

# A&O Consulting

Business integrity by  
ALLEN & OVERY

Conduct risk: putting  
customer vulnerability  
into focus

2021



# Vulnerability and financial services

Looking domestically as well as to the UK for best practice guidance – what do regulators mean by “vulnerable customers”?

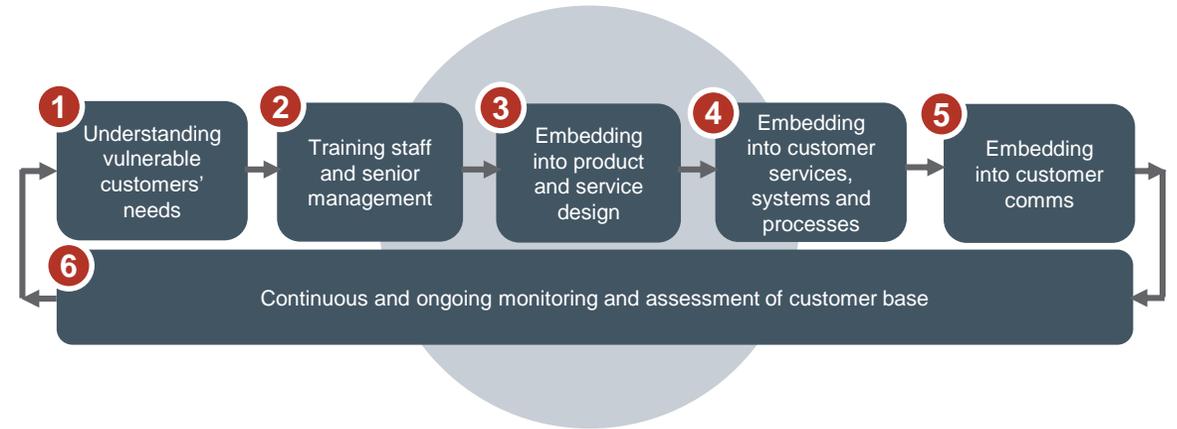
<p><b>Definition</b></p>	<p>“Someone who, due to their personal circumstances, is especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care.” <i>FCA Finalised Guidance 21/1, 2021*</i></p> <p>“We are committed to taking extra care care with customers who are experiencing vulnerability, including: a) age-related impairment; b) cognitive impairment; c) elder abuse; d) family or domestic violence; e) financial abuse; f) mental illness; g) serious illness; or h) any other personal, or financial, circumstance causing significant detriment.” <i>Australian Banking Code of Practice, 2020</i></p> <p><small>*This definition covers “natural persons”, which includes individuals but may also include some businesses or charities that are not incorporated.</small></p>	<p><b>Guidance from Australian regulators &amp; industry bodies</b></p>	<ul style="list-style-type: none"> <li>– Vulnerability is not specifically regulated in Australia, however ASIC’s regulatory requirements are relevant to vulnerability. Protecting customers from harm at a time of heightened vulnerability is a focus for ASIC, as set out in their <b>2021–24 Corporate Plan</b>.</li> <li>– In 2020, the Australian Banking Association launched a <b>new Banking Code of Practice (BCoP)</b> with a chapter titled ‘Taking extra care with customers who are experiencing vulnerability’.</li> </ul>	<p><b>Key emerging issue facing the industry</b></p>	<p><b>Proactive identification</b> – privacy considerations and the use of data analytics to identify vulnerable cohorts are ongoing issues in Australia. <b>The Australian Institute of Company Directors</b> emphasises the importance of a principles-led ethical framework to provide guidance for grey areas where individuals have not self-identified as vulnerable.</p>									
<p><b>Drivers</b></p>	<p><b>The risk of vulnerability increases as customers experience circumstances/factors of vulnerability – it can be temporal. ASIC defines these factors to include the following:</b></p> <ul style="list-style-type: none"> <li>– The actions of the market or individual providers             <ul style="list-style-type: none"> <li>– <b>For example:</b> being targeted with products that are inappropriate for a particular customer, or being given inadequate or overly complex documentation</li> </ul> </li> <li>– Personal or social characteristics that can affect a person’s ability to manage financial interactions             <ul style="list-style-type: none"> <li>– <b>For example:</b> speaking a language other than English; having different cultural assumptions or attitudes about money; or experiencing cognitive or behavioural impairments due to intellectual disability, mental illness, chronic health problems or age</li> </ul> </li> <li>– People experiencing specific life events or temporary difficulties             <ul style="list-style-type: none"> <li>– <b>For example:</b> an accident or sudden illness, a relationship breakdown, family violence, job loss, or death of a family member.</li> </ul> </li> </ul>		<p>In 2020 <b>the General Insurance Code of Practice (GICoP)</b> was expanded to include provisions to assist customers who experience vulnerability. ASIC is expected to eventually be given power to enforce certain provisions of the GICoP.</p> <p>Both the GICoP and the BCoP list the following factors as those which may cause vulnerability: age, disability, health conditions, family violence, language barriers, cultural background, Aboriginal or Torres Strait Islander status, remote location or financial distress.</p>											
<p><b>Resulting harms</b></p>	<table border="1"> <thead> <tr> <th>Examples</th> <th>Financial exclusion</th> <th>Difficulty accessing services</th> <th>Scams</th> </tr> </thead> <tbody> <tr> <td>Purchasing inappropriate products or services</td> <td>Partial exclusion</td> <td>Disengagement with the market</td> <td>Over-indebtedness</td> </tr> </tbody> </table>				Examples	Financial exclusion	Difficulty accessing services	Scams	Purchasing inappropriate products or services	Partial exclusion	Disengagement with the market	Over-indebtedness	<p><b>Consequences of exploiting vulnerability</b></p>	<ul style="list-style-type: none"> <li>– Reputational damage from engaging in exploitative sales practices is significant</li> <li>– Australian companies have seen serious penalties e.g. Telstra fined \$50m for using improper sales practices on 100+ Aboriginal &amp; Torres Strait Islander people.</li> </ul>
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Purchasing inappropriate products or services	Partial exclusion	Disengagement with the market	Over-indebtedness											
<p><b>Scale</b></p>	<p>50% of UK adults display one or more characteristics of being potentially vulnerable at any one time (FCA Financial Lives Survey 2017). No similar industry-wide statistics currently exist in Australia.</p>													

