# Guidance for firms on the fair treatment of vulnerable customers: Feedback on GC20/3

**Feedback Statement**

FS21/4

February 2021

## This relates to

Guidance Consultation 20/3 which is available on our website at www.fca.org.uk/publications

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# 1 Summary

1.1 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.

1.2 There are many reasons why a person may be at greater risk of harm. These may be related to health, capability, resilience, or the impact of a life event. We refer to these reasons as drivers or characteristics of vulnerability. Our Financial Lives 2020 survey showed that by February 2020 46% of UK adults displayed one or more characteristics of vulnerability. Our Covid-19 panel survey found that this had increased to 53% of UK adults in October 2020, showing that there were many more people who found themselves at greater risk of harm due to the pandemic and its effects (see paragraphs 1.12 to 1.21 for more detail).

1.3 Protecting vulnerable consumers is a key priority for us. Characteristics of vulnerability may result in consumers having additional or different needs and may limit their ability or willingness to make decisions and choices, or to represent their own interests. Vulnerable consumers may be at greater risk of harm, particularly if things go wrong. So, the level of care that is appropriate for these consumers may be different from that for others.

1.4 We are issuing Guidance on the fair treatment of vulnerable customers because we want them to experience outcomes as good as those for other consumers and receive consistently fair treatment across the firms and sectors we regulate. The Guidance is intended to drive improvements in the treatment of vulnerable consumers and bring about a practical shift in the actions and behaviour of firms that enables this to happen.

1.5 The Guidance sets out our view of what firms should do to comply with their obligations under the Principles for Businesses (the Principles) and ensure vulnerable customers are treated fairly. It explains that to achieve good outcomes for vulnerable customers, firms should:

- 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

1.6 We expect the fair treatment of vulnerable customers to be taken seriously by firms and embedded into their business models, culture, policies and processes throughout the whole customer journey.

1.7 In July 2020, we issued our second consultation on the Guidance (GC20/3). This feedback statement sets out our response to feedback received and the changes we have made to the Guidance as a result. Overall, respondents supported our proposals and we are implementing them as consulted on in GC20/3, subject to minor changes.

1.8 The Guidance is published on the Treating vulnerable consumers fairly page of our website.

## Who this affects

1.9 The Guidance will likely be of interest to:

- all FCA regulated firms to whom the Principles apply, along with their appointed representatives
- industry groups and trade bodies
- professional bodies
- consumer organisations and organisations that promote the interests of vulnerable consumers
- consumers and consumer advisers

## The wider context of this feedback statement

### Our work

1.10 Vulnerable consumers are more likely to experience harm and, where they do, the impact on them is likely to be greater than for other consumers.

1.11 Over the past 6 years we have undertaken significant work to help firms understand the issues and act appropriately to ensure the fair treatment of vulnerable consumers.

- Occasional paper 8 – Consumer Vulnerability (OP8) in 2015 to stimulate debate and interest on consumer vulnerability.
- Our 2017 Consultation on the Future Approach to Consumers showed that many firms were uncertain about how to understand the needs of vulnerable customers and what they needed to do to respond to their needs. They asked us to be clearer about this. Some respondents asked for clearer guidance under the Principles.
- Through our subsequent research and engagement, we have seen that many firms have made good progress in understanding and addressing issues of vulnerability. However, too often work such as our High-Cost Credit Review and consumer insights show that not all firms treat their vulnerable customers fairly, with the consequence that these consumers experience harm.
- In July 2019, we published an initial consultation (GC19/3) setting out our view of what our Principles for Businesses require of firms to treat vulnerable customers fairly. This sought views on the aims and content of the draft Guidance, the costs and benefits, and whether the draft Guidance was sufficient to ensure vulnerable consumers are treated fairly or if additional interventions were needed. Respondents generally supported our approach.
- Following a delay while we prioritised urgent interventions to reduce consumer harm during the coronavirus (Covid-19) pandemic, we progressed with a second-stage consultation in July 2020 (GC20/3), seeking views on our updated draft Guidance and our Cost Benefit Analysis (CBA). Alongside this we published Financial Lives: The experiences of vulnerable consumers.

## Impact of coronavirus

**1.12** It is clear that coronavirus is having different and lasting impacts on consumers. The coronavirus pandemic has exacerbated challenges for many who were already vulnerable. While the essential nature of vulnerability has not altered during the crisis, and nor have our fundamental characteristics of vulnerability, the scale and causes of vulnerability have changed.

**1.13** We worked quickly to address specific issues affecting vulnerable consumers that have arisen from coronavirus. We have also worked to understand the impact of coronavirus on consumers and how it affects vulnerability, engaging extensively with consumer partners and carrying out research to understand the nature and scale of the impact on people's financial lives.

**1.14** As the fieldwork for our Financial Lives 2020 survey took place before the coronavirus pandemic, our research included a number of ad hoc surveys, the largest of which is our Covid-19 panel survey conducted in October 2020 ('the panel survey'). This survey looks at the impacts of coronavirus on people's income and financial positions. At the time of the survey it asked UK adults to look ahead to how things are likely to change for them over the next 6 months.

**1.15** The panel survey showed that the number of adults displaying one or more characteristics of vulnerability rose by 3.7 million between March and October 2020 to 27.7 million. This was driven mostly by more people experiencing negative life events, such as job loss or reduced working hours, and low financial resilience.

**1.16** It found that one of the biggest impacts of coronavirus has been on employment, leading to an increase in low financial resilience. From the end of February to October 2020, over a quarter (27%) of all UK employees were furloughed for some length of time. Almost 1 in 3 (31%) UK adults experienced a drop in their household income over the same period, but the most badly affected are those in sectors which have seen the highest proportion of staff laid off or furloughed, ie the accommodation sector (where 59% have seen their household incomes decrease), and the arts, entertainment and recreation sector (58%). Certain other groups of consumers have also been disproportionately affected, with the biggest proportional increases in low financial resilience seen among younger adults, the employed and self-employed, and those with a mortgage.

**1.17** Our evidence was collected in October 2020 – the proportion of UK adults with low financial resilience may have increased since then. We also expect greater numbers of consumers to be affected by bereavement and health issues, including poor mental health, as a result of the pandemic and lockdown.

**1.18** Our Financial Lives 2020 survey findings on non-financial impacts shows that the vast majority (82%) of over-indebted adults had experienced one or more issues as a result of the debts they have, with anxiety and stress, embarrassment, loneliness or a feeling of having nowhere to turn most cited.

**1.19** With 15% of adults seeing their unsecured debt levels increase between March and October 2020 and around 1 in 4 adults (25% or 13.2 million) thinking it likely they will struggle to make ends meet in the next 6 months, debt advice groups expect demand for their advice to increase substantially.

**1.20** Protecting vulnerable consumers remains a key priority for us and our 2020/21 Business Plan's 4 external business priorities all require us to understand and take strong action to address issues faced by vulnerable consumers.

**1.21** In our view, the Guidance is more relevant now than ever, and remains relevant for firms to use during the current circumstances as well as in the long term. It provides firms with a clear steer on the actions they can take to ensure the fair treatment of vulnerable customers, and how consumers can expect to have their needs met.

## How it links to our objectives

**1.22** The Guidance will advance our consumer protection objective as it sets out ways in which firms can comply with their obligations under the Principles to treat vulnerable customers fairly. This will result in better outcomes for vulnerable consumers so they are as good as outcomes experienced by other consumers.

**1.23** The fair treatment of vulnerable consumers should lead to more consumers making effective decisions. This will have positive impacts on competition as more consumers shop around and purchase products that better suit their needs.

## What we are changing

**1.24** Evidence from consumer organisations and our own regulatory work shows that there are still inconsistencies in how vulnerable consumers are treated. While some firms have made significant progress in how they treat vulnerable customers, others have failed to consider their needs, leading to harm. Some firms told us that they would like to improve their treatment of vulnerable customers but are unclear on how to. Where we see firms acting to help these customers, we have found they have mainly done this by making changes for individual customers as the need arises.

**1.25** We want to see the fair treatment of vulnerable customers embedded as part of a healthy culture throughout firms, not just through customer-facing interaction but also in areas such as product development and in their overall business models. Firms' senior leaders should create and maintain a culture that enables and supports staff to take responsibility for reducing the potential for harm to vulnerable customers. They should ensure that firms embed the fair treatment of vulnerable customers in their policies and processes throughout the whole customer journey. We have seen some good examples where commitment comes from the top and where there is a culture of feedback and learning from the frontline.

**1.26** The Guidance is intended to drive this change, ensuring that vulnerability is taken seriously by all firms, including those that do not have direct interaction with consumers, or are part of a distribution chain. It explains what firms should do to treat vulnerable customers fairly to comply with our Principles. It focuses firms' attention on understanding the needs of customers with characteristics of vulnerability in their target market and customer base and responding to these needs in a way that results in good outcomes, rather than taking a 'tick-box' approach to compliance.

