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4 October 2019

Dear Sirs

RE: GC19/3 - Guidance consultation on the fair treatment of vulnerable customers

The Investment Association (IA) welcomes the opportunity to comment on these proposals.

The IA supports the aim of the draft guidance and that the financial services industry as a whole needs to do more to support vulnerable customers given its role in delivering products for life, and over the long-term.

We would highlight two pieces of IA work carried out this year that will help deliver better outcomes for customers. The first, the IA's Fund Communication Guidance, sought to simplify the language used in customer documentation in order to make the sector more accessible. The second, the IA's Culture Framework, is a practical resource for firms to understand culture, how it develops and can be measured and monitored in a meaningful way. Both will support members to help drive the sort of change required to provide better customer outcomes for all.

Within the FCA's draft guidance, there are a small number of items that we would urge the FCA to clarify before finalising the guidance, such as considerations around intermediaries involved in customer interactions, the definition of 'key documents' and points relating to GDPR. We welcome the two-stage consultation process, plus commitment to reviewing the effectiveness of the guidance over time. The IA stands ready to support the FCA and its member firms in the application of the guidance for the benefit of all customers, vulnerable or not.

We hope that this feedback is useful and would welcome further involvement in future discussions on this topic.

Yours faithfully



John Allan
Senior Operations Specialist

Date: 4 October 2019



FCA CONSULTATION RESPONSE

ABOUT THE INVESTMENT ASSOCIATION

The Investment Association (IA) champions UK investment management, a world-leading industry which helps millions of households save for the future while supporting businesses and economic growth in the UK and abroad. Our 250 members range from smaller, specialist UK firms to European and global investment managers with the UK base. Collectively, they manage £7.7trillion for savers and institutions, such as pension schemes and insurance companies, in the UK and beyond. 40% of this is for overseas customers. The UK asset management industry is the largest in Europe and the second largest globally.

Our Affiliate membership consists of several outsourcers supplying services to the industry. Many of these provide front-line customer service roles on behalf of our members and are particularly enthused by this topic.

EXECUTIVE SUMMARY

The IA supports the aim of the draft guidance and that the financial services industry as a whole needs to do more to support vulnerable customers given its role in delivering products for life, and over the long-term.

The investment strategies and solutions that our member firms provide are indeed intended to be held for the medium to long-term and while information is disseminated regularly throughout that period, it is possible for customers to be out of contact for long periods. It is therefore incumbent on us to assess a customers' vulnerability at each interaction and as we move to a more digital world, cater for differing expectations and requirements on how these interactions may take place.

Within the FCA's draft guidance, there are a small number of items that we would urge the FCA to clarify before finalising the guidance, such as considerations around intermediaries involved in customer interactions, the definition of 'key documents' in relation to our sector and the difficulty with tailoring these where prescribed. There are also some points relating to GDPR and the ability or requirement to share data across firms.

We welcome the two-stage consultation process, plus commitment to reviewing the effectiveness of the guidance over time. The IA stands ready to support the FCA and its member firms in the application of the guidance for the benefit of all customers, vulnerable or not.

RESPONSES TO QUESTIONS



1. DO YOU HAVE ANY COMMENTS ON THE AIMS OF THE DRAFT GUIDANCE?

The aim of the draft guidance to ensure consistency of outcomes for vulnerable customers regardless of the sector in which a firm operates, is welcome and the IA supports it. We are working with our members to ensure a consistency of approach by firms in our sector. However even within our membership base there is a large variation of firms, business models, size, client type and ongoing relationship management style and method. There will be a large amount of work required, including with intermediaries, to achieve the aim within the investment sector itself, and more broadly across the FCA's remit given the varied products and scope.

Ultimately the customer, whether they are vulnerable or not, will benefit from the heightened attention of this area given the focus on the customer outcome. The IA is keen to continue to work with the FCA on this to achieve consistency across our sector and beyond.