# Emerging regulatory expectations

As customer vulnerability becomes a greater focus for Australian regulators, we can look overseas to see how best practice is being operationalised in a more mature market. The FCA published guidance for firms on *the fair treatment of vulnerable customers* in February 2021, to be used by supervisors as a “lens” to supervising and enforcing the standards. FCA points explicitly to the fundamental Principles for Business as the authority for fair treatment of vulnerable customers.

## Key FCA “good practice” expectations

- 1 Identifying and understanding the needs of vulnerable customers**, including:
  - nature and scale of drivers of vulnerability in target markets and customer bases
  - impact of vulnerabilities on needs
  - how vulnerabilities affect the customer experience and outcomes.
- 2 Training and awareness**
  - Embed fair treatment of vulnerable customers. Staff understand principles of the Treating Customers Fairly initiative (and their role in affecting vulnerable customers across a range of indicators of actual and potential vulnerabilities, and associated needs)
  - Customer-facing staff have the skills to engage with vulnerable customers and to seek relevant information about their vulnerability and encourage disclosure
  - Relevant information on vulnerability is recorded appropriately and is accessible on a need-to-know basis
  - Practical and emotional support is offered to staff dealing with vulnerable customers.
- 3 Product and service design**
  - Consider the needs of vulnerable customers at all stages of product and service design
  - Consider the impact of features of products/services particularly where they are designed to deliberately or inadvertently exploit vulnerability, or are designed to deliver positive outcomes for vulnerable customers
  - Design products and services that meet evolving needs and avoiding inflexibility that could result in harmful impacts
  - Design sale processes that meet customers’ needs.