1.27 The Guidance will support us as we apply a vulnerability lens to supervising and enforcing the standards set by our Principles and rules. It will help us hold firms to account if they breach the Principles. It may be relevant to enforcement cases in helping us assess whether it could reasonably have been understood or predicted at the time that the conduct in question fell below the standards the Principles require.

## Outcome we are seeking

1.28 We want vulnerable consumers to experience outcomes as good as those for other consumers. They should receive consistently fair treatment across the firms and sectors we regulate.

1.29 In 2006, the FSA set out 6 outcomes, under Principle 6, that firms should strive to achieve to ensure the fair treatment of customers (the 'TCF outcomes'). Alongside the Principles, these outcomes are at the core of what we expect of firms for all customers, including vulnerable customers. These are:

**Outcome 1:** consumers can be confident they are dealing with firms where the fair treatment of customers is central to the corporate culture

**Outcome 2:** products and services marketed and sold in the retail market are designed to meet the needs of identified groups and are targeted accordingly

**Outcome 3:** consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale

**Outcome 4:** where consumers receive advice, the advice is suitable and takes account of their circumstances

**Outcome 5:** consumers are provided with products that perform as firms have led them to expect, and the associated service is of an acceptable standard and as they have been led to expect

**Outcome 6:** consumers do not face unreasonable post-sale barriers imposed by firms to change product, switch provider, submit a claim or make a complaint

1.30 The Guidance will help deliver, across financial services, our vision of a well-functioning market that works for consumers, as laid out in our Approach to Consumers.

## Measuring success

1.31 We will monitor how firms respond to the Guidance through our supervisory work. Firms will need to be able to demonstrate how their business models, culture, policies and processes ensure the fair treatment of all customers, including those who are vulnerable.

1.32 We will monitor outcomes for consumers with characteristics of vulnerability compared to those for other consumers. We will do this with reference to all of the aspects of the firm/customer relationship and we will have regard to the TCF outcomes, and other outcomes we have communicated are important for consumers in a sector, for example through our work on business priorities. We will look at what action firms are taking to ensure they treat vulnerable customers fairly.

**1.33** We will do this by applying a 'vulnerability lens' to our supervision and enforcement of the standards set by our Principles. Firms can expect us to ask them to:

- demonstrate the actions they have taken in each of the areas outlined earlier in paragraph 1.5
- provide information they are using to monitor whether they are achieving outcomes for customers with characteristics of vulnerability that are as good as those for other customers (see monitoring and evaluation in Chapter 5 of the Guidance)

**1.34** At the same time, we will also seek to understand consumers' experiences of their treatment, for example whether they are experiencing difficulties effectively engaging with firms and accessing appropriate products. We will do this through market research and engagement with our Consumer Network.

**1.35** We will use intelligence on consumer outcomes and firm actions to target our regulatory attention. We always focus our attention where we see the greatest risk of harm. Where we identify that a firm is not treating consumers fairly, the Guidance will inform how we hold firms accountable against our Principles. Options available to us include supervisory or enforcement action and further policy work.

**1.36** We will continue to engage with stakeholders, including firms and consumer groups, on the treatment of vulnerable consumers in 2021-2023. In 2023-24, we plan to evaluate the action firms have taken and whether we see improvements in the outcomes experienced by vulnerable consumers. We plan to make this assessment against our understanding of what firms do now and further intelligence gathered through our monitoring.

**1.37** At the same time as the evaluation of firms' treatment of vulnerable customers, we will look again at how the financial services industry is adapting to meet the needs of older consumers. We committed to do this in our 2017 Occasional Paper on the Ageing Population.

## Summary of feedback and our response

**1.38** We received 119 responses to GC 20/3, from a wide range of stakeholders. This included consumer organisations, firms, trade bodies, professional associations and private individuals. Much of the feedback did not raise new issues.

- The vast majority of respondents were supportive of issuing the Guidance. Many felt that with coronavirus significantly increasing the number and severity of issues affecting consumers the Guidance is needed more now than ever.
- Our change from defining "actual" and "potential" vulnerability in GC19/3 to asking firms to think about vulnerability as a spectrum of risk in GC20/3 was generally welcomed.
- As with our first consultation, some respondents welcomed the flexibility provided by the Guidance, noting that this allows firms to use their own judgement. Others asked for more prescription, including further examples and case studies, to provide more certainty about how firms should act to treat vulnerable customers fairly, including in specific scenarios or for specific sectors.

- A few respondents either suggested that minimum standards would promote consistency of approach or asked how we would ensure consistency of treatment without these.
- Some respondents, mainly firms and trade bodies, asked for clarity about our expectations in certain areas. These included proactive identification, responsibilities as part of a distribution chain, and how to recognise and respond to vulnerable customers' needs in digital customer journeys. Some respondents also asked for clarity on how the Guidance interacts with existing rules, legislation and codes.
- Firms and trade associations remain concerned about recording and sharing data on customers and their needs, with requests for additional guidance and case studies on this topic.
- There were also requests for more information on our supervisory and enforcement approach and concerns about how the Financial Ombudsman Service may interpret the Guidance.
- Some respondents challenged the assumptions in the Cost Benefit Analysis (CBA) due to the impact of the pandemic, including the increase in vulnerable customers, temporary coronavirus-related Guidance and changes to planned investments.

**1.39** We have considered feedback and made minor changes to the Guidance to provide further clarity. The Guidance is published on the vulnerable consumers page of our website. Feedback received and our responses to it are set out in detail in Chapter 2.

## Equality and diversity considerations

**1.40** We have considered the equality and diversity issues that may arise from the Guidance. Overall, we do not think that the Guidance negatively affects any of the groups with protected characteristics under the Equality Act 2010. It should positively affect some groups with protected characteristics as well as consumers with characteristics of vulnerability which are not protected characteristics.

**1.41** Groups with certain protected characteristics may have, or be more likely to have, drivers of vulnerability (and vice versa). One driver of vulnerability, health, largely overlaps with the protected characteristic 'disability' under the Equality Act.

**1.42** We have addressed the consultation feedback on equality and diversity considerations in Chapter 2. The vast majority of responses agreed with our assessment of equality and diversity considerations, and the overlap between vulnerability and protected characteristics.

**1.43** Further information was sought on the links between the Guidance and the requirements of the Equality Act, and how we work with the Equalities and Human Rights Commission (EHRC). We have published a Memorandum of Understanding (MoU) with the EHRC which outlines the principles and areas of co-operation between the FCA and EHRC. This includes, where relevant, sharing knowledge and expertise, and cross-referring concerns. When carrying out our functions, if we are concerned that firms may be in breach of our rules including our Principles, and we suspect that this may also be a breach of the Equality Act, we will work with the EHRC to support each other's work.

## Next steps

**1.44** We have published the final Guidance. It sits on our website alongside supporting materials, for example our research into the experiences of vulnerable consumers and Occasional Paper 8 and Practitioners' Pack on consumer vulnerability.

**1.45** We will continue our engagement with stakeholders, including firms, on the treatment of vulnerable customers.

**1.46** In 2023-24, we plan to evaluate what action firms have taken and whether we have seen improvements in the outcomes experienced by vulnerable customers. The starting point for our baseline is the activity that firms already take to treat vulnerable customers fairly ie the action they took prior to issuing this Guidance.

**1.47** At the same time as the evaluation of firms' treatment of vulnerable customers, we will look again at how the financial services industry is adapting to meet the needs of older consumers. We committed to do this in our 2017 Occasional Paper on the Ageing Population. As the Guidance will help provide a consistent framework for the fair treatment of vulnerable customers, in GC20/3 we proposed to conduct this review after the Guidance had been finalised.

## What you need to do next

**1.48** Firms must ensure they comply with the applicable Principles and treat vulnerable customers fairly. The Guidance should help firms to do this as it sets out the types of actions firms can take to achieve this. Paragraph 1.9 of the Guidance provides more information and the diagram at Figure 1 provides a summary of the actions firms should take to ensure they treat vulnerable customers fairly. Firms will need to use their judgement to consider what each section of the Guidance means for them and what they should do to ensure they treat customers fairly.

**1.49** We want firms to share good practice ideas and experiences on the fair treatment of vulnerable customers. We will engage with trade associations and representative bodies to encourage them to continue supporting firms to meet the needs of vulnerable customers.

# 2 Feedback and response summary

**2.1** We received 119 responses to GC20/3 from a wide range of stakeholders. We thank stakeholders for taking the time to respond. A list of non-confidential respondents is available at Annex 1.

**2.2** In this chapter, we summarise and respond to significant areas of feedback we received. The feedback is presented under each of the questions posed in GC20/3. These relate to:

- Q1 – our assessment of equality and diversity considerations of the proposed guidance
- Q2 – the updated draft guidance
- Q3 – our CBA
- Q4 – what we should prioritise when monitoring firms' treatment of vulnerable customers
- Q5 – types of information it would be necessary for firms to collect, to assess the effectiveness of their policies and processes in respect of vulnerable consumers
- Q6 – any other feedback on our proposals

## Q1 – Do you have any comments on our assessment of the equality and diversity considerations of our proposed guidance?

