Financial Conduct Authority (FCA)
Guidance Consultation: Guidance for firms on the fair treatment of vulnerable customers (GC19/3)
Response from the Low Incomes Tax Reform Group (LITRG)

1 Executive Summary

1.1 We welcome the opportunity to input into the FCA's proposed guidance for firms on the fair treatