Guide to dealing with vulnerable consumers

1. Introduction

The regulation of consumer credit has been the responsibility of the Financial Conduct Authority (FCA) since April 2014. When the FCA was created, prudential and conduct functions were split, with the FCA having responsibility for conduct. This gave the regulator a new focus on the consumer. It's the FCA's aim that its authorised firms create and put into practice appropriate strategies to address the needs of consumers in vulnerable circumstances.

The Institute of Chartered Accountants in England and Wales (ICAEW), the Institute of Chartered Accountants of Scotland (ICAS) and the Institute of Chartered Accountants in Ireland (CAI) are designated professional bodies (DPBs) under Part XX of the Financial Services and Markets Act 2000 (the Act). Previously those arrangements only dealt with investment business activities. Following the change of the law on 1 April 2014, credit-related regulated activities are now within the scope of the Act.

Part XX allows ICAEW, ICAS and CAI to provide arrangements by which firms may take advantage of an exemption from the general prohibition on carrying on activities that are regulated under the Act. This removes the need for authorisation from the FCA.

ICAEW, ICAS and CAI's arrangements for credit related regulated activities are contained in the Designated Professional Body (Consumer Credit) Handbook ('the Handbook'), which has been approved by the FCA.

Regulation 4.10 of the Handbook requires a consumer credit firm to act in the best interests of the consumer client. In doing so, consideration should be given as to whether the client is vulnerable and deal with any vulnerability appropriately.

2. What is vulnerability?

The FCA has developed the following definition[1] of a vulnerable consumer:

'A vulnerable consumer is someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care.'

There is no typical vulnerable consumer – their vulnerability may be temporary due to a life changing event or it may be permanent due to a long term health condition. Many people who are vulnerable would not necessarily recognise themselves as being so and may not describe themselves as vulnerable in their dealings with a firm. To assist in identifying vulnerability, one option is for firms to use the risk factor approach. The table below provides a non-exhaustive list of examples of risk factors.

[1] FCA Occasional Paper No. 8: Consumer Vulnerability https://www.fca.org.uk/publications/occasional-papers/occasional-paper-no-8-consumer-vulnerability

Examples of risk factors for vulnerability
Low literacy, numeracy and financial capability skills
Physical disability
Severe or long term illness
Mental health problems
Low income and/or debt
Caring responsibilities (including operating a power of attorney)
Being ‘older old’ for example over 80
Being young
Change in circumstances (eg job loss, bereavement, divorce)
Lack of English language skills
Non-standard requirements or credit history (eg armed forces personnel returning from abroad, ex offenders, care home leavers, recent immigrants)

Given that credit related regulated activities must only be provided in an incidental manner[2] to other professional services, a firm’s client base may be such that few if any of their clients exhibit these risk factors when they first become clients of the firm.

However, vulnerability can often be caused by a sudden change in personal circumstances, like redundancy.

Principals and staff are not expected to become health experts, but should remain alert to behaviours or clues to vulnerability, as clients may not always be explicit in stating that they have specific needs or have become vulnerable.

The table below provides examples of some triggers:

Examples of triggers
Late or missed payments
Payments stopping suddenly
Failure to respond to correspondence or to attend meetings
Signs of agitation such as shortness of breath/anger or signs of withdrawal
Asking for repetition (a sign that the client has not understood)
Makes decisions that are unexpected and/or out of character or mixed/contradictory instructions
Previously organised records are now chaotic

[2] Regulation 3.04 DPB (Consumer Credit) Handbook

Much of the published guidance is targeted at large organisations such as banks[3] or utility companies[4] which are more likely to encounter vulnerable consumers and will have often have specialist teams to deal with those who are vulnerable. A vulnerability strategy which is appropriate for a high-street bank may not suitable for an accountancy practice, but firms should take steps to ensure that staff are aware that a client may be or may become vulnerable and are able to identify possible vulnerability based on the risk factors and triggers above and deal with people accordingly.

3. What should firms be doing?

Vulnerability is not just about the individual's situation. It can be caused or aggravated by the actions or processes employed by a firm. A lack of empathy in a difficult situation or letters that are complex and difficult to understand may increase an individual's vulnerability.

Some examples of good practice are set out below.