**2.3** We asked for comments on our assessment of the equality and diversity considerations of our proposed Guidance.

### Feedback received:

**2.4** Respondents agreed that there can be an overlap between certain protected characteristics and vulnerability, and a few asked for more clarity on this, as well as the likelihood of a breach of the Equality Act also being a breach of our rules. Some respondents highlighted that obligations under the Equality Act are not well understood by firms, and suggested we work with or fund the Equalities and Human Rights Commission (EHRC) to issue guidance for financial services firms, including on how the Equality Act interacts with the Guidance. Some consumer organisations wanted us to review the level of firms' compliance with the Equality Act and to specify how we will work with the EHRC to enforce against breaches of it.

**2.5** One respondent raised that the Equality Act does not apply in Northern Ireland (NI), and people who use sign language in NI use Irish Sign Language. A few consumer organisations questioned whether firms may incorrectly interpret wording on 'vulnerable consumers receiving outcomes as good as other consumers' and believe this is not aligned with the Equality Act, which allows for the more favourable treatment of disabled customers. A few respondents also commented that the term 'vulnerable' can cause challenges, for example because it is a broad definition, it could risk too many people being classified as vulnerable, and it is a state that can change at any point. Another respondent raised that people don't consider themselves to be vulnerable, and the term can appear to place the onus on firms to protect them, rather than ensuring outcomes that are equal to other consumers.

## Our response:

**2.6** We considered the requirements of the Equality Act and our responsibilities under our Public Sector Equality Duty (PSED) when updating the Guidance. We do not have powers to take action for breaches of firms' obligations under the Equality Act, which are the sole reserve of the EHRC. However, we updated the Guidance (see Appendix 2) to clarify that it is likely that a breach of the Equality Act will also be a breach of our rules, such as our Principles. For example, if a customer is being discriminated against, whether indirectly or directly, on the basis of their protected characteristic, then this is likely to be a breach of Principle 6, which requires firms to treat customers fairly. Other Principles are relevant here, such as Principle 1 and 2, which require firms to conduct their business with integrity, and due skill, care and diligence.

**2.7** We updated the Guidance to clarify that the driver of vulnerability, health, largely overlaps with the protected characteristic 'disability' under the Equality Act. Groups with certain protected characteristics may have, or be more likely to have, characteristics of vulnerability (and vice versa). For example, our Financial Lives 2020 survey results show that certain demographics are far more likely to display characteristics of vulnerability, including adults aged 75+, and Black adults. However, as all people have protected characteristics, there will be many who do not have characteristics of vulnerability.

**2.8** We have worked with the EHRC to formalise our relationship in a Memorandum of Understanding (MoU), which we have published alongside the Guidance. This MoU sets out how the FCA and EHRC will work together and benefit from each other's expertise in areas of mutual regulatory interest. Where we are concerned that firms may be in breach of our rules, including our Principles, and we suspect this may also be a breach of the Equality Act, we will work with the EHRC to support each other's work.

**2.9** In paragraph 2.24 below we clarify that the change in wording to outcomes 'as good as those for other consumers' is a drafting change, and our policy intention is that all consumers, including those who are vulnerable, should get good outcomes. Firms may need to take different or additional steps to get vulnerable consumers to those outcomes. In the Guidance, we remind firms to consider the requirements of the Equality Act, and outline how it is aligned; in particular that whilst the Guidance is broader, it also seeks similar outcomes to the anticipatory duty under the Equality Act that requires reasonable adjustments for disabled people. We also specify that the Guidance does not replace or substitute other applicable rules, guidance or law and does not require firms to act in a way that is incompatible with legal or regulatory requirements.

**2.10** We updated the Guidance to clarify that in Northern Ireland, where the Equality Act is not enacted but other anti-discrimination legislation applies, firms should ensure they comply with any applicable legislation and FCA rules and guidance. We also included references to Irish Sign Language where relevant. We updated the Guidance to ensure the language is appropriate when referring to health conditions, and we clarify how the use of the term vulnerable is intentionally broad. All consumers are at risk of becoming vulnerable, particularly if they display one or more characteristic of vulnerability, which means they may be at greater risk of harm. Firms should take additional care to ensure they meet the needs of consumers at the greatest risk of harm. We recognise the definition includes consumers who may not consider themselves to be vulnerable or want the term applied to them (see paragraph 2.9 in the Guidance). The Guidance clarifies to firms that we want vulnerable consumers to experience outcomes as good as those for other consumers.

## Q2 – Do you have any feedback on the updated draft guidance?

2.11 The majority of respondents welcomed the updated Guidance and said it set out what firms need to do to treat vulnerable customers fairly. Many respondents suggested amendments which they believed would make the Guidance clearer. We discuss below the responses received about each section of the Guidance, namely:

- application of the Guidance and general approach
- understanding the needs of vulnerable consumers
- skills and capability of staff
- taking practical action through product and service design; customer service and communications
- monitoring and evaluation

### Application of the guidance and general approach

2.12 The Guidance applies to firms serving retail customers who are natural persons. In GC20/3 we explained the meaning of 'natural persons'. Some respondents welcomed this explanation and agreed that despite this, firms may still find the Guidance useful when considering how to comply with the Principles in relation to incorporated businesses. Others asked how this application interacts with the remit of the Financial Ombudsman Service, other guidance eg on branch closures, or where services are considered to fall outside the scope of regulation such as buy-now, pay-later or salary advance schemes.

2.13 As with responses to GC19/3 there was support for a proportionate, outcomes-based approach as it allows firms to meet the needs of their target market and customer base. A few respondents still felt that minimum standards were needed or asked how we would ensure consistency of treatment without them. A few also remained concerned that the non-binding nature of the Guidance could make it difficult to hold firms to account, suggested that the Guidance should be incorporated into the Handbook, or asked for a list that sets out all existing sector-specific requirements in our Handbook that relate to the treatment of vulnerable consumers.

2.14 Some respondents suggested ways to restructure the Guidance to help firms focus on key areas or amendments to the terminology to make it clearer, more consistent or to align with terminology used in other sectors. A few felt that reference to 'vulnerable customers' was problematic as it could lead to consumers being labelled rather than firms focusing on understanding their needs.

2.15 A common theme was the desire for more prescription, to provide certainty about how firms should act to treat vulnerable customers fairly. A small number of respondents asked for more sector or activity specific guidance and case studies or suggested that the Guidance make clear which parts apply to each sector. Many asked for more examples and case studies, eg in relation to small firms, distribution arrangements, digital journeys, and proactive identification. Others also felt that greater emphasis should be placed on behaviours such as behavioural biases and scarcity mindset, as well as supporting the fair treatment of consumers where characteristics of vulnerability included gambling, economic abuse, scams and health conditions such as cancer.

2.16 A few consumer organisations queried why we amended the aim of the Guidance from outcomes 'at least as good as those as other consumers' to 'outcomes as good as those for other consumers' and thought this was a backward step. Others were supportive of this change, with one firm stating that the aim of the Guidance should be to treat all customers fairly, not to give vulnerable customers better treatment.

## Our response:

**2.17** The Guidance applies to all firms, products and services where the Principles for Businesses apply. It applies only in respect of the supply of products and services to retail customers who are natural persons. It does not alter the application of any other rules or guidance. It does not alter which complainants would be eligible to refer a complaint to the Financial Ombudsman Service.

**2.18** We considered feedback about the application of the Guidance to natural persons and have updated the Guidance to include relevant information from the GC20/3 Feedback Statement. The Guidance explains that 'natural persons' includes individuals but may also include some businesses or charities which are not incorporated. For example, individuals or groups of individuals who are un-incorporated business customers eg sole traders and some partnerships.

**2.19** The Guidance does not apply to incorporated businesses or charities as these are 'legal' persons and so it would be the corporate body, rather than any natural person running it, that is the firm's customer. However, as the Principles do apply to incorporated businesses firms still need to ensure they are treating these businesses fairly, and they may still find the Guidance useful.

**2.20** While the Guidance is not incorporated into our Handbook this does not change how firms use it to help them meet their obligations under the Principles. The Guidance is published on a dedicated section on our website and we will promote it. It is guidance on our existing Principles which firms must comply with and we believe it will enable a consistent level of protection that can be used in a proportionate and flexible way according to the circumstances of both consumers and firms. It is not feasible to provide a list of every requirement in our Handbook that relates to the fair treatment of vulnerable consumers as this may change over time. However, in Appendix 2 of the Guidance we have outlined other legal and regulatory obligations that may be relevant for firms, for example where consumers are unable to make payments. As outlined in paragraph 3.8 of the Feedback Statement in GC20/3 we think that introducing minimum standards could result in a levelling down in some sectors or a tick box approach, and we remain of that view.

**2.21** We considered feedback about the structure, clarity and terminology of the Guidance and have made some amendments in response. This includes bringing key information into the Guidance. We recognise that labelling customers as 'vulnerable' is a sensitive issue. We have not changed the reference to 'vulnerable consumers' as this is a recognised term across both financial and non-financial sectors. However, while we refer to consumers as being vulnerable throughout the Guidance, we also suggested that firms do not use this label in their interactions with customers.

