**Vulnerable Customers**

The FCA has recently focused its attention on Vulnerable Customers. This article provides a brief summary of the FCA’s findings and sets out how members can ensure that their firms are geared up to recognise vulnerable customers and make sure the customer’s interaction with the firm is positive.

Nowadays firms are often system driven with employees focusing on following rules and procedures. Technically the advice customers are receiving may be excellent however, employees , in some firms, have lost the art of listening and responding to the individual client.

The FCA continues to prioritise TCF. Principle 6 States that **a firm must pay due regard to the interests of its customers and treat them fairly.** Treating customers fairly has never meant treating customers the same and, in particular treating a vulnerable customer in the same way as another customer is not fair.

The TCF outcomes include:-

* Ensuring that consumers can be confident that they are dealing with firms where the fair treatment of consumers is central to the corporate culture.
* Designing products and services that meet the needs of identified consumer groups and are targeted accordingly.
* Giving clear information and keeping the consumer appropriately informed.
* Creating no unreasonable post sale barriers to change product, switch provider, submit a claim or make a complaint.

Members should bear in mind that anyone of us could become vulnerable if circumstances change. The focus should be on how we would like to be treated if we became *vulnerable?*

Humans are not predictable, things go wrong and consumers need firms to factor this into product design, support and service delivery. Most problems relate to poor interaction, or systems that do not flex to meet specific needs.

A Flexible approach is the Key to dealing with Vulnerable customers. Staff need to know what to do and need to be empowered to act in an appropriate way that may be outside standard parameters. Products and services in general need to be designed with realistic expectations about changes in circumstances.

**Definitions:**

**Vulnerable Consumer:-** The FCA considers ‘**a vulnerable consumer to be someone who, due to their personal circumstances,** (including abilities) **is especially susceptible to detriment especially when a firm is not acting with appropriate levels of care’**

This is a wide definition and does not necessarily apply to a constant group. A consumer may become **vulnerable** at certain times due to personal circumstances changing such as:-

1. Ill health – mental or physical
2. Stress
3. Debt
4. Intoxication (drugs /alcohol)
5. Unemployment
6. Divorce
7. Death of a loved one

Or a consumer may have the potential to be permanently vulnerable due to a medical condition or their ability:-

1. Suffer with a disability
2. Learning difficulties making comprehension difficult
3. Lack of English Language skills
4. Low literacy and or numeracy skills.
5. Elderly
6. Young (inexperienced)

Some people could be affected by more than one of the factors listed above e.g. they may be elderly and have been recently diagnosed with an illness. However, please note that just because a customer is affected by one or more of the factors listed above they are not automatically vulnerable.

**Detriment:-** detriment can manifest itself in different ways e.g. physical detriment such as anxiety or stress or financial detriment such as.:-

1. Choosing the wrong product,
2. Paying a high price,
3. Failing to get the right product that services their needs,
4. Not be treated fairly by their chosen provider
5. Through the use of consumer credit, getting into unmanageable or problem debt.

However just because a person is vulnerable does not mean they will suffer detriment.

**Signs / indicators**

Customers may not see themselves as vulnerable or may be reluctant to disclose that they are or have found themselves in difficult circumstances. Therefore, firms must be aware of and look for behaviour and/or language that may signal a problem or that extra care should be taken:-

Examples of behaviours to be aware of include:-

* Constantly reiterating the question.
* Body language: sweating, anxiety, fidgeting, irritability (observable during face to face meetings)
* Volume, pitch/tone of voice, slurred speech, long pauses
* Inconsistent answers.
* Missed direct debits
* Consistently late payments
* Cash payments
* Not responding to correspondence.

Key words in a conversation to be aware of include:-

* Illness
* Treatment
* Diagnosis
* Depression
* Bereavement / loss.
* medication

Vulnerability is not just to do with the situation of the consumer, it can be caused or exacerbated by the actions or processes of firms for example:-

* Complex telephone systems that give no option of talking to a person,
* A computer that says no
* A call handler without the time or inclination to listen
* A system that fails to record what may be distressing circumstances forcing the customer to repeat themselves at every point of contact.

**The risk of detriment is highest when individual circumstances and organisational barriers coincide.**

“Understanding vulnerability involves understanding the interplay of individual circumstances, situations and the part played by market or firm behaviour. It involves recognising that people’s circumstances and situations may lead them to behave in ways that may increase the risk of detriment. Therefore, there is a greater onus on firms to take these customers needs into account” (Thoresen 2008)

**What can firms do?**

The following are steps that your firm can take to make sure that vulnerable customers are not inappropriately treated or overlooked:-

1. Have in place a high level policy on consumer vulnerability but ensure that the policy is understood and embedded across all operations.
2. Educate staff to see customers as individuals each with unique demands and needs.
3. Build on the knowledge of various vulnerabilities. Firms can establish links with the advice and charity sector and obtain training from these sectors as appropriate.
4. Ensure your systems and your employees are able to respond flexibly to meet customers’ needs. Not many of us fit the standardised perfect customer mould that products and services are designed for. Find solutions to individual needs.
5. Empower all staff to act in an appropriate way. This may mean acting outside standard parameters if it is in the best interests of the customer taking into account the customers circumstances.
6. Ensure all staff understand the importance of listening to and empathising with the customer and are trained to spot clues suggesting possible vulnerability. In situations where staff are expected to follow scripts ensure staff know that they will not be penalised for moving away from the script where they have a gut feeling that something is not right.
7. Train all employees to ask the appropriate questions.
8. Ensure employees know where internal expertise lies within your firm or within an external company and know how and when to refer a matter on.
9. Where appropriate to do so firms can also point customers to free counselling /advice from external organisations such as:

