the Financial Lives survey. Finally, the guidance was also published alongside an infographic and also a short video which on the FCA's website.

All of this goes to show that the FCA is seeking to introduce objective and universal standards for measuring fair treatment of vulnerable customers, while acknowledging that what is 'fair' depends heavily on the facts of the case.

**VF:** For listeners who are wondering how the guidance relates to and interacts with other requirements governing the treatment of vulnerable customers, we'd recommend reading the appendices to the guidance too. Appendix 1 looks at the GDPR and DPA 2018 considerations when interpreting the guidance and Appendix 2 sets out other obligations which are relevant to the treatment of vulnerable customers for example, those under the Equality Act 2010, MCOB or CONC.

### Chapter 2: The Needs of Vulnerable Customers

**JO:** It's fair to say that, in summary, this is a very wide-ranging piece of guidance with far-reaching consequences. Now let's get into the detail of the main chapters! Do you think it makes sense to go through chapter-by-chapter?

**VF:** I think so, as each chapter has a particular theme. Chapter 2 is focused on understanding the needs of vulnerable customers and is a good place to start.

**SS:** The contents of Chapter 2 effectively cover what you said earlier: the FCA expects firms to understand the nature and scale of characteristics of vulnerability that exist in a firm's target market and customer base.

**VF:** Yes, but there is also a forward-looking element. Firms should understand the *impact* of vulnerability on the needs of consumers in their target market and customer base – not just the fact that vulnerability exists. To do this,

firms will need to ask themselves what types of harm or disadvantage their customers may be vulnerable to and how this might affect the consumer experience and outcomes.

- JO:** That necessarily involves a firm assessing the nature and scale of characteristics of vulnerability in their target market. Claire, how onerous do you see this being in practice?
- CH:** In theory, this should be in line with what firms are already doing, but we know that can be challenging. The FCA considers that firms should be aware of the numerous situations and circumstances that may lead to a customer in their target market or their customer base becoming vulnerable. As we know from the FCA's previous work, vulnerability is on a spectrum and all customers are a risk of become vulnerable at some point during a product lifecycle.
- JO:** Right – the FCA has previously identified four drivers of vulnerability that should already be on firms' radars: (1) health; (2) life events such as bereavement, unemployment, divorce or relationship breakdown; (3) resilience – the customer's ability to withstand financial or emotional shocks; and finally, (4) capability including a low knowledge of financial matters or low confidence in managing money. As we know, this last driver also looks at literacy and digital skills. For any listeners with a bit of extra time, take a look at page 10 of the guidance, which sets out some of the characteristics associated with these four drivers!
- VF:** The guidance does recognise that this is not a straightforward exercise, though. Customers can be impacted by characteristics that overlap but equally, not all customers with characteristics of vulnerability will be vulnerable but may have additional or different needs which need to be met by the firm.
- SS:** It seems to be a question of firms understanding which characteristics are *likely* to be present in their target market and customer base. So, for example, a firm advising on investments or pensions may have an older customer base with vulnerability characteristics such as poor health and life events associated with old age. Firms should also be on the look-out, where appropriate, for issues that crop up with individual customers. In the retail lending market, firms may need to consider factors such as lack of financial resilience due to the nature of the customer's employment. Some characteristics also do not discriminate by demographic, for example, bereavement and relationship breakdowns.
- VF:** Going back to this idea of understanding the impact of vulnerability, I'd like to understand A&O Consulting's take on how to approach that. For example, firms might know at the outset of a customer relationship, or when designing a product generally, that certain customers will be vulnerable. That's easier to establish than monitoring an evolving situation. As Sophie suggested, some vulnerability characteristics can't be planned for. There's also a question of suitability: at what point does vulnerability serve to render a product inappropriate for a consumer?
- CH:** The guidance highlights the spectrum of vulnerability and flags that the FCA expects firms to respond to the needs of all customers along this spectrum but taking additional care to ensure that the needs of consumers at the greatest risk of harm are met. As you've already spotted, this isn't just about providing support at the time vulnerability occurs, but is also focused on how firms should look to act early to prevent the risk of harm emerging and growing. Considering the characteristics and impact of vulnerability in the product design phase is one example of how firms can look to do this. This section of the guidance provides examples of harm and disadvantage but sadly we don't have time to go through those during this podcast.
- CH:** It is also important that firms consider how their actions can worsen or perpetuate vulnerability and to ensure that the firm understands how some vulnerable customers may be more likely to be susceptible to behavioural biases. This is important, for example, in the product design and marketing stage to ensure that those biases aren't exploited to the detriment of consumers. In the guidance, the FCA refers to the fact that consumers with

characteristics of vulnerability may be more likely to have mistakenly bought an inappropriate product because they misunderstood that product's features or didn't understand the terms.