**2.22** The Guidance is outcomes-focused and aims to provide a balanced overview of various drivers and characteristics of vulnerability. It equally applies to different firms across the financial services sectors we regulate. We have made minor amendments to the detail of the Guidance and added a few additional case studies and examples to further help firms consider how to put the Guidance into practice. However, it does not seek to cover every firm type or scenario as this is not possible given the diversity of firm business models operating in the sectors we regulate. Firms need to use their own judgement on what the Guidance means for them.

**2.23** We also maintain the approach set out in paragraph 3.10 of GC20/3 not to introduce sector-specific requirements or further guidance at this time. As explained in GC20/3 if we identify harm to vulnerable consumers arising in specific sectors, we will continue to act to address this, as shown by our recent work in response to coronavirus.

**2.24** We understand that some respondents are disappointed with the change to outcomes 'as good as those for other consumers.' We consider that this is a drafting change rather than a policy one. The previous articulation of 'at least as good as' was imprecise and caused confusion. Our policy intention is that all consumers, including those who are vulnerable, should get good outcomes. There are many factors that contribute to these outcomes, and the Guidance relates to firms' roles in supporting consumers to achieve good outcomes. It explains that firms may need to take different or additional steps to help get vulnerable consumers to those outcomes.

## Understanding the needs of vulnerable consumers

**2.25** We received some suggestions to expand the drivers of vulnerability to acknowledge the role played by markets and firms in causing or exacerbating vulnerability. Some consumer and specialist organisations also suggested amending Table 1 of the Guidance '*Characteristics associated with the 4 drivers of vulnerability*' to reflect other characteristics of vulnerability or to demonstrate that some characteristics could fall under more than one driver. One respondent also proposed that this table should include statistics against each characteristic using Financial Lives data.

**2.26** Many consumer bodies also proposed that the Guidance is updated to clarify the need for firms to consider what harm or disadvantage it is that consumers are vulnerable to. They explained that if firms only focus on drivers and characteristics of vulnerability, they may overlook their consequences and effect.

**2.27** Most respondents agreed with illustrating vulnerability as a spectrum of risk. They said this was clearer and that it would help ensure firms design strategies that take account of the varying nature and degree of permanence. However, some respondents cautioned that this may still pose challenges for firms in identifying who is vulnerable and felt it risked eliminating groups who are lower on the spectrum of vulnerability. A few suggested that we need to take care with the terminology because 'spectrum' has links with autism, and debt advice organisations refer to 'actual' and 'potential' vulnerability. Some felt that we needed to be more explicit about how to apply this, particularly where vulnerability is temporary. Some suggested that it would be beneficial to provide examples of vulnerabilities on different parts of the spectrum and how we would expect firms to respond.

## Our response:

**2.28** Table 1 in the Guidance showing characteristics associated with the 4 drivers of vulnerability illustrates the types of circumstances and characteristics which can lead to consumers having additional or different needs. While we have made some amendments in response to feedback, the Guidance is clear that this is not intended to be a complete list and that characteristics are complex and overlapping. Respondents should refer to the Financial Lives survey for a breakdown of contributing survey-based characteristics that we have measured.

**2.29** As described above our definition of vulnerability acknowledges that the actions (or inactions) of firms have the capacity to improve or worsen consumer outcomes and cause vulnerability.

2.30 In Chapter 2 of GC20/3 we discussed that a key consideration is what harm or disadvantage consumers are vulnerable to. This information is now included in the Guidance.

2.31 The 'spectrum of vulnerability' aims to move thinking away from a binary 'labelling' of customers as vulnerable or non-vulnerable and recognise that vulnerability can be temporary. As most respondents were supportive of this articulation, we have retained this in the Guidance. We have not included examples as we do not think this is appropriate. There is a range of risks and harms associated with vulnerability, and whether firms' actions are appropriate will depend on many factors. The key consideration is that consumers receive the right outcomes, regardless of where they are on the spectrum of vulnerability.

## Skills and capabilities of staff

2.32 Many respondents agreed with the importance of embedding the fair treatment of vulnerable consumers across the workforce and were pleased to see reference to senior leaders creating and championing a culture that supports this. Respondents were also supportive of the focus on empowering and training all staff, particularly frontline or customer-facing staff including those who are not 'in house'. Responses generally related to identifying vulnerability, staff training and support and recording and sharing data. These are outlined below.

### (i) Identifying vulnerability and making it easy to disclose a need

2.33 A few respondents remained concerned about the expectations of staff in recognising and responding to vulnerability. Some firms and trade associations explained that despite best efforts there may be situations where they do not know about a customer's vulnerability, either because of non-disclosure or non-engagement. A few thought that some responsibility needed to be placed on customers. Others suggested that the onus should not be on customer disclosure and emphasised that firms should make clear to customers how they can be supported if they identify themselves as having a specific need.

2.34 Some respondents remained unclear about how proactive firms need to be in identifying and responding to vulnerability, particularly where there is no direct interaction with the customer. Some firms and consumer bodies suggested that paragraphs 3.58 and 3.59 of the GC20/3 Feedback Statement were unclear about the expectations of staff in following up on cues, as well as the use of data analytics including during digital interaction. A few firms were also concerned about potential supervisory action or complaints where a customer has not disclosed or been identified as vulnerable, where this is then raised at a later stage.

### (ii) Staff training and support

2.35 A few respondents asked for more detail on expectations around staff training, for example how vulnerability champions could be used in practice. Others highlighted specific areas training should cover. One suggested a standard for training should be considered.

2.36 A few firms highlighted challenges in training staff in multi-product businesses, or because they had reprioritised resources due to the pandemic. Some thought it was unachievable for staff to be aware of all common vulnerabilities. Emphasis was also placed on the balance between safeguarding customers and staff, with examples provided outlining how firms can support their staff.

### (iii) Recording and sharing data about consumers' needs

**2.37** In GC20/3 we asked firms to record information they need to treat vulnerable customers fairly. We explained that when dealing with the personal information of its customers, firms and staff must ensure they comply with all applicable data protection requirements. Appendix 1 of the Guidance in GC20/3 set out relevant data protection considerations that firms should take into account when interpreting the Guidance.

**2.38** The majority of firms and trade associations that responded on this matter generally thought the information in the Appendix was a good start, but many asked for further clarity from us and the Information Commissioner's Office (ICO) to give firms confidence in knowing what data they can collect, record, and share. Some respondents were concerned that adhering to the Guidance would bring them into conflict with data protection legislation. Requests for clarity related to the lawful basis under which firms can record data, including where consent has not been provided, what they should record, and how. Respondents asked how to share vulnerable customer data with third parties, particularly in distribution chains, when it is appropriate to accept data from third parties, and when it may be appropriate to signpost customers to third party support. Many respondents asked for separate guidance on aspects of data protection legislation. They also asked for additional practical advice, examples and case studies for firms outlining how they could approach various scenarios. One respondent also suggested that the Appendix should be woven into the Guidance to make it more prominent.

**2.39** A provider of data sharing infrastructure also recommended that we do more to encourage data sharing and emphasise that this should be good practice. They suggested that a central register could provide accurate and consistent data and sharing data may help identify vulnerable consumers earlier.

**2.40** A few respondents referred to the work of the UK Regulators' Network (UKRN) and the workstream on 'using data to support consumers in vulnerable circumstances.'

## Our response:

### (i) Identifying vulnerability and making it easy to disclose a need

**2.41** As outlined in GC20/3 we recognise that firms can only take reasonable steps to recognise and respond to vulnerability. The Guidance is clear that firms should ensure their staff are capable of recognising and responding to needs where the customer has told the firm about a need, where there are clear indicators of vulnerability or where there is relevant information noted on the customer's file that indicates an additional need or vulnerability that may require a response. It suggests how firms can both support frontline staff and also set up their systems and processes in a way that encourages and enables consumers to disclose their needs, both face-to-face and in digital journeys.

**2.42** The Guidance outlines that staff should take steps to encourage disclosure where they see clear indicators of vulnerability but are not expected to go further than this to proactively identify vulnerability. We have made a few amendments to Chapter 3 of the Guidance to reflect this. We have also included information about signs and phrases firms could look out for. Firms are not required to use data analytics to proactively identify vulnerability, except where this is already required in rules, for example in repeat overdraft use where firms are required to identify patterns of usage indicative of low financial resilience and vulnerability.

### (ii) Staff training and support

**2.43** Chapter 3 of the Guidance (Skills and capability of staff) contains information about staff training, including examples of how firms can put this into practice. It is encouraging to see the steps firms have already taken to embed the fair treatment of vulnerable customers throughout their business models, culture, policies and processes, including through staff training. It is for firms to determine exactly what level and form of training is relevant and proportionate for them, taking into account the size of firm and business model. It may also be helpful for firms to share best practice or, as suggested by a few respondents, to engage with professional bodies.