* Debt <https://www.moneyadviceservice.org.uk/en/tools/debt-advice-locator>
* Bereavement <http://www.cruse.org.uk/>
* Cancer <http://www.macmillan.org.uk/>

1. Check all the information given to customers to ensure it meets the clear fair and not misleading rule.
2. Endeavour to understand the intention of the (FCA & ICO) rules so that the rules themselves do not prevent the firm from meeting the needs of the customer.
3. Ensure the products sold and the services offered are available, usable and accessible to all regardless of personal circumstances.
4. Maintain realistic expectations about changes in circumstances.
5. Wherever practical, give customers a choice in how they wish to communicate with the firm e.g. face to face, phone, e-mail or text. Where required we will endeavour to access interpreting services, braille, large print.
6. Always try to communicate with customers in a manner and at a time that is convenient to them.
7. Record properly and share appropriately any disclosure made to the firm by a customer or by a third party contacting the firm on the customers’ behalf or with information / concerns.
8. Proactively contact customers if you suspect they may be having difficulties.

**Areas of particular relevance**

1. **Bereaved Customers**

Bereavement is inevitable. If a firm is advised that a customer has suffered a bereavement and requires a policy to be changed into another name this should be dealt with immediately. Firms should also find out if the deceased person held any other insurances with the firm. It is common sense that no bereaved customer should receive correspondence addressed to, or in the name of a deceased relative once they have informed a firm of the death.

1. **Proactive and collaborative approach:-**

As intermediaries firms need to recognise their limitations. Intermediaries introduce clients to the insurer / the finance provider. If as intermediaries firms recognise vulnerability it is really important they know their providers are able to support their approach to Vulnerable Customers (e.g. Do insurers produce documents in Braille or large print? Do finance providers show forbearance when a vulnerable customer defaults? Do providers have their own vulnerable customers’ policy showing their approach? Has the firm talked to the provider about their approach? Who is the person able to make proactive and flexible decisions regarding vulnerable customers?) Understanding how providers respond makes sure intermediaries are better able to identify which providers are appropriate for vulnerable customers.

1. **Training**

There are three areas where training must be ongoing:-

1. Understanding the Data Protection Act. This will ensure that staff do not have any concerns about recording information about a customer in a professional and appropriate manner and where necessary sharing that information.
2. Understanding vulnerability and the indicators to look out for.
3. The principle of Treating Customers Fairly.
4. **Handling and Recording disclosures**

If a firm becomes aware that a customer’s circumstances have changed and it becomes apparent that they may be vulnerable the firm should make a record of this and share this information appropriately within the firm. A real stumbling block for employees /firms is the lack of understanding around the Data Protection Act.

If firms are nervous about how to handle personal information they may be less likely to encourage disclosure. *The ICO has stated that in the right circumstances and for the right reasons, data protection should not act as a barrier to the recording of information when this recording would lead to a fair outcome for the customer*. In support of this the FOS is clear that if employees ask a proper question, record factual information (not opinion) and explain to the customer why they are recording the information (to meet the clients demands and needs / provide the best level of care) there is no issue with the Data Protection Act. Information should always be recorded in the customer’s own words

Employees must not make assumptions. E.g. staff must record the needs or adaptations that the customer asks for rather than an assumed underlying condition.

If firms receive a telephone call or a visit from a person who is calling on behalf of one of their customers and, although does not hold a power of attorney, they inform the firm of circumstances such as the customer is not occupying his property or is unable to pay the premium due to hospitalisation, the firm must not refuse to talk to them. The firm cannot disclose information about the customer to that third party without authorisation or an arrangement however; the firm can listen and make a note of the conversation and assist in any way possible. The firm can take the appropriate action once they have been in contact with the customer (although it should be noted that this might not be possible). The firm must show empathy, and reassure the concerned third party. The firm must avoid putting up barriers to anyone who is providing information regarding a customer’s circumstances.

If a customer needs assistance in making a call, a third party should be enabled to carry out the call on the customer’s behalf.

Firms should always be courteous and thank the person for the information. If the firm is talking to a third party e.g. a carer, ask if they can supply evidence of their authority to act on the customer’s behalf. If they do not have formal authority to act on the customer’s behalf firm’s can still record the observations and look into them. Firms must advise the person that their observations may need to be shared with the customer and colleagues. Explain how the information will be used including why the information is being collected and who the data will be shared with – ask the individual for their permission to use the information in this way.

Some customers may appoint another person as having a **Power of Attorney** on their behalf. There are two types of power of attorney:-

* **Ordinary Power of Attorney:-** This is a legal document authorising one or more people to handle a person’s financial affairs. It is only valid whilst the customer still has the mental capacity to make their own decisions. This may have been set up if for example, the customer needs someone to act for them for a temporary period whilst they are on holiday. A power of attorney can be a general power without restrictions or it can give limited powers only to do a specific task e.g. sell a house.
* **Lasting Power of Attorney:-** this is a way of giving someone you trust the legal authority to make decisions on your behalf if you lack mental capacity at some time in the future or no longer wish to make decisions for yourself.

**Key Message:** Most vulnerable customer want to retain their independence rather than rely on support. The vast majority of consumers approach firms in good faith not expecting charity but needing support and flexibility.

Should you have any queries please do not hesitate to contact a member of the COBRA Network Compliance Team.