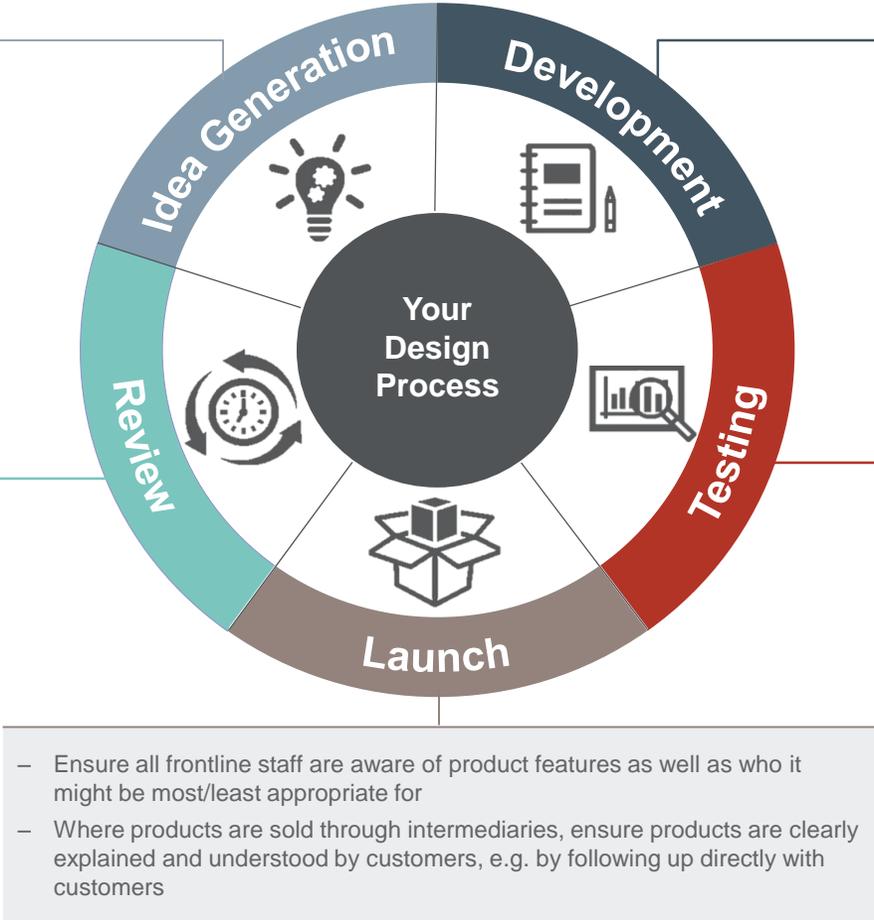


- 4 Customer services**
  - Frontline staff empowered to respond flexibly to the needs of vulnerable customers. Staff should not be discouraged from taking extra time to respond to vulnerable customers’ needs
  - Setting up systems and processes in ways that support and enable vulnerable customers to disclose their needs and firms should be able to spot the signs of vulnerability
  - Promote specialist support options from the firm and including third party help/representation to vulnerable customers
  - Record relevant information on the needs of vulnerable customers and make accessible to relevant staff.
- 5 Communication and engagement**
  - Communications should be clear and easy to understand for vulnerable customers – will need to be tailored depending on the characteristics of the vulnerability identified
  - Proactively check that vulnerable customers understand communications at the point of sale and when/if there are any subsequent changes to terms agreed
  - Use multiple channels to communicate and engage. Domestic guidance here tells us that ASIC expects lenders to make reasonable efforts to contact a vulnerable customer if they don’t respond to a communication. ASIC also emphasises the importance of vulnerable customers being informed of the long-term costs of the assistance they are considering and to which they agree.
- 6 Monitoring vulnerabilities**
  - Implement appropriate processes to identify where the needs of vulnerable customers are not met at key points in the customer journey and address gaps
  - Produce, and regularly review, MI on performance against desirable outcomes for vulnerable customers.