**2.44** We agree that it is important frontline staff are supported. In GC20/3 we set out that frontline staff may come across challenging situations and firms should offer practical and emotional support to staff where appropriate. We offer some suggestions as to what form this might take at paragraph 3.21 of the Guidance.

### (iii) Recording and sharing data about consumers' needs

**2.45** Having considered feedback we want to reassure respondents that nothing in the Guidance is intended to conflict with General Data Protection Regulation (GDPR) or the Data Protection Act (DPA) 2018.

**2.46** We are not the regulator of data protection matters and it is not appropriate for us to give guidance on how firms should comply with data protection legislation. However, we consulted the ICO and following their feedback, made amendments to the Guidance and Appendix to help firms navigate the key data considerations in achieving good outcomes for all consumers. For example, we refer to more of the ICO's guidance and explain that while firms should be transparent with customers about the information they are recording and how it will be used, firms should also be mindful that there are a number of lawful bases and conditions for recording and processing data (including Special Category Data). Appendix 1 of the Guidance sets out the different legal bases in further detail and makes clear that consent is not the only legal basis that firms can use.

**2.47** As we cannot provide guidance on data protection legislation, information on relevant GDPR and DPA 2018 considerations when interpreting the Guidance remains in the Appendix. We include references to the Appendix where it is most relevant in the Guidance. If firms remain unsure of what is required under the GDPR or DPA 2018 they should obtain their own legal advice or consult Data Protection Officers in their own organisations (where available).

**2.48** As outlined in GC20/3, firms should determine what information they need to record to ensure their customers are treated fairly. This will vary depending on their business model. We have added additional links to ICO guidance on key topics of interest, such as recording and sharing data. This includes the ICO's updated Data Sharing Code of Practice and supporting materials (including case studies), and there are further extensive resources available on the ICO website. Firms may also find the Money Advice Trust and Money Advice Liaison Group's Practical guide on Vulnerability, GDPR and disclosure useful.

**2.49** We also continue to encourage firms and trade associations to work together to develop and produce industry codes of conduct by raising awareness of important data protection issues and challenges within their sector. The ICO will provide advice and support from the start to trade associations in developing codes of conduct. Contact them at codesofconduct@ico.org.uk

**2.50** We are aware of a few initiatives such as vulnerability registers focused on sharing customer data so that customers only have to disclose once. We include this as an example in Chapter 4 of the Guidance.

**2.51** We continue to work closely with fellow regulators via the UKRN on matters relating to data and vulnerability, including in relation to the UKRN workstream mentioned by respondents. Further information about this project can be found in UKRN's 2020/21 workplan and it has also recently published relevant consumer research.

## Taking practical action – product and service design

**2.52** Respondents were generally supportive of the information on product and service design. Some suggested that information on inclusive design, sales processes, and products and services being flexible to meet evolving needs be given even greater prominence.

**2.53** Some consumer bodies asked that we provide clear guidance on how firms can apply principles of inclusive design into their work.

**2.54** Some consumer bodies also proposed that firms should be encouraged to use a standard set of diagnostic questions to engage with customers and ensure the product or service applied for is most suitable, and that we should monitor this on an ongoing basis. One firm also asked for clarity on the reference to 'cooling off periods' in paragraph 4.12 of GC20/3.

**2.55** Many firms and trade associations also asked for more clarity on oversight responsibilities in distribution chains, for example for due diligence of other firms within the distribution chain, including ongoing monitoring. A request was made to confirm that the Guidance does not go beyond existing requirements in our Handbook.

## Our response:

**2.56** Chapter 4 of the Guidance (Taking practical action) focuses on areas that are key touchpoints or key considerations for firms in ensuring the fair treatment of vulnerable customers. Many respondents agreed with this focus. We consider that, as drafted in GC20/3, the focus of the Guidance is balanced on reflecting the needs of vulnerable consumers at all stages of the customer journey and so we have not made any changes.

**2.57** We do not consider it appropriate to introduce a standard set of diagnostic questions for firms to use as part of sales processes. This could lead to a tickbox approach and it is unlikely the same set of questions would be suitable in every scenario. Regarding 'cooling off periods' many firms are already subject to rules across different sectors. The Guidance does not propose to change this but instead suggests that firms may want to voluntarily consider granting flexibility, such as giving extra time to vulnerable customers in certain circumstances. We have amended the terminology used to avoid confusion.

**2.58** The Guidance does not go beyond the Principles and existing obligations regarding distribution arrangements and we have made clear that this is guidance only and does not cut across firms' existing obligations (see paragraph 4.27 of the Guidance). It should be taken to align with sector specific regulations that create obligations on regulated entities within supply chains.

## Taking practical action – customer service

### (i) Telling consumers about the support available to them

**2.59** Some consumer bodies agreed that telling customers about options of help and support is important. A few suggested that firms should be more proactive in telling customers about this.

**2.60** We received feedback from a few respondents about consumers who may need additional support in making decisions, rather than relying on others to make decisions. We also received feedback regarding references to the Mental Capacity Act.

**2.61** A few respondents asked for more information or sector specific guidance on Power of Attorney and third party access outside Power of Attorney, or suggested examples for how firms might help consumers to set up trusted third party support.

**2.62** Some consumer organisations also proposed that all consumers should be provided with an 'if things go wrong' leaflet covering scenarios such as customers' material circumstances changing for the worse. They suggested that this leaflet could also provide details of support services such as the Money and Pensions Service, Financial Service Compensation Scheme (FSCS) and the Financial Ombudsman Service.

### (ii) Putting in place systems and processes that support the delivery of good customer service

**2.63** A few respondents noted that there may be times of increased need, such as during the coronavirus pandemic, where consumers required support and firms offered specialist helplines. They encouraged firms to offer this as a matter of course.

## Our response:

### (i) Telling consumers about the support available to them

**2.64** We agree that firms should be proactive in offering support throughout the customer journey and regardless of the channel used. In the Guidance, we retain the information and examples about how firms can do this. We have also amended the Guidance to reflect suggestions about referencing the Mental Capacity Act 2005.

**2.65** We outlined in GC20/3 that as well as the range of legal mechanisms to support customers who do not make their own decisions firms should also provide straightforward, flexible options to facilitate support on a short or medium-term basis. We included a case study outlining how one firm has successfully implemented an approach and explained that if firms feel they need more information about third party access and support they should consider, through their trade or professional bodies, if there is a need for specific guides.

**2.66** Firms are already required to provide information about their complaints process and consumers' right to refer their complaint to the Financial Ombudsman Service. Firms are also required to provide information about the FSCS in certain circumstances. Our Handbook contains requirements on firms to sign-post customers to sources of free debt advice and to provide, for example, Money Advice Service factsheets where appropriate. We consider it sufficient for firms to provide information about other available support as and when the need arises. That said, firms may wish to work with trade bodies and consumer bodies to develop further information about the support available. For example, the main current account providers have agreed to publish information about the additional services they offer all customers, including those in potentially vulnerable circumstances.

### (ii) Putting in place systems and processes that support the delivery of good customer service

**2.67** In the Guidance we have retained information, including case studies and examples, outlining how firms can put in place systems and processes that support the delivery of good customer service. This includes information on specialist services and 'tell us once' style approaches. It is for firms to determine precisely what support they should put in place to enable them to treat customers fairly.

## Taking practical action – communications

**2.68** A few respondents highlighted that communications can be complicated and may lead to consumers suffering harm. Some emphasised that communications should help all consumers, not just vulnerable consumers, to engage with financial services and make good decisions. A few firms were concerned about expectations around evidencing consumer understanding of their communications.

**2.69** A few firms, trade bodies and consumer organisations asked for clarity on whether firms are expected to introduce multiple channels if they do not offer this already. They also asked about types of communications that are 'key documents', interaction with existing disclosure requirements, and expectations around translating materials.

**2.70** One respondent suggested the communications information be updated to refer to numeracy as well as literacy because feeling under pressure to make a decision quickly could also be a significant issue for people who struggle with numbers and data.

## Our response:

**2.71** Principle 7 requires that 'A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.' As explained at Appendix 2 of the Guidance, there are also other rules in our Handbook relating to communications. Firms should communicate in a way which helps all consumers, including those who have different needs, enabling them to make informed decisions. In the Guidance, we remind firms that they may also need to make such changes to comply with their obligations under the Equality Act.

**2.72** As outlined in GC20/3 this may include offering different formats and channels where it is proportionate to do so. Paragraph 4.76 of the Guidance sets out that firms with a predominantly single channel strategy should think about the possible communication needs that consumers with characteristics of vulnerability in their target market or customer base may have and consider providing another channel or channels.

**2.73** Where a firm is changing the channels it offers, or an existing customer is no longer able to engage with a product or service because of a characteristic of vulnerability, firms should consider what steps are appropriate to ensure they continue to treat customers fairly. Information in the product design and communications sections of the Guidance set out that firms should take additional care in how they can proactively manage such changes where a consumer is very vulnerable or the potential for harm is serious. For example, they may wish to consider supporting the customer to find an appropriate alternative provider or product/service.

