

FCA consultation response on proposed guidance for firms on fair treatment of vulnerable consumers

Response from Citizens Advice Scotland

October 2019

Citizens Advice Scotland (CAS), our 59 member Citizen Advice Bureaux (CAB) and the Extra Help Unit, form Scotland's largest independent advice network. Advice provided by our service is free, independent, confidential, impartial and available to everyone.

In 2018-19, the Citizens Advice Service network helped over 270,000 clients in Scotland and dealt with almost 750,000 advice issues. With support from the network, clients had financial gains of over £131 million and our self-help website Advice in Scotland received approximately 3.7 million page views.

Introduction

CAS is pleased to respond to the consultation on proposed guidance for firms on fair treatment of vulnerable consumers. We welcome the FCA's commitment to protecting vulnerable consumers and we think this guidance should help firms to think about ways in which they can support vulnerable customers.

The FCA will not be surprised to learn that our members regularly come into contact with vulnerable consumers as many lean on the support of their local bureau to try and resolve preventable problems that could be resolved through a better understanding and approach to vulnerability. Clearly the work on vulnerability goes hand in glove with other FCA work around a "duty of care", given that the culture in some firms can harm consumers and make them more vulnerable.

We think that firms can do better at working with vulnerable consumers by ensuring that:

- Inclusivity is built into their culture, product design, sales, communications and processes.
- Vulnerable customers are able to share information with them and that this is correctly and appropriately recorded (in line with data protection principles) so that people do not have to continually tell the firm about their vulnerability. Furthermore that this information is reviewed so that if the customer's circumstances change, the service is still provided in a way appropriate to their needs.
- If a particular product is exacerbating vulnerability, then they must offer extra support and advice to vulnerable consumers (or refer them to independent advice) to help them decide whether the product is right for them, **before** they take on said product.
- They respond flexibly to accommodate vulnerable consumers (and the people that are helping them) and do not bind their frontline staff in inflexible policies and procedures.

Please note, we have only addressed the questions in the response form relevant to our client base and our duty of consumer advocacy. Questions where we have no comment have been deleted.

Questions:

Q1: Do you have any comments on the aims of the draft Guidance?

We think the aim to ensure consistency of outcomes for vulnerable consumers, regardless of the sector in which a firm operates is a laudable one. We know from our clients that some sectors are much better than others at dealing with vulnerability and have made good progress in recent years. Arguably other financial sectors actually increase vulnerability and we are most concerned about:

- guarantor loans and
- potentially vulnerable people being mis-sold debt solutions that are unsuitable for them.

We note from feedback from advisers that there are some particularly poor lending practices which lead to vulnerable people being duped into being guarantors for unscrupulous family, friends and colleagues. On the issue of debt advice, our advisers regularly see people who, on the advice of a commercial debt advice firm or lead generator, have entered into a Protected Trust Deed - a niche insolvency product - which was either unsuitable for the consumer or has "failed" due to being unaffordable, leaving the consumer out of pocket, undischarged from their debts, and worse off than when they started. We hope the proposed guidance will help prevent these issues from arising in future.

A West of Scotland CAB reports a client is a 22 year student, diagnosed as autistic. A fellow student has obtained a loan from a lender citing her as "guarantor", the loan has been defaulted on and the guarantor lender has raised a Simple Procedure court action against the defaulter and the client. The client was not contacted by the lender nor were any of her details obtained by the firm. The client has self-harmed in the past and the stress and worry of this matter may drive her back to self-harming.

An East of Scotland CAB reports a client sought advice after £309.17 was taken from his bank account for a guarantor loan. He speaks/understands little English and attended the appointment at the CAB with a friend. The client says he was working on a building site and a colleague he had known for a short time asked if he would allow him to pay £3000 into the client's bank account, in order that his wife did not know. The colleague then asked the client to give him the money in cash. This allowed the client's colleague to gain access to his bank details. The client reports that approximately one month later his colleague applied for a guarantor loan for £3000 online and put the client as guarantor without the client's knowledge. When the client received letters he initially ignored them due to his lack of English.

A West of Scotland CAB reports a client being unaware she was agreeing to be a guarantor for a loan for her son. Her son took out a loan of £3000 with a guarantor lender. She is an older woman with a disability and caring responsibilities and it is unlikely she was ever going to be able to take on payments. The client's son is now unemployed and the client is being pursued by the lender for £6305.42.

A West of Scotland CAB reports a client signed a trust deed in November 2015 for debts totalling £6,813. Contributions of £125 a month for 48 months were agreed upon. This meant she would repay £6,000, leaving very little after covering the trustee's outlays of £5,101. Given that the client could have repaid the debts in full with that level of contribution and a little more time, the PTD was effectively mis-sold to the client. The trust deed then failed as she could no longer afford it; by this time she had paid £2,743 towards it. She has been told that this only covered the trustee's fees. Effectively she has lost all of the money she paid in with nothing to show for it.