2. DO YOU HAVE ANY COMMENTS ON THE APPLICATION OF THE GUIDANCE OR ITS STATUS AS NON-HANDBOOK GUIDANCE?

We welcome the fact that the draft guidance is principles and outcomes-focused rather than based as prescriptive rules for scenarios, given the very varied business models, customer types and product-based customer interactions that we see.

We also welcome the fact that the draft guidance is mapped to existing Principles and that, at this stage at least, no additional legal or regulatory obligations or rules are created. We hope that you have noted that the industry has engaged on this topic, and the two-stage consultation is a welcome development to see how the industry is able to take best practice forward in place of prescriptive rules.

That said, we note that there is potential for firms with intermediated customer on-boarding or relationship chains to be affected by the draft guidance. These firms, who do not have a direct relationship with the customer, and may not be able to identify them as an individual, will be concerned that they are being brought into the scope of the draft guidance when in reality they have very little visibility or control of client interactions that may take place many steps removed. It would be useful if, in the development of this guidance, clarification is made as to any regulatory expectations on the various parties in the chain.

3. DO YOU HAVE ANY COMMENTS ON THE DISTINCTION BETWEEN ACTUAL AND POTENTIAL VULNERABILITY (ANNEX 1, SECTION 1)? (PLEASE NOTE WE ARE NOT SEEKING VIEWS ON THE MEANING OF VULNERABLE CONSUMER BECAUSE WE HAVE CONSULTED ON THAT PREVIOUSLY.)

The distinction between actual and potential vulnerability is a useful one to draw and helps set the context in the mind of staff dealing with customers. In the scope of treating customers fairly, the default position would be for firms to treat all customers as potentially vulnerable, especially given the longer-term nature of our sector's investment strategies and solutions, and the often long gaps in between a customer initiating contact with the firm. This means that a customer's circumstances may have changed dramatically in that time which requires our members to re-establish vulnerability on each new contact from a customer. If the question of potential vulnerability is at the front of mind when contacted by a customer, it will help the firm facilitate the provision of the most suitable support.

4. DO YOU HAVE ANY COMMENTS ON OUR VIEW OF WHAT FIRMS SHOULD DO TO UNDERSTAND THE NEEDS OF VULNERABLE CONSUMERS (ANNEX 1, SECTION 2)?



Appropriate regulatory intervention that seeks to improve customer outcomes is to be welcomed, and this one is particularly timely given the changes in the available options for customer interaction over the last few years. Technological changes have both increased and changed the methods by which firms can interact with customers and many of our members have introduced new digital channels.

The Principles for Business already oblige firms to understand the requirements of their customers, and the treating customers fairly (TCF) framework also provides a useful context.

In our sector, the investment strategies and solutions on offer are generally designed to be held for the medium to long-term and direct customer interaction is relatively infrequent, but can be intense around certain periods or milestones. The transient nature of vulnerability, as noted in our response to question 3, does therefore pose a challenge in that customers would need to be reassessed for vulnerability at each new customer-initiated interaction. The 'potentially-vulnerable' classification therefore would become the default for all customer-initiated interactions. Any classification then decided upon would become the classification for the next period, and there will then be a number of firm-initiated interactions that will take place in that time. Some of these will be investment performance or portfolio notifications, or transaction statements or contract notes, all of which are prescribed regulatorily and may be difficult to tailor. Given this point, we advocate that any modifications to process or approach should be available to all customers, whether they are deemed vulnerable or not at any point. For example, the format of information, available time for telephone conversations and the method of communication should be available for selection by anyone, and supports the principle and TCF framework noted earlier.

One of the 'milestones' mentioned earlier, where intensive interaction comes about, is the notification of death of an investor. This will typically involve a close relative initiating a conversation with a firm about a sensitive and upsetting event. This person may not have had any interaction with the firm, or indeed any firm in the sector before. Our industry has previously attempted to improve upon the documentary and legal requirements for an executor or beneficiary to obtain access to the investment. We note that other sectors, and some government departments, have 'once-and-done' notification services which remove the need for people to contact multiple firms about the same distressing news, and we are planning to assess whether this could be applied in our sector.