# Taking vulnerable customers into account at all stages of product and service design process

- Ensuring design of the product is inclusive and therefore accessible to as many vulnerable customers as possible.
- Understand what vulnerable customers might need or how they might be affected by changes to an existing product/service (e.g. holding focus groups with vulnerable customer representatives, or consulting with staff most frequently in contact with customers).

- Periodically review products/services to check whether they still meet the needs of vulnerable customers
- When altering or withdrawing a product/service, firms should seek to understand the impact on vulnerable groups and communicate the impacts to customers clearly and consequences to any customers of not acting.



# How A&O Consulting can help

We have worked across all aspects of some of the leading vulnerability agendas, both in our previous industry roles and with our current clients. We have the practical experience to help you implement a credible, effective vulnerability agenda.

<b>Strategic approach</b> <ul style="list-style-type: none"><li>– Designing a targeted vulnerability strategy and program for delivery, aligned to firm purpose and values.</li><li>– Defining roles and responsibilities across business areas and 3LoD including expectations of leadership team.</li><li>– Developing engagement strategy for regulators and critical stakeholders to influence the evolving vulnerability agenda.</li></ul>	<b>Identification</b> <ul style="list-style-type: none"><li>– Identifying characteristics of vulnerability (actual &amp; potential) across the customer base.</li><li>– Advising on data handling and data access in light of regulatory and legal requirements.</li></ul>	<b>Governance</b> <ul style="list-style-type: none"><li>– Enhancing governance arrangements to ensure effective Board oversight and engagement with vulnerability agenda.</li><li>– Reviewing management committee framework to ensure appropriate consideration of customers experience vulnerability (e.g. at product governance committee).</li></ul>	<b>Processes and operations</b> <ul style="list-style-type: none"><li>– Mapping customer journeys and identifying potential process-based risks.</li><li>– Supporting process redesign e.g. on bereavement or in situations of family violence</li><li>– Advising on the mandate of specialist team focusing on customers experiencing vulnerability.</li><li>– Defining protocols for issue escalation and case management.</li></ul>
<b>Risk management</b> <ul style="list-style-type: none"><li>– Strengthening Compliance &amp; Conduct Risk frameworks to address vulnerability risks.</li><li>– Reviewing policies and procedures to identify changes required to address vulnerability risks.</li><li>– Reviewing Management Information suite to ensure clear indicators of emerging vulnerabilities impacting customer base.</li></ul>	<b>Monitoring performance</b> <ul style="list-style-type: none"><li>– Strengthening compliance monitoring and assurance activity focusing on vulnerability agenda.</li><li>– Undertaking independent review of treatment of vulnerable cohorts – e.g. customers in financial difficulty.</li><li>– Reviewing third party customer treatment, and alignment with vulnerability policies – e.g. debt collection agencies, outsourced providers.</li></ul>	<b>Training, awareness and culture</b> <ul style="list-style-type: none"><li>– Developing firm-wide engagement strategy and communication plan.</li><li>– Facilitating roundtable discussions on key customer treatment decisions for senior leaders.</li><li>– Designing and delivering internal awareness campaigns and culture training for customer-facing staff.</li></ul>	<b>External partnerships</b> <ul style="list-style-type: none"><li>– Identifying potential partner organisations that are aligned to the firm's approach and values.</li><li>– Developing an engagement plan and designing the operating model for external partnership arrangements.</li><li>– Providing ongoing insights on emerging better practices including regulatory horizon scanning.</li></ul>

# Team bios



**Sally Dewar**  
CEO

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Sally has worked in the financial services sector for more than 25 years.

She was a senior regulator at the FSA for 10 years, and from 2008–2011 was the Managing Director of the Risk Division, and an Executive member of the FSA Board working with wholesale banks through the financial crisis. In this role she was responsible for the FSA’s policy direction, risk management processes, governance and markets oversight, including responsibility for the UK Listing Authority and the supervision of regulated markets and related infrastructure. She also sat on the Board of the Committee of European Securities Regulators.