A North of Scotland CAB reports a client answered an advert, was advised that a trust deed would be a good debt remedy for her, and signed up for one which was then protected. She told the company arranging it about her circumstances, and was told there would be no further problems if she kept up the agreed payments of £100 a month for 4 years. She did not have a face-to-face interview at any time. She signed the papers alone, with no witness, and returned them to the Insolvency Practitioner by post. She now realises that her husband is jointly and severally liable for almost all of their debts so the Trust deed is not going to solve anything other than her liability.

Q4: Do you have any comments on our view of what firms should do to understand the needs of vulnerable consumers (Annex 1, Section 2)?

Not specifically, but we do have some sympathy with the comment that “the revised FCA guidance might benefit from starting with a typology of common vulnerability harms. One advantage of such an approach is that it would recognise that this diverse range of individual drivers often end up having broadly similar types of impact or harm.”¹

We think this would help prevent firms individually coming to different understandings of the needs of vulnerable consumers and the harms they are trying to prevent. Obviously the danger of this approach is that firms might adopt a blanket approach to vulnerability without considering individual additional needs; however we think that a typology of common vulnerability harms might at least be a shortcut to getting firms up to speed with their response to vulnerable consumers.

Q5: 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)?

We agree with the FCA's assessment that frontline staff are a vital touch point for identifying, recording and responding to vulnerability. Our advisers have shared with us situations where front line staff have clearly not been briefed about initiatives to help vulnerable consumers. An example of this was the banks' approach to continuous payment authorities (CPA) for pay day loans, where front line staff refused to cancel CPAs at the request of consumers, even though the FCA had communicated that they had to, to their head offices. This lack of a joined up approach caused many vulnerable consumers significant financial difficulty.

¹ <http://www.moneyadvicetrustblog.org/2019/08/02/the-fcas-proposed-roadmap-for-vulnerability-are-we-there-yet/>

We also note that fixed policies and procedures can undermine the ability of front line staff to react adequately to vulnerability as the following example illustrates.

An East of Scotland CAB reports helping a deaf client to cancel a client's automatic renewal on their insurance, but was faced with a policy that the client would need to speak on the phone to go over security questions. Adviser explained the client is profoundly deaf and could not hear the questions so they would need to be relayed via an interpreter. But under the company's guidelines this would not pass the security criteria. Adviser asked for an email address that could be used to cancel the client's automatic renewal, as there wasn't enough time to do this via post. Also the client does not understand the English written word, as his language is sign language. The company did not have an email address that could be given to do this. Adviser asked about complaints procedures but the only email address for this purpose would be via the ombudsman. Eventually they agreed to put a stop on the client's automatic renewal as a courtesy over the telephone. This process took 2 hours and 45 mins.

Q8: Do you have any comments on how firms are expected to use and apply the Guidance?

We accept that guidance needs to allow some flexibility to take account of different sectors and the changing environment for firms and consumers. However we think that the approach will need to be kept under review, particularly to ensure that riskier markets targeted towards vulnerable consumers are complying with the spirit of the guidance.

Q13: 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?

We strongly agree with it being used as both a tool for supervisors and in an enforcement context.

Q14: Do you have any comments on our intention to monitor the effectiveness of the Guidance?

We think this is essential. The non-Handbook guidance status should be kept under review and monitored and if it proves to be less effective, because it is only guidance, then the FCA may need to consider whether further rules are required.

Q15: Do you have any comments on the potential additional policy options?

We think that "*setting out in one document all the relevant existing requirements in our Handbook that impose obligations on firms in respect of how they treat vulnerable consumers*"² would be useful for both firms and the advice sector. Having all the obligations in one place would help our network to ensure that firms are treating vulnerable consumers fairly, without having to do lengthy online searches to find the applicable sections of guidance.

² Guidance for firms on the fair treatment of vulnerable customers p19



In regard to the other potential options, we would like to see how the guidance based approach works before considering whether further rules are required in relation to vulnerable consumers.

Q17: Do you agree that proposing to issue guidance is the most effective means of achieving our aim at this stage?

Yes. The danger with the alternative rule based approach is that it can become a tick box exercise, leaving the vulnerable consumer no better off than they were before.

Q18: 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.

We think that rules are more effective where detriment can be objectively identified and limited. In contexts like high cost credit and rent to own they have proved to be effective barriers to bad practice.

However the issue of vulnerability is less objectively measurable and is more about attitudes and behaviours. In this context we would hope that guidance will cause firms to engage with vulnerability in imaginative and helpful ways, especially if it is a regular topic of supervisory visits and is used in an enforcement context. We hope that this approach will drive the right behaviours, but if it doesn't then rules may have to be considered.