2.74 Paragraph 4.68 of the Guidance sets out that where disclosures are standardised by rules, firms must comply with these requirements. However, this should not prevent them from also providing information in a form that meets the needs of vulnerable consumers. Firms should refer to relevant sections of our Handbook, and other relevant regulations, when considering what constitutes 'key documents' for their sector.

2.75 At paragraph 3.82 of the GC20/3 Feedback Statement, we explained that firms are not required to translate their communications but should consider whether doing so is proportionate if they see a significant need or demand for this in their customer base.

2.76 We agree that numeracy is also a consideration in helping consumers to make informed decisions. We have updated the Guidance to reflect this.

### Monitoring and evaluation

2.77 This is discussed further in response to question 4.

## Q3 – Do you have any feedback on our CBA?

### Impact of Covid-19

2.78 A number of respondents challenged the assumptions in the CBA due to the impact of the pandemic, because of the anticipated increase in levels of vulnerable consumers and changes to planned investments (compared to the projections submitted in the cost survey), as well as the costs associated with temporary coronavirus-related Guidance issued by the FCA.

### Other costs

2.79 A number of respondents raised the question about the inclusion of distribution chains and the impact this may have on costs. A few respondents questioned whether product and service design costs should be classified as ongoing. And a few respondents also asked for clarity on whether the costs of debt advice agencies had been included in the analysis, and in particular the not-for-profit debt advice sector. Several respondents raised that the CBA does not take account of the potential costs to the third sector.

2.80 Some respondents also said that costs related to vulnerable customers are not easily separated from normal business activity. A few respondents raised that some one-off costs, such as IT systems and monitoring and evaluation, could be underestimated. One respondent thought that anticipated increases in complaints/ Financial Ombudsman Service referrals should be included in the costs, and the impact on Claims Management Companies (CMCs) had been overlooked. Several respondents suggested there may be some unintended consequences, such as the costs presented may deter smaller firms, or have an impact on firms narrowing their target markets or how they compete in the future.

2.81 A few respondents also queried whether the costs to the FCA are likely to be neutral.

### Benefits

2.82 Some respondents commented that there is a lot of focus on costs in the CBA, and that the benefits section could be further developed, with high level quantification of benefits. Some respondents asked for clarification on the illustrative break-even analysis in the CBA, including on the percentage range of vulnerable customers used, and what firm actions could deliver these savings. A few respondents asked for the inclusion of benefits to firms of treating vulnerable customers fairly.

## Our response:
### Impact of Covid-19

2.83 Overall, we do not think it is necessary to revise the CBA when finalising the Guidance. We believe the initial conclusions of the CBA, that the expected benefits are proportionate to the cost to industry, remain valid. Therefore, the CBA from Guidance Consultation GC20/3 is unchanged.

2.84 We acknowledge that coronavirus has impacted the economy since we conducted the CBA. For example, we know the number of vulnerable consumers in financial services markets has increased, although the long-term impacts remain uncertain. We do not think this affects the general expectations of the Guidance, ie that firms should take additional care to meet the needs of those at the greatest risk of harm.

2.85 If estimated firm costs associated with the Guidance increase because of greater numbers of vulnerable consumers, we believe that benefits from the Guidance would grow by at least as much. The benefits we outlined in our CBA increase in proportion to the number of vulnerable consumers and the extent of their vulnerability, while only certain costs rise with the prevalence and severity of vulnerability. If a firm has to serve more vulnerable consumers, costs will vary depending on the number of vulnerable consumers and their needs. For example, increased time to provide face to face service, may increase, but fixed costs such as staff training would remain the same. Therefore, the benefits will increase proportionally more than costs.

2.86 We know that many firms have taken action in response to our temporary coronavirus-related Guidance, including additional support for customers in vulnerable circumstances. While we have worked to ensure that the temporary coronavirus-related Guidance has been consistent with this Guidance with regards to the treatment of vulnerable consumers, the temporary Guidance included additional actions specific to the circumstances of the pandemic which go beyond those set out in this Guidance, for example setting out expectations for firms to offer payment deferrals in response to widespread and simultaneous need for consumers facing temporary payment difficulties. This CBA aims to capture costs directly arising as a result of this Guidance, and does not include firms' additional activities (and costs) from the temporary coronavirus-related Guidance. With the temporary coronavirus-related Guidance, we considered that the delay involved in publishing a formal consultation accompanied by a cost benefit analysis would be prejudicial to consumers' interests. There is no statutory requirement to prepare a cost benefit analysis for Guidance.

2.87 At page 25 of the Guidance, we explain that not all consumers in financial difficulty will be vulnerable or require a tailored response. Our rules in MCOB and CONC set our expectations on the treatment of consumers unable to make required payments. They include requirements on firms to establish effective policies for the fair and appropriate treatment of customers who the firm understands or reasonably suspects to be particularly vulnerable.

### Other costs

2.88 As specified earlier in the Feedback Statement (see paragraph 2.58), we clarify our expectations on distribution chains; the Guidance does not introduce new requirements that go beyond the Principles and other existing expectations, and firms should not therefore incur extra costs. Our assumption that product design costs should be treated as one-off costs was based on discussions with a sample of participants in our firm survey. In our analysis, we assumed that any ongoing component of designing products and services in a way that takes vulnerability into account would be captured in other cost categories such as monitoring and evaluation and training and development.

2.89 We have outlined in paragraphs 2.128-2.133 of this Feedback Statement the approach taken by the Financial Ombudsman Service, and do not think we need to incorporate the potential cost of complaints in the cost benefit analysis. As vulnerability is embedded into the existing rules for CMCs, we excluded them from the sample of firms, but included familiarisation costs. While other sectors also have rules that reference vulnerability, these tend to be narrower, for example focusing on those in financial difficulty, therefore we did not exclude costs for these firms.

2.90 While our survey respondents did not include not-for-profit debt advice agencies, to estimate total costs we applied our sample's cost estimates to a population of 52,000 firms that included debt advice agencies. Consultation responses did not reveal any types of cost that would be incurred by debt advice agencies, that would not be applicable to other firms. We believe that it is reasonable to assume that debt advice agencies will incur costs similar to those of other firms of similar size with similar numbers of vulnerable consumers, recognising that our estimates are averages and some firms will incur higher or lower costs in reality. Therefore, we have not revised our initial estimate. We recognise that engagement between firms and the third sector may require increased resources and costs. However, as outlined in GC20/3, we suggest different ways that firms can engage with charities and where possible, firms should seek to collaborate with them for mutual gain.

2.91 We recognise it may be difficult to identify and separate the costs that are incurred as a result of the Guidance, as they may often form normal business activity. In our firm survey, we explicitly asked firms to report incremental costs arising from the Guidance. Therefore, the submissions to the cost survey from firms are our best estimate of the additional costs, as a result of the Guidance. The cost incurred by different firms will vary depending on the actions taken to implement the Guidance and may be lower or higher than the average cost estimates. As specified in GC 20/03, we updated the draft Guidance to reflect that firms, including small firms, should take actions that are proportionate to the size of their firm and their business model.

2.92 While there may be indirect impacts arising from the Guidance as outlined by respondents, it is not practical to quantify them. There are also potential benefits to firms that they will consider, as outlined below.

2.93 In the Guidance, we outline how we will supervise firms' treatment of vulnerable customers. It will build on our supervisory approach and will be taken forward with existing resources, so we do not anticipate a significant increase in costs for the FCA.

### Benefits

2.94 The break-even analysis demonstrates the point at which ongoing benefits would exceed ongoing costs. We highlight that this is purely illustrative, and estimated this based on 5-20% of consumers being vulnerable. Our Covid-19 panel survey showed that 53% of consumers display a characteristic of vulnerability in October 2020; though not all these consumers may be experiencing harm, and we recognise that more consumers may stand to benefit from the Guidance than presented in the break-even analysis.

**2.95** There are likely to be benefits to firms, for example improving levels of customer trust and reputation. One way this could arise is by considering the needs of vulnerable customers through the product and service design process – a report by the Centre for Responsible Credit found that Fair For You, a not-for-profit lender that offers credit solutions to low income households, has designed its products and processes with active involvement of its target group, and report the features are highly valued, and there are high levels of satisfaction with the business. There also may be other benefits, for example, the National Audit Office report on tackling problem debt found evidence that adopting good practice both benefits individuals and boosts collection rates. Lenders and debt collection agencies who had a better understanding of what their over-indebted customers could afford retained more customers, increased collections over time and reduced operating costs.

**2.96** Overall, as outlined in paragraph 2.83 above, we do not think it is necessary to revise the CBA when finalising the Guidance. Therefore, the CBA from GC20/3 is unchanged.