- Offering a choice of ways of communicating communication choices (face to face, phone, email, post) and try to communicate by the client's preferred method.
- Arrange meetings at a time which suits the client or allow for extra time for appointments.
- Communicate in a clear, jargon-free way.
- Exercise forbearance if someone is having difficulty paying their bill.
- If a client is in financial difficulties and the firm is unable to help, referring the client to an appropriate not-for-profit debt advice body.
- Ensure easy access to buildings – for example, a problem that deaf clients can encounter is their inability to hear the entry phone.[5]
- Offer home visits if accessibility is a problem.
- Make a quiet area available for discussions if someone has difficulty concentrating.[6][7]
- Have somewhere private for sensitive discussions, for example if someone is recently bereaved.
- Properly recording information about the client and their circumstances (see also data protection below).
- When contacted by a third party such as a carer, making a note of the information provided even if you are unable to deal directly with the carer.
- Having a process to obtain feedback to check whether the needs of vulnerable clients are being met.

4. Data protection

Firms may be wary of recording information about a client's personal circumstances believing that it would be a breach of data protection legislation. Staff who are unsure what they are able to

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[3] Improving outcomes for customers in vulnerable circumstances
https://www.bba.org.uk/publication/bba-reports/improving-outcomes-for-customers-in-vulnerable-circumstances/
[4] Ofgem Consumer Vulnerability Strategy https://www.ofgem.gov.uk/publications-and-updates/consumer-vulnerability-strategy
[5] Deaf Studies Trust, 'Legal Choices, Silent Process', March 2012
http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/Legal%20Choixes%20Silent%20Process%20.pdf
[6] Dementia Friendly Financial Services Charter
https://www.alzheimers.org.uk/site/scripts/download_info.php?fileID=2891
[7] Legal Services Consumer Panel Fact Sheet, *Consumers with Learning Disabilities,* July 2013
http://www.legalservicesconsumerpanel.org.uk/ourwork/vulnerableconsumers/Fact%20sheet%20-%20learning%20disabilities.pdf

record may avoid having conversations about a client's vulnerability if they are nervous about how to handle the personal information they obtain. This may mean that an opportunity to help a vulnerable client may be missed. The Information Commissioner's Office has communicated to the FCA[8] that in the right circumstances, and for the right reasons, data protection should not act as a barrier to the recording of information, when the recording would lead to a fair outcome for the client. If information is recorded it should be with the client's consent, should be factual and recorded in a professional manner with no assumptions made about the person or their situation.

The Money Advice Liaison Group and Royal College of Psychiatrists, have produced a briefing note[9] developed with the Information Commissioner's Office, about mental health problems and the appropriate processing of data, which is relevant to all areas of vulnerability. The briefing note includes a drill (the TEXAS drill) that staff could follow to manage disclosures effectively.

Firms may also have concerns about how they should respond when contacted by a third party such as a relative or a carer. If a third party contacts your firm to let you know that a client cannot manage their financial affairs for a while, because of, for example, a deteriorating health condition or a sudden crisis, there is nothing to stop a firm making a note of the circumstances so that appropriate action can be taken when your firm can be in contact with the client. This does not involve disclosing any information to the caller. Sometimes this is all that is required to reassure concerned relatives that the firm understands the situation. Firms may also want to use the information provided by a third party to investigate further and seek a separate conversation with the client when appropriate to do so. This may be important to prevent abuse as well as clarifying the client's ongoing needs. The Money Advice Trust and Royal College of Psychiatrists have developed a tool[10] (the CARER drill) to help staff deal with information disclosures from carers so that valuable information is not lost.

5. Summary

In brief, your firm should;

a) Be aware of the circumstances and triggers which may indicate that a client could be vulnerable.
b) React with empathy and adapt its processes where that is possible.
c) Have an awareness of the specialist guidance published by other bodies.

A firm also needs to be able to recognise situations where it is unable to assist the client and be able to signpost the client to additional sources of help. The TEXAS drill referred to above includes some sources of possible help.

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[8] FCA Occasional Paper No. 8: Consumer Vulnerability
https://www.fca.org.uk/publications/occasional-papers/occasional-paper-no-8-consumer-vulnerability

[9] Briefing Note 4 Appropriately processing data from individuals with mental health problems under the Data Protection Act
http://www.rcpsych.ac.uk/pdf/MALG%20Briefing%20Note%20(4)%20-%20DPA%20and%20mental%20health%20(13_04_29).pdf

[10] The Royal College of Psychiatrists and Money Advice Trust (2014) Lending, debt collection and mental health: twelve steps for treating potentially vulnerable customers fairly – guidance for treating potentially vulnerable customers fairly in the credit industry, and tips on practical implementation
http://www.moneyadvicetrust.org/SiteCollectionDocuments/Research%20and%20reports/12%20steps%20(Nov%202015).pdf