Essentially, there are two key questions which firms need to consider when thinking about the impact of vulnerability: Firstly, what types of harm or disadvantage might our customers be vulnerable to? Secondly, how can our own actions increase or reduce the risk of that harm? I think that would involve considering how one-off events such as relationship breakdown or bereavement might affect a customer, even if the target market otherwise doesn't display any vulnerability characteristics.

### ***Chapter 3: Skills and Capabilities of Staff***

- JO:** Let's move on to talk about Chapter 3, which sets out requirements relating to the skills and capabilities of staff. The focus here is on ensuring that the fair treatment of vulnerable customers is embedded across the whole workforce so that all relevant staff understand how their role affects such fair treatment and that frontline staff have the necessary skills and capabilities to recognise and respond to a range of characteristics of vulnerability.
- VF:** The view of the FCA is that customers are more likely to suffer harm if staff do not understand how vulnerability is relevant to them or if frontline staff do not have the necessary skills to meet vulnerable customer needs.
- CH:** Culture is critical here. This chapter therefore highlights the importance of having a firm culture that prioritises the fair treatment of vulnerable customers where the governance, processes and systems support staff to meet the needs of vulnerable customers at all times. Firms should ensure that all relevant staff understand the potential needs of their target market's vulnerabilities and what this might mean in practice.
- JO:** The guidance in fact provides two examples covering the possible impacts of mental health conditions, disabilities and domestic abuse (including economic control) to illustrate how firms can approach this. It also includes good practice case studies where firms have worked with third party consumer organisations and charities to increase understanding and awareness across their employees.
- SS:** Staff training and development is obviously key here as well as awareness of firm's policies and procedures so as to avoid the policy/practice gap. What about subjective judgment exercised by staff? Claire, is there any risk involved there?
- CH:** Frontline staff do also need to be capable of exercising judgement when it is necessary to do so – potentially vulnerable customers could slip through the cracks if a firm applies a model based on rigid, objective criteria. Staff should know when to refer the customer to a colleague or a specialist team for additional guidance and support. Examples given by the FCA of actions firms could take here include appointing vulnerability champions, developing "How to" guides, sharing briefing or training material created by charities, trade or professional bodies and giving opportunities for internal knowledge sharing across the teams.
- CH:** Staff also need to be able to identify signs of vulnerability and then seek further information from the customer. Record-keeping will play an important role. Staff must know how customer information should be compliantly recorded and be appropriately accessible to other employees. For example, some firms use the TEXAS model to help staff record disclosures in a compliant way. Getting this right avoids customers having to repeat information etc. when dealing with different members of the same organisation. As mentioned earlier, firms will need to get to grips with how such obligations interact with data protection laws.
- JO:** So the focus is not only on the customer! Chapter 3 discusses how firms can offer practical and emotional support to frontline staff dealing who are dealing with vulnerable consumers.

This concept leads onto Chapter 4, which is all about taking practical action once firms understand vulnerability in their target market and customer base.

#### **Chapter 4: Firm Action**

**SS:** It's the longest chapter in the guidance...

**VF:** That's understandable when you consider that this chapter looks at:

- product and service design;
- appropriate customer support which responds flexibly to the needs of vulnerable customers and which makes customers aware of the support that is available to them; and
- the use of systems and processes that support the delivery of good customer outcomes.

The chapter also looks at the role of customer communications, flagging the need for all communications and information about products and services to be understandable for consumers in their target market and their customer base and considering how firms communicate with vulnerable customers, for example, by offering multiple channels so vulnerable customers have a choice.

**SS:** This is probably the area where the most guidance is needed. Firms are unlikely to have a business model based on exploiting vulnerable customers, in part because this would be a clear breach of the FCA's Principles. Harm often occurs unintentionally so it is important for firms to look out for and consider those unintended consequences when designing products and services having regard to how the needs of their customers can change over time.

**JO:** Given the time we have for this podcast, it is impossible to highlight all of the key points in chapter 4. It really is worth a detailed read as it explores considerations for firms at each stage of the product design cycle, the sale of products and services through intermediaries and distribution chains and the importance of good customer service, for example by building in flexibility to meet the differing and changing needs of vulnerable customers.

**CH:** From a systems and controls perspective, we would flag that this chapter of the guidance re-iterates the importance of having processes in place to allow customer service staff to compliantly record and access information that will be required in the future to respond to the needs of vulnerable customers.

**VF:** For the purposes of this episode, I'd propose going into more detail on the FCA's comments around communications. The guidance considers the need to tell customers proactively about the options, help and support available to meet their needs and ensure that such support is easy to access and use.

**JO:** Agreed, communication really is key and may represent the area where firms will need to carry out the most work. This is because all communications should be designed with the needs of vulnerable customers in mind. The guidance states that a failure to communicate with vulnerable customers in a way that they can understand may result in an increased risk of harm. Low capability, driven for example by low literacy, numeracy, poor knowledge of financial products and cognitive disabilities, or physical disabilities may result in specific communication needs.

