



Association of
Mortgage Intermediaries

*Association of Mortgage Intermediaries' response to FCA GC20/3: Guidance for firms
on the fair treatment of vulnerable customers*

This response is submitted on behalf of the Association of Mortgage Intermediaries (AMI) and the Association of Finance Brokers (AFB). AMI is the trade association representing over 80% of UK mortgage intermediaries. AFB sits within AMI and represents second charge (formerly secured loan) brokers.

Intermediaries active in this market act on behalf of the consumer in selecting an appropriate lender and product to meet the individual consumer's mortgage requirements. AMI members also provide access to associated protection products. AFB members also provide access to unsecured products.

Our members are authorised and regulated by the Financial Conduct Authority (FCA) to carry out mortgage, insurance mediation and consumer credit activities. Firms range from sole traders through to national firms and networks, with thousands of advisers.

Response

AMI welcomes this further consultation on the draft guidance and remains fully supportive of the FCA's view that doing the right thing for vulnerable customers should be embedded into a firm's culture. We believe that all customers should be treated fairly and the addition of further case studies in this guidance, as well as the publication of the financial lives case studies, will be invaluable to help hone firms' thinking.

We are pleased that the FCA is planning to engage with trade associations to support firms as they develop their strategies towards vulnerable customers and we look forward to working with you on this. We would welcome clarity on the expected extent and timing of that contact to enable us to plan ahead as we look at the support needed for our members. With no transitional period for the application of the guidance, work on the communication of requirements of any industry codes or guidance will need to commence shortly.

We note with thanks the statement that the ICO will provide advice and support to trade associations looking to produce industry codes that address data protection issues or challenges within a sector and will likely look to take advantage of this.

We agree with the FCA that the application of the guidance should be proportionate. We are however concerned that the requirements for due diligence on all regulated firms within a distribution chain could inadvertently lead to the death of the smaller advice firm with the concentration of the intermediary market into larger firms. These requirements will further exacerbate the challenges to business which small and medium firms are already facing when looking to obtain new PII cover.

AMI considers that the separation that intermediation allows between consumer and product provider provides better opportunity to identify vulnerability in a customer but also to ensure that needs are fully met as intermediaries offer individual advice. Intermediaries are able to look at a broader range of products than a single product provider, which mitigates some of the more obvious risks facing the vulnerable, and the advice process allows brokers time to build a relationship with their customers therefore increasing the likelihood that any vulnerability will be disclosed or identified and any appropriate measures can be taken.

The value of advice and the process to deliver advice for all consumers, particularly those who are vulnerable, should not be underestimated. Advisers consider not only a consumer's current position but take into account potential events in the future. A customer suffering from stress or anxiety could potentially benefit from a more flexible product, yet may not have the base knowledge to know that this is a possibility or to be able to research this themselves. Additionally, brokers advise on protection needs and will be in a position to have discussions with and advise vulnerable customers who may have otherwise believed that they would not be eligible for cover. Accordingly, those firms prepared to take the responsibility of delivering regulated advice should be viewed positively against those who deliver execution-only services. In addition, there should be a burden of responsibility on firms who look to interact solely via technology to satisfy themselves and the FCA that they are complying with both the spirit and content of this guidance.

Questions

Q1: Do you have any comments on our assessment of equality and diversity considerations of our proposed Guidance?

We agree that if applied well and consistently, the Guidance may positively affect some groups with protected characteristics. The monitoring of MI as part of firms' work may also highlight any unconscious bias that may exist within staff and prompt firms to undertake training and development to address this. Such monitoring may also be useful to highlight any unconscious bias that has been inadvertently built into technological solutions and consequently to mitigate any risk of harm to consumers.

Q2: Do you have any feedback on the updated draft Guidance?

We welcome the updates to the draft Guidance. The change in approach away from the distinction of actual and potential vulnerability to a spectrum of vulnerability seems sensible and should avoid firms pigeon-holing consumers and instead recognising drivers of vulnerability and any resulting consequences.

Also welcome is the explicit inclusion of technology in the Guidance. This is an important consideration as the regulator looks to support the enhancement of technological development through open finance. The move to open finance could bring increased disadvantages for vulnerable customers. Decisions made can inadvertently impact vulnerable consumers, for example in areas such as differential and individual pricing which act to the advantage of some and the potential harm of many. The usage of consumer data can be complex and difficult to understand for all consumers, and potentially more so for those with vulnerabilities, particularly with cross correlation and the assessment of personal data in 'seemingly unrelated' risk and pricing decisions. We are also concerned that there is a risk consumers who do not choose to use automated processes will be marginalised as manual processing becomes more expensive and that where technology is used for automated transactions, vulnerability will be more difficult to recognise. We consider that technology-based solutions should be able to demonstrate how they deal with consumers exhibiting vulnerable characteristics.

The inclusion of additional examples and case studies in the Guidance as well as the publication of the financial lives case studies are helpful clarification of the approaches that both need to be taken and avoided. We would welcome the publication of additional case studies and examples once the finalised Guidance has been published and supervision is underway to iron out any potential misunderstandings or common mistakes, rather than firms having to wait until the formal evaluation of progress in 2023.