Sally then joined JPMorgan (JPM) as a Senior Executive and regulatory advisor to the EMEA and APAC leadership team. In this role she led the design and delivery of JPM’s culture and conduct agenda across EMEA and APAC (which was then adopted worldwide), and worked on a wide range of governance initiatives including designing the individual accountability regime, undertaking various regulation driven reviews, as well as being responsible for JPM’s advocacy efforts around regulatory policy reform internationally. She was also elected onto the first European Securities & Markets Authority (ESMA) Stakeholder Group which provided market input to regulators on new and emerging policy.

Sally was also on the Board of JPM’s UK wealth management entity, JPM International Limited, and chaired its Audit Committee. In addition she was a permanent attendee at JPM Securities Plc. Board meetings, providing regulatory advice to the Chairman and other Board Executives.



**Lee Alam**  
Managing Director, APAC

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Lee has been involved in financial services regulation for more than 20 years, both as a regulator with the UK FSA and in industry – most recently with the Commonwealth Bank of Australia (CBA) and prior to that a Managing Director at JPMorgan (EMEA/Asia Pacific).

At the FSA, Lee held a variety of team leadership roles in the Market Conduct Division and also the UK Listing Authority. In his last role, he managed a high-profile team of 15 direct reports during the global financial crisis with responsibility for detecting and investigating market abuse cases across all asset classes, implementing short selling bans and reporting, developing new market abuse policy/guidance, reviewing firms’ systems and controls, and leading thematic reviews and education initiatives into market-wide concerns. He also developed the markets-led policing strategy for the FSA, leveraging innovation to disrupt market abuse strategies. This strategy has now been adopted by other regulators such as ASIC.

As General Manager of Global Regulatory Affairs at CBA during the AUSTRAC proceedings, APRA inquiry and the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. Lee’s focus was on regulatory engagement, advocacy & change, governance and reporting and CBA’s Group Conduct program (which included the roll out of CBA’s Code of Conduct).

At JPMorgan, Lee was responsible for the design and implementation of the company’s Global Culture and Conduct Program, which spanned more than 60 locations.

# Team bios – Customer Vulnerability experts



**Claire Haydon**

Executive Director, EMEA

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Claire is an Executive Director in Allen & Overy's strategic and regulatory consulting business, based in London.

Claire has worked in financial services for more 20 years. Prior to joining A&O Consulting, Claire spent 4 years at Lloyds Banking Group in a number of roles as part of the Compliance leadership team, including Group Regulatory Liaison Director. This followed 16 years at the UK's financial services regulator (FSA/FCA).

At Lloyds, Claire was responsible for managing the Group's relationships with regulators, advising senior management and the Board on effective regulatory engagement across financial and non-financial risk matters. She then moved into a central Compliance role managing a range of issues including people risk (such as conduct breach management and remuneration) and customer treatment (particularly vulnerability and financial difficulty).

**At Lloyds, Claire was responsible for supporting the design and roll out of the group-wide Customer Vulnerability program,** providing compliance advice and reviewing operating effectiveness and compliance with regulatory requirements. She was a member of the Group's Customer Vulnerability Committee.



**Tom Anderson**

Executive Director, EMEA

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Tom is an Executive Director in Allen & Overy's strategic and regulatory consulting business, based in London.

Tom has worked in regulation and financial services for 26 years. Prior to joining A&O Consulting, Tom spent 4 years at Nationwide Building Society where, for the last 2 years, he was the Chief Compliance Officer (CCO). He also spent 2 years at RBS Group as Head of Regulatory Relations and 12 years at the Financial Services Authority, where he was Head of Wholesale Banks & Investment Firms. Tom started his career in stockbroking with HSBC.

**At Nationwide, Tom was responsible for Conduct, Compliance and Operational Risk management across all of the Society's operations, including oversight of the firm-wide Vulnerable Customers program.** He worked extensively on the Conduct Risk maturity program, supporting business areas in their approach to conduct risk management.

Tom chaired the Society's Conduct & Compliance Committee and managed the Data Protection Officer team who were engaged in the management of vulnerable customer data incidents, as well as associated regulatory communications.