**VF:** Temporary vulnerability characteristics can also have an effect. Stress and mental health conditions such as anxiety can impact a customer's ability to engage with and understand communications. All of this means that firms must ensure that throughout the life cycle of a product their communications are clear and provided to vulnerable customers in a way that they can understand. A product life cycle comprises quite a few different communications!

- SS:** Indeed, these requirements around communications apply to: marketing material, point of sale disclosures, terms and conditions, post-contractual information, information about changes to products or services and complaints processes. It may be that firms need to develop additional or different formats of information, where proportionate to do so, to ensure that they are accessible by all.
- JO:** Listeners are probably already thinking that such alternative ways of presenting information could contradict form and content requirements arising under the CCA. The FCA does address this in the guidance. If mandatory requirements mean that firms do not have the flexibility to change communications to meet the needs of vulnerable customers then firms should provide the information in different formats in addition to the mandatory ones. Thinking about this in practice, this could mean providing large print formats, accessible websites, audio options, using infographics or videos etc.
- VF:** But it's not enough simply to create an infographic and be done with it. Firms should also have regard to how vulnerable customers may process that information. Behavioural biases are also key. For example, frontline staff should have the time to talk customers through information and respond to any questions. If the product or service is being sold online, then providing FAQs, live chat, chat bots or pop ups can help to explain complex terms or answer questions as customers go through the application journey.
- SS:** It is also important to understand that not all customers can or will use certain communication channels. Going back to Victoria's earlier point about mental health conditions, customers suffering from anxiety or stress may find using the telephone particularly stressful. Those who find writing or typing difficult may prefer video or telephone calls. Having regard to the differing needs of vulnerable customers, it seems that having a flexible communications strategy could be key.

### **Chapter 5: Compliance**

- JO:** That bring us onto chapter 5. The last chapter! It sets out the FCA's expectations in relation to firms monitoring and evaluating their compliance. What do you think are the key points here, Claire?
- CH:** The focus here is for firms to implement appropriate processes to evaluate whether they have met the needs of vulnerable customers so that they can make the necessary improvements. Firms should produce and regularly review management information which is appropriate to the nature of their business on the outcomes that they are delivering for vulnerable customers. While the chapter does not require firms to report on particular metrics, firms need to ensure that they are able to demonstrate how their culture and processes result in the fair treatment of all customers, including those who are vulnerable.
- CH:** In particular, the guidance states that firms should implement quality assurance processes throughout the whole customer journey. The purpose is to highlight areas where: firms do not fully understand vulnerable customers' needs; the performance of staff has led to poor outcomes for vulnerable customers; products and services unintentionally cause harm to vulnerable customers; and customer services processes are not meeting vulnerable customers' needs.
- VF:** This seems like a broad requirement. Is there any way to narrow down what aspects a firm should consider when evaluating the customer journey?
- CH:** The FCA has indicated that firms should assess the following four processes:
- Decision making – i.e., are products/services meeting the needs of vulnerable customers when providing information and support to make decisions?

- Engagement throughout the customer journey – i.e., are customer service and communications meeting the needs of vulnerable customers? Are customers experiencing difficulties effectively engaging with firms?
- Disclosing changes in circumstances/needs – i.e., are vulnerable customers supported and encouraged to share information about their circumstances or needs?
- Suitable products – are customers able to access products/product features that suitable and that meet their changing needs?

**SS:** Internal information and record-keeping can only get you so far in evaluating these aspects, though. How can firms assess these processes? Are there any external resources?

**CH:** Firms could look at complaints data, online reviews or social media complaints, test experience through mystery shopping exercises, audits, focus groups and deep dives, allowing staff to provide honest feedback, getting insights from consumer bodies, charities and other organisations with an understanding of the lived experiences of vulnerable customers and undertaking a policy and procedure review.

Appropriate MI is also critical to monitoring and evaluating compliance. MI should be appropriate and allow firms to review the outcomes of vulnerable customers in comparison with other consumers. If poor outcomes are identified that it is important for firms to understand why and to ensure that this is fed back into product and service design.

**VF:** The FCA will integrate the supervision of this guidance into its existing processes for the supervision of firms. Firms should not therefore assume that supervision will involve a one-off exercise at some point in the future to determine compliance against the guidance. Instead, firms should expect to be asked to demonstrate how their business model, the actions they have taken and their culture ensure the fair treatment of all customers, including vulnerable customers, on an ongoing basis. This includes the oversight provided by the Board and senior management team. It goes without saying that the FCA will have regard to the guidance when exercising its enforcement powers.

**JO:** Thanks very much Victoria, that’s a helpful summary. Well, I think that covers most of the key points and that brings us to the end of the podcast! As ever, we hope you have enjoyed this episode and please do reach out if you have any questions. A special thanks goes to Claire for joining us today.



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