5: 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)?

The proposals contained in this section appear to be comprehensive and appropriate. The use of case studies provides firms with useful additional insight to the FCA's requirements in this scenarios, and are a good method of articulating guidelines in a practical and relatable way.

It is appropriate to highlight the link to existing requirements under the SM&CR and the Training and Competence regime to ensure that staff are appropriately skilled to identify a customer's requirements and be able to service them appropriately. We advocate that the guidance becomes an intrinsic part of these two schemes, but would not support a vulnerability-specific extension to the SM&CR.

It is helpful for there to be detailed guidance for firms so that they understand what is meant by 'vulnerable' in a range of situations and are able to provide training as well as practical and emotional support to staff who are dealing with vulnerable customers. It would be useful to have some additional guidance around any requirements for firms to delve into more detailed information-seeking in the event that the customer displays potential vulnerability but does not proactively provide detail on it.



6: DO YOU HAVE ANY COMMENTS ON OUR VIEW OF WHAT FIRMS SHOULD DO TO TRANSLATE THEIR UNDERSTANDING OF THE NEEDS OF VULNERABLE CONSUMERS INTO PRACTICAL ACTION ON PRODUCT AND SERVICE DESIGN, GOOD CUSTOMER SERVICE AND COMMUNICATIONS (ANNEX 1, SECTION 4)?

The three areas provide clear background and guidance of what firms should be considering when putting a vulnerability policy/action into place. As referred to in answer to question 4, we consider that this is an opportunity for firms to reassess the customer experience given recent changes to new technology channels that may have opened up. This should not be focused solely on vulnerable customers but the experience of all customers.

Many of our member firms will outsource some customer interaction functions to third party suppliers. These suppliers are fully engaged in this process and have informed our response. They service multiple firms and so the objective of achieving consistency across the several hundred firms in this sector does become somewhat easier given the similarity of services afforded by suppliers to firms and their customers. We have seen some good proactive initiatives being brought forward to review and improve customer touchpoints and outcomes. We would also expect that this draft guidance will incentivise firms to engage proactively with suppliers to share their own principles and best practice approaches.

We recently published our *IA Culture Framework* in partnership with Latham & Watkins in which we point out that poor culture is not just an issue of poor morale and high staff turnover but a conduct issue. It is reasonable that a regulator who wants to ensure good customer outcomes or prevent prudential risks should take an interest in the culture of the firms they oversee. The Framework aims to help firms deliver any enduring cultural change needed to ensure they are putting their customers first. It includes the FCA's five conduct questions which have clear applicability to the issue of dealing with vulnerable clients. For example, what proactive steps has a firm taken to identify conduct risks, which will typically refer to client outcomes.

Senior managers need to be conscious of the impact their decisions, processes and procedures have on their customers, both at outset and throughout the customer's lifecycle, and the need to use data and intelligence to identify areas requiring improvements. Equally firms need to encourage individuals throughout the organisation, at all levels, to be responsible for managing the conduct of their business.

More specifically, we note that paragraph 98 refers to 'key documents' and the suggestion that alternative formats are made available. As mentioned earlier in our response to question 4, many of the major documents issued to customers by our sector are highly prescribed by regulation and so may be difficult to tailor in all situations. Additionally, we would appreciate a clarification of what 'key documents' are applicable in our sector. The IA welcomes the opportunity to work with the FCA on both of these points so that there is clear guidance to member firms in this area.

7: DO YOU HAVE ANY OTHER COMMENTS ON THE DRAFT GUIDANCE?