## Q4 – Do you have any feedback on what we should prioritise when monitoring firms' treatment of vulnerable consumers?

### Our supervisory and enforcement approach to monitoring firms' treatment of vulnerable consumers

**2.97** Many respondents including firms, trade associations and consumer organisations, requested more clarity on how we will supervise and enforce the Guidance, including whether there would be further thematic work. Some firms emphasised the importance of any supervisory approach being proportionate and flexible, taking into account firm type and size, when assessing actions taken by firms to treat customers fairly.

**2.98** Many respondents recognised that monitoring firms' treatment of vulnerable consumers is not straightforward. Overall, the majority encouraged us to focus on the outcomes that are being achieved.

**2.99** Respondents suggested a variety of ways that we can prioritise when monitoring firms' treatment of vulnerable customers. This included prioritising sectors where consumers are likely to suffer the most detriment. A few respondents thought that we should begin by considering how coronavirus has impacted consumers' circumstances.

**2.100** Many suggested focusing on senior management responsibilities and firms' culture, while others thought that frontline staff was the more appropriate starting point. One respondent suggested taking a phased approach by initially focusing on whether firms are building capability (including culture and commitment of senior leadership and staff training) and then moving on to monitor how this had been embedded. A few firms suggested that firms should carry out their own gap analysis as a starting point.

2.101 Some respondents suggested monitoring should focus on areas aligned to their key areas of interest. A few consumer organisations suggested that feedback from both staff and consumers would be helpful and that we should engage with consumer organisations and charities directly to obtain information that could help with prioritisation. They thought our Financial Lives survey could be a key tool.

2.102 Some firms and trade associations asked about implementation of the Guidance and for a clear commencement date. Many encouraged us to recognise the ongoing challenges associated with coronavirus and the competing regulatory priorities that firms are currently facing. They asked that this be factored into implementation expectations or that we allow for an implementation period. Some asked for clarity on whether, demonstrating that they are working on implementing new and/or enhanced vulnerability processes but where these are not yet operational, will meet expectations in the short-term.

### Evaluation

2.103 Many consumer groups suggested that application of the Guidance should be reviewed before 2023, emphasising that there are likely to be new vulnerabilities arising as a result of coronavirus.

### Our response:
### Our supervisory and enforcement approach to monitoring firms' treatment of vulnerable consumers

2.104 As the Guidance is issued in relation to existing Principles it will take effect immediately and is relevant where the Principles apply.

2.105 We have considered feedback and outline how we will monitor firms' treatment of and outcomes for vulnerable consumers in Chapter 1 of this Feedback Statement and Chapter 1 of the Guidance. Chapter 5 of the Guidance sets out how firms should monitor that they are treating vulnerable customers fairly and outcomes for vulnerable customers.

### Evaluation

2.106 We have considered the impact of the coronavirus and consider the approach taken in the Guidance remains relevant.

## Q5 – What types of information do you envisage it would be necessary for firms to collect, to assess the effectiveness of their policies and processes in respect of vulnerable consumers?

### Types of information

2.107 The majority of respondents agreed that firms should have robust internal assurance, risk management and audit processes in place so that they can continuously monitor and evaluate whether they are achieving consistent outcomes for consumers.

2.108 Respondents generally felt that the information used should enable firms to review the impact of their interventions to ensure vulnerable customers receive outcomes as good as other customers. A few respondents found the case studies, examples and reference to the FSA guide to treating customers fairly management information a useful starting point. Many firms and trade associations outlined that firms already collect and analyse a great deal of information and explained how they use this. Some respondents emphasised that the type and quantity of information collected should be proportionate to the size and business model of the firm. A few firms and trade associations asked for clarity about what information should be recorded depending on the size of firm and sector it operates in. Others felt that firms were best placed to understand this, and supported firms being able to determine this themselves.

**2.109** Many respondents provided useful feedback about the types of information it would be necessary for firms to collect. Some referred to information that could help firms better understand their customer base and be key indicators of vulnerability. Others proposed that firms should use insights that would help them test, review and improve products and services to evaluate whether the fair treatment of vulnerable customers is embedded in throughout their business models, culture, policies and processes.

### Reporting requirements

**2.110** A few firms and trade associations were concerned that the Guidance would implement additional reporting requirements. They suggested that if this is the case the CBA should be updated, or a separate consultation carried out. Some consumer organisations also suggested that we should set rules on how firms report this information back.

### Publishing MI used by firms

**2.111** A few respondents suggested that either firms should publish details of the data they collect or that we could publish anonymised, non-commercially sensitive information from firms outlining how they have interpreted the Guidance and how effective their policies have been.

## Our response:

### Types of information

**2.112** It is encouraging to see that many firms already use a wide range of information from different sources and different points in the customer journey to determine whether they are delivering good outcomes for vulnerable customers. It is also positive to see that continuous monitoring and improvement is a key area of focus. To support firms, we have updated Chapter 5 of the Guidance with some of the additional suggestions. However, firms should be mindful that this is not an exhaustive or 'tick-box' list and they should determine what information would be most useful for them.

### Reporting requirements

**2.113** The Guidance does not introduce any new record-keeping or reporting requirements for firms. As outlined in Chapter 1 of this Feedback Statement and in the Guidance, we will monitor outcomes for consumers with characteristics of vulnerability compared to those for other consumers. We will look at what action firms are taking to ensure they treat vulnerable customers fairly.

**2.114** Firms can expect to be asked to provide information they are using to monitor whether they are achieving outcomes for customers with characteristics of vulnerability that are as good as those for other customers (see monitoring and evaluation in Chapter 5 of the Guidance). They should do this with reference to the TCF outcomes, or other outcomes we state are important to achieve for consumers in their sector.

### Publishing MI used by firms

**2.115** Guidance cannot require firms to report or publish specific data. Firms may wish to publish key management information (MI) in order to be transparent about the service levels they are achieving for vulnerable consumers. In 2023-24 we plan to evaluate the action firms have taken and whether we have seen improvements in the outcomes experienced by vulnerable consumers which may include information about the MI firms have used to track outcomes.

## Q6 – Do you have any other feedback on our proposals?

### Financial Ombudsman Service approach

**2.116** Some firms and trade associations raised concerns about how the Financial Ombudsman Service will consider this Guidance when investigating complaints. Respondents' feedback raised concerns about the breadth of information considered by the Financial Ombudsman Service being more extensive than our supervisory approach. They were also concerned about the Financial Ombudsman Service effectively setting minimum expectations or best practice for firms when determining complaints, and upholding complaints where vulnerability was not disclosed and when considering specific complaints eg about financial difficulties, particularly during the coronavirus pandemic. Some of these respondents requested clarification that the Financial Ombudsman Service would not apply the Guidance retrospectively.

### Other feedback

**2.117** Many respondents provided additional feedback about matters that are relevant to the Guidance but not specifically about the content.

### (i) Interaction with existing regulation and legislation

**2.118** A number of respondents queried how the Guidance interacts with our existing rules and guidance including the temporary coronavirus-related Guidance, GI pricing practices, access to cash and open finance. A few suggested that we explicitly link the Senior Managers & Certification Regime to the fair treatment of vulnerable consumers by making senior individuals accountable for firms' conduct toward them. Some consumer bodies also felt a duty of care would be the best way to ensure the fair treatment of vulnerable customers and to bring consistency and fairness across all financial service markets. One respondent asked if the Guidance would supersede regulation if this achieved the best outcome for a vulnerable consumer. Another suggested that we work with the PRA to examine whether any prudential rules are causing poor outcomes for consumers.

**2.119** A few respondents thought the Guidance should go further to say that financial services are essential services. A few also thought it did not address systemic issues such as financial inclusion or firms taking pre-emptive action where customers are in financial difficulty. Some respondents suggested additional rules were needed to address systemic issues, or other areas of potential harm.

**2.120** A few respondents also suggested that we consider, reference or align with information from other organisations. This included BS1477, Ofwat's common metrics, updates to the Lending Standards Board CRM Code, and implementation of the Civil Liability Act 2018.

**2.121** We also received some feedback on other areas for development outside of the Guidance. For example, in relation to the Consumer Network and suggestions for updating the Financial Lives survey.

### (ii) Innovation

**2.122** Some respondents suggested several ways that innovation can help improve outcomes for consumers. One suggested using the FCA's Sandbox or TechSprints to bring inclusive design to life. Some consumer bodies suggested that we should set a specific challenge in the FCA Sandbox on proactive identification of vulnerability and lead the way in collaborating with other regulators to engage in proactive identification of vulnerable customers. Some consumer bodies also proposed that we incorporate inclusive design principles into the way we set regulatory policies.

### (iii) Working with third parties

**2.123** The majority of respondents supported a collaborative approach, with some explaining how they do this already. Many were also supportive of working with trade associations or professional bodies to develop and share resources and best practice, or establish collaborative forums. Some respondents reiterated that we are best placed to share best practice and signpost to external sources such as potential charity partners, training providers and approved professionals. One thought we should establish a network of firms and consumer groups to become thought leaders. Some consumer bodies clarified that limitations on support from the third-sector were due to resource constraints rather than capability. A few suggested firms should donate to the third-sector in return for partnerships, and that we should monitor this.