Whilst the updated Guidance has done much to clarify its scope, we ask for further clarity. The wording of the draft Guidance refers to understanding the nature and scale of vulnerability and the needs of vulnerable consumers in the firm's target market and customer base. This may be the case for many firms who have long-term relationships with customers and regular contact, however, where products are sold on a more transactional basis, firms will have initial contact with consumers who are neither part of their target market nor their customer base, and whom they are not able to assist. Could the FCA confirm whether firms should apply the Guidance in their dealings with these consumers, particularly where they will never become customers? We are concerned that whilst consideration of the needs of these potentially vulnerable consumers is reflected in the Financial Lives cases studies, predominantly through the use of sympathy and signposting, it is not explicitly outlined in the Guidance and whilst implicit in the statement that firms should understand how a vulnerability can be perpetuated or exacerbated by the action, or inaction, of the firm itself, we are concerned that this may be missed by firms.

The source of a firm's leads will largely determine the amount of contact with consumers who are outside a firm's target market or customer base. A mortgage broker who receives the majority of their customers through estate agency or past customer referrals will be more likely able to meet the needs of the majority of their leads than a broker who advertises on television, on social media or who receives leads from price comparison websites or credit reference agencies.

Sections 4.27 and 4.28 state that firms in a distribution chain should undertake initial and ongoing due diligence to ensure that firms they work with treat customers fairly and that where firms rely on third party providers and outsourcers, they must effectively manage these providers to ensure that their customers are treated fairly. The full ramifications of this requirement for firms to complete on-going due diligence on other regulated firms within their distribution chains concern us. This may be possible for large firms, but will be extremely difficult, if not completely infeasible, for small and medium sized firms. The FCA has stated that it recognises that this Guidance should be applied proportionately to firms and that it will supervise accordingly, but we would welcome confirmation that this proportionate application should apply between firms in the same distribution chain too. Lack of clarification on this, risks heavy handed requirements for small firms at best and market compression at worst. Where the other firm is a regulated entity, they should be able to rely on that firm's adherence to the FCA rules and guidance.

The timing of the issuance of this Guidance will be critical to ensure that firms have capacity to fully implement the required changes. We would question whether firms have the capacity to deal with these changes currently or at any point before Q2 2021. If it is, as stated, intended that the Guidance will take effect when it is issued with no transition period, we ask that the FCA should reconsider the proposed timings in view of Government's requirement for people to work from home where possible for the next six months and the likelihood of reoccurring local lockdowns across the country seeming more certain. Care should be taken to only implement at a stage when the market can apply the Guidance and avoid conflicts with other work such as Certification and Directory activity which will involve those in the same job roles.

Q3: Do you have any feedback on our cost benefit analysis?

Whilst we have no comments on the specificity of the CBA, could the FCA confirm whether consideration has been given to the requirement for all regulated firms in a distribution chain to complete ongoing due diligence on the other regulated firms in that chain and that this has been reflected in the CBA? Due diligence across all parts of the value chain could be an onerous task and cost and resource needed to do this could be prohibitive for small and medium sized advice firms. Whilst we accept the principles of good provider / distributor relationships, we do not consider that routinely regulated firms should be auditing the activity of other regulated firms on areas with this degree of abstraction.

We question whether firms will have the available time, resource or funds to undertake the work properly at a time when Covid-19 is generating additional and unexpected costs to firms, now and for the foreseeable future.

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

We would suggest that there will be sectors within financial services where understanding of the needs of vulnerable customers is less developed than in others and which therefore will pose a greater risk of harm to consumers. As the FCA's supervisory work, stakeholder engagement and survey of firms has given it a view of the actions that firms are already taking to treat vulnerable customers fairly, as stated in the CBA, this knowledge should be used to prioritise the areas requiring the greatest intervention. It would be helpful to the industry if the FCA could share this knowledge. We hope that the regulator will work with firms to help them recognise the areas requiring most urgent improvement and that these will be shared to enable all firms to learn and improve.

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?

We would appreciate greater clarification from the FCA on its expectations in this area following engagement with the industry.

We believe that the information necessary to collect will vary both with the sector and with the size of the firm. Firms themselves will be best placed to understand whether the information that they collect is helping them to evaluate their policies and procedures and it should be expected that following any staff training and implementation of new policies or processes, the number of customers known to be vulnerable should increase.

It is important that firms monitor the outcomes of their interactions with consumers. This could be done partly by customer surveys or reviewing feedback on social media and complaints. This will help to ensure that the policies have been fully understood and are reflected in all areas of the firm.

Firms should consider the outcomes for all their customers, including those whose only interaction is with front-line operators as their needs are outside the remit of the firm, and should not concentrate only on the outcomes for customers with a disclosed vulnerability. It might help firms to compare the characteristics of customers at the front line with those of the customers who take a product, to highlight trends and to ensure that there are procedures in place to recognise and mitigate any unconscious bias. Should the FCA consider that the dashboards produced by many firms to assess "Treating Customers Fairly" are insufficient, then this Guidance should include specific examples.

Q6: Do you have any other feedback on our proposals?

Although the mortgage industry has been highlighted by the FCA as an area of concern due to the difficulties of some (mortgage prisoners) in getting a better rate and by the CMA for the loyalty penalty paid by those who do not switch their mortgage, FCA research also found that borrowers who use a broker are more likely to be active and remortgage and more likely to do so externally.

Mortgage intermediaries are well placed to spot customers' vulnerabilities throughout the advice process and that advice process also allows for the product most suited to their needs and circumstances to be sold. We do not however agree that it would be appropriate for lenders to contact customers purely to ensure that the intermediary ensured that their needs were met. This would be a time intensive task, particularly at a time when lenders' capacity seems already reduced due to operational challenges and the end of the initial mortgage payment holidays. This requirement should instead be covered within the contracts between the firms.