We would like to raise a point about the quantity and complexity of disclosure that firms are required to make to potential and actual customers. There is evidence that retail customers on the whole do not read the majority of information provided in pre-sales and ongoing maintenance disclosure. This aside, there are two concerns for firms: one, that firms will



expend significant resource and cost in making this reporting accessible in various formats for vulnerable customers who perhaps will not understand it due to low literacy levels, dementia or similar vulnerability, and two, that the sector will eventually be placed out of reach for these types of customers due to the inaccessible language contained within, and the quantity of, prescribed disclosure. Unless regulators address the quantity and content of the disclosures required, it is unlikely that the desired regulatory outcomes on this topic will be fully obtained.

We are undertaking consumer research on attitudes to our sector, which we hope to publish later this year. This covers the UK public's current attitudes to investing. It also explores the most effective language for firms to use to better explain the benefits of saving and investing for a retail (non-investor) audience. Although this research is not specifically relating to vulnerable customers, it should provide insight that firms can use for the benefit of all customers.

8: DO YOU HAVE ANY COMMENTS ON HOW FIRMS ARE EXPECTED TO USE AND APPLY THE GUIDANCE?

We note that the FCA has been in discussion and received input from the Information Commissioner's Office in respect of recording data. It would be useful for clarification to be issued for cases where, in an intermediated customer relationship chain, information on vulnerability has to be passed across multiple entities. This is particularly important given the non-rule status of the guidance. For instance, can firms therefore oblige other entities to provide them with such information?

Additionally some guidance would be useful on what sort of data might be captured and whether this should specifically take the form of the categories that the FCA has identified (for example an extended version of table 1).

On a similar note, under the GDPR, the customer may request and receive a download of this data, and may well be unhappy being classified in such a way, or challenge its accuracy under Principle 4. Any clarification or guidance on such a situation would be useful, especially given the non-prescriptive nature of the guidance and a potential inconsistency of approach on this across firms or sectors.

9: DO YOU HAVE ANY VIEWS ON THE EXTENT TO WHICH THE GUIDANCE WILL ENABLE FIRMS TO COMPLY WITH THEIR OBLIGATIONS UNDER THE PRINCIPLES AND ACHIEVE BETTER OUTCOMES FOR VULNERABLE CONSUMERS?

While fairly high-level, the guidance provides practical steps for firms to take. At this stage in the development of policies and raising awareness of the topic in the industry, it is our view that this is a good foundation. Over time there may be some scenario-specific challenges that would require further dialogue.

10: TO INFORM OUR COST-BENEFIT ANALYSIS, DO YOU HAVE ANY COMMENTS ON WHAT COSTS FIRMS MAY INCUR AS A RESULT OF THIS GUIDANCE?

It is difficult for us to estimate a cost figure for the sector, but would expect that firms and their suppliers would need to make spending decisions in technology design and build, reviewing updating and maintaining customer experience process design, document design and content changes and opportunity cost in training and awareness time.

11: DO YOU HAVE ANY EXAMPLES OF ACTIVITIES OR PROCESSES THAT ARE IN PLACE, OR COULD BE ESTABLISHED, TO ENSURE THE FAIR TREATMENT OF VULNERABLE CONSUMERS?

We have seen some firms nominate 'vulnerable customer champions', staff members who are the first point of call for other customer-facing staff to refer questions on real-life scenarios, or particular cases that cause concerns, to ensure that the customer is treated in a consistent and empathetic way. Other good examples are where firms have allocated named 'relationship managers', or a team, to specific customers who have been identified as particularly vulnerable on an ongoing basis and may benefit from extra care or time.

12. DO YOU HAVE ANY ANALYSIS YOU COULD SHARE WITH US OF THE POSITIVE OUTCOMES FOR VULNERABLE CUSTOMERS RESULTING FROM THE IMPLEMENTATION OF ACTIVITIES OR PROCESSES IN PLACE AIMED AT ACHIEVING BETTER OUTCOMES FOR VULNERABLE CONSUMERS?