**2.124** Several respondents also suggested that we lead the way in collaborating with other regulators to develop strategies or to agree a common definition of 'vulnerability'. There was a suggestion that we should publish our work with other regulators.

### (iv) FCA communications and research

**2.125** A number of respondents suggested that the FCA should fund or lead research on areas including communications, behavioural biases, and how consumers engage with numbers and data to make an informed choice.

**2.126** A few respondents provided feedback about how we publish information on vulnerability. Suggestions included a dedicated area to be used for reference, an accessible summary of the guidance, a process map to provide additional clarity for firms and the Financial Ombudsman Service and accessible case studies describing firms' mis-treatment of vulnerable consumers in a similar format to that on the Financial Ombudsman Service's website.

**2.127** Another suggestion was to locate all non-Handbook guidance in the same place on our website. One respondent proposed that we should consider how evolving FCA expectations can be documented and time stamped to create a searchable audit trail so industry, the Financial Ombudsman Service and Claims Management Companies are clear on expectations.

### Our response:
### Financial Ombudsman Service approach

**2.128** Many of the responses on the Financial Ombudsman Service's consideration of the Guidance are relevant to their overall approach to complaints handling. The Guidance does not change either the Financial Ombudsman Service's approach to how it handles complaints referred to it or to a firm's obligations in handling complaints in accordance with the Dispute Resolution: Complaints (DISP) rules and guidance.

**2.129** In GC20/3 we explained that the Financial Ombudsman Service takes account of our rules and guidance and (where appropriate) good industry practice, amongst other things, when reaching decisions on what is fair and reasonable in all circumstances of a case. This already applies to its consideration of complaints about the fair treatment of customers, including vulnerable customers.

**2.130** While the Guidance does not seek to set minimum standards for firms, it aligns with DISP in setting out that firms 'should' be monitoring and evaluating their treatment of vulnerable customers, which includes learning from complaints. Firms should ensure that lessons learned from decisions by the Financial Ombudsman Service should be effectively applied in future complaint handling.

**2.131** The Financial Ombudsman Service publishes a range of information including decisions, case studies, data and insight. We also publish complaints data. While the Financial Ombudsman Service's decisions and case studies do not set legal precedent, they can help firms anticipate how they might approach a similar complaint in future, and decide whether they should take steps that could prevent such a complaint (and the underlying harm) from arising. This information can also be useful for firms when undertaking complaints analysis as it can help them compare their performance with their peers and understand what might be best practice.

**2.132** The Financial Ombudsman Service recognises that the Guidance is outcomes focused. While the Guidance sets out and provides examples and case studies of actions that firms 'should' and 'could' take to treat consumers fairly, the Financial Ombudsman Service recognises that firms may take a different approach to that set out in the Guidance.

**2.133** As with all complaints, firms need to be clear in their representations to the Financial Ombudsman Service on any alternative approach taken and why they consider it appropriate. Equally, and in line with the outcomes-based approach, firms should not rely solely on the examples and case studies in the Guidance as there are many different approaches to how they might treat vulnerable customers fairly.

### *Other feedback*
### (i) Interaction with existing regulation and legislation

**2.134** We explain that the Guidance does not replace or substitute other applicable rules, guidance or law and does not require firms to act in a way that is incompatible with legal or regulatory requirements. The fair treatment of customers is already considered in our work, including the workstreams noted in paragraph 2.118 above. In our view, the Guidance is clear that senior leaders are accountable for creating and maintaining a culture in which staff take responsibility for reducing the potential for harm to vulnerable consumers.

**2.135** We expect that any future policy changes on duty of care and potential alternative approaches will be consistent with the aims of the Guidance as the expectations it sets will be relevant going forward.

**2.136** We shared feedback relating to other areas of FCA work and the PRA with relevant teams.

### (ii) Innovation

**2.137** We agree that innovation is important in improving outcomes for vulnerable consumers. We have worked closely with financial service providers to look at the barriers for identifying vulnerable consumers, exploring subjects like ethics, GDPR and innovation, including as a member of the UKRN's vulnerability network.

**2.138** In November 2020, we launched a digital sandbox pilot, with the initial pilot focusing on the challenges caused or exacerbated by coronavirus. The identification and risk management of vulnerable consumers is a key area of focus. The pilot concluded earlier in February 2021 and will inform discussions on future iterations of the digital sandbox which supports innovative firms to develop new solutions in this way.

**2.139** We are convening a virtual TechSprint in Q1 2021 to explore solutions to issues that disproportionately affect women in the UK, such as lack of digital identity. We expect that the solutions will be adaptable to a wide-range of vulnerable consumers and we will look at how we support the solutions to move from creation to adoption.

**2.140** As explained in GC20/3, if firms want to explore the use of innovation to improve outcomes for consumers, they can contact our Innovation Division. Where questions relate specifically to the application of GDPR, the ICO's Sandbox or Innovation Hub may be more appropriate.

### (iii) Working with third parties

**2.141** It is for firms to decide whether partnerships with other organisations can improve outcomes for their vulnerable consumers and, where possible, firms should seek to collaborate with charities for mutual gain.

**2.142** We will continue to engage with trade associations and professional bodies to encourage them to support firms as they develop their strategies towards vulnerable customers. We consider it more appropriate for these organisations, rather than us, to maintain details of best practice, sources, training etc that are relevant to their sector. We are pleased to see that many trade and professional bodies are already doing this.

**2.143** We continue to work closely with other regulators through various networks and forums including UKRN, the Consumer Forum and the Consumer Protection Partnership to share insight and learnings to promote good outcomes for consumers. Cross-sector work is typically published on the UKRN webpages. For example, a UKRN summary of support available across sectors, a literature review on identifying vulnerable consumers which reflects on regulators' definitions of vulnerability, and Performance Scorecards.

### (iv) FCA communications and research

**2.144** We have a webpage which summarises our work on the fair treatment of vulnerable consumers. We have updated this page and the video on actions firms should take to reflect the Guidance.

**2.145** We will continue to conduct research and develop insights relevant to the fair treatment of vulnerable consumers and will include this on the dedicated webpage.

**2.146** We already publish a wide range of publications from corporate documents, policy papers and research and data. We also publish many documents which provide details of the outcomes of our supervisory and enforcement work. These documents are dated, and our website can be filtered and search terms used to identify relevant documents.

# Annex 1
# List of non-confidential respondents

Association of British Insurers

Access to Insurance Working Group

Age Partnership Ltd

Age UK

Alzheimer's Society

Association of British Credit Unions

Association of Consumer Support Organisations

Association of Financial Mutuals

Association of Mortgage Intermediaries

Association of Professional Compliance Consultants

AXA UK Group

Centrica (British Gas)

British Insurance Brokers Association

British Vehicle Rental and Leasing Association

Bondgate Finance

Building Societies Association

Centre for Competition Policy, University of East Anglia

Chartered Bodies Alliance

Chartered Institute of Credit Management

Chartered Insurance Institute

Christians Against Poverty

Citizen's Advice

Citizens Advice Scotland

Cocoa

Consumer Council for Northern Ireland

Consumer Finance Association

Credit Services Association

Cruse Bereavement Care

Debt Managers Standards Association

Electronic Money Association

Equifax and TDX Group

Equinti

Fair4AllFinance

Fair by Design

Finance & Leasing Association

Financial Inclusion Centre

Financial Inclusion Commission

Financial Services Consumer Panel

Financial Vulnerability Taskforce

Furness Building Society

Gamble Aware

Gamcare

Gamvisory Group

Glassbox

Good Things Foundation

Hodge

Institute and Faculty of Actuaries

Investment & Life Assurance Group

Investment Association

Just Group plc

Key Group

Lending Standards Board

Lendology

Macmillan Cancer Support

Matrix Captial Limited

Money Advice Hub

Money Advice Trust

Money and Mental Health Policy Institute

Money and Pensions Service

Monzo Bank

National Numeracy

Optimum Credit Limited

Pepper Money Limited

Personal Finance Research Centre, University of Bristol

Personal Finance Society

Personal Investment Management & Financial Advice Association

Philip J Milton and Company Plc

Praesidium Advisory

Responsible Finance

Scope

Sesame Bankhall

Settld

StepChange

Surviving Economic Abuse

The Money Charity

TISA

Toynbee Hall

UK Finance

Vulnerability Registration Service

VCX Limited

Zurich

# Annex 2
# Abbreviations used in this paper

| | |
|---|---|
| **CBA** | Cost Benefit Analysis |
| **CMC** | Claims Management Company |
| **DPA** | Data Protection Act |
| **EHRC** | Equality and Human Rights Commission |
| **FSCS** | Financial Services Compensation Scheme |
| **FSMA** | The Financial Services and Markets Act 2000 |
| **GC** | Guidance Consultation |
| **GDPR** | The General Data Protection Regulation |
| **ICO** | Information Commissioner's Office |
| **MoU** | Memorandum of Understanding |
| **PSED** | Public Sector Equality Duty |
| **UKRN** | UK Regulators Network |



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