In response to the FCA's Asset Management Market Study and as a natural extension of our involvement in the Fund Objectives Working Group, we instigated a program of customer-led insight earlier this year to help shape new *Fund Communication Guidance* for the sector on the language used in customer documentation, specifically in the areas of investment objectives and policy, and benchmark disclosure.

The Guidance was led by The Wisdom Council and aimed to garner insight into how customers interact with the fund industry and how best to engage with customers across fund communications, in particular KIIDs, KIDs, fund factsheets and marketing and informational material written for customers. The testing focused on customer insight along two strands, the first of which was the clarity of language in objectives, policy and strategy (building on FCA Draft Guidance published as part of CP18/9).

Working via a mix of four discussion groups with a diverse range of retail customers, 1,000 online surveys with current investors and a roundtable discussion with six sophisticated investors, the guidance was developed and then refined further. This is good example of the industry working collaboratively to improve outcomes for customers, and in particular make the sector more accessible for all.

13: 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?

The draft guidance states that there will not be any additional obligations levied on firms but also that it will be used as a supervision tool. While this is understandable here is a need for clarity on how firms will be assessed and to what standard they are being held.

We also request clarity, as explained further in the answer to question 2, from the FCA on the obligations of firms with intermediated customers, who do not have a direct relationship with the customer or have very little control over the type of client interactions that may take place.

Similarly, firms may be concerned that where business is placed with firms via an agency, platform or other introducer, and they receive information – or not – on the customers vulnerability, that they may be held in some way responsible if the classification is incorrect, incomplete or obtained via a flawed process. Clarity would be welcomed on the regulatory expectations of the responsibility of firms in these intermediated chains.

14: DO YOU HAVE ANY COMMENTS ON OUR INTENTION TO MONITOR THE EFFECTIVENESS OF THE GUIDANCE?

We agree with the implication that this guidance will necessarily evolve over time as lessons are learnt in real-life situations, and from feedback from consumer groups. The IA is keen to be a part of this review process and will assist the FCA wherever possible.

15: DO YOU HAVE ANY COMMENTS ON THE POTENTIAL ADDITIONAL POLICY OPTIONS?

At this stage we see these options as unnecessary and would urge the FCA to wait to see how firms apply the guidance in practice and its effectiveness. The IA is happy to support our member firms in adopting the guidance, and in particular considering and providing feedback on any sector-specific concerns or unintended consequences that may arise.

16: SHOULD WE CONSIDER ANY FURTHER ADDITIONAL POLICY OPTIONS?

There is a role for senior managers in adapting the culture of the firm to embed the framework of vulnerability sensitivities in the three identified areas of product design, customer service and communication spheres. We consider that the existing SM&CR responsibility for ensuring that frontline staff have the necessary skills and training required for their roles is sufficient and that there is no need for a specific vulnerability aspect to the regime. All Senior Managers are seen as having a role to play in driving an appropriate culture and demonstrating it through their own behaviours. The Conduct Rules are also seen as a means of driving up standards of individual behaviour in financial services and a means of shaping a firm's culture, standards and policies which include the treatment of vulnerable customers. The FCA decided not to introduce a Prescribed Responsibility for the Investment Management industry in relation to culture considering that every individual in a firm should be responsible for the firm's culture. In the same way it seems unnecessary to introduce a Prescribed Responsibility as every individual should be responsible for treating vulnerable customers in an appropriate manner as part of the firm's approach to conduct and within their wider culture.

17: DO YOU AGREE THAT PROPOSING TO ISSUE GUIDANCE IS THE MOST EFFECTIVE MEANS OF ACHIEVING OUR AIM AT THIS STAGE?

AND

18: 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.

Yes, our sector is proactively engaged in this topic and is in favour of the guidance without the need for any other additional policy measures.

FURTHER INFORMATION

For further information, please contact: [John Allan](#) on 020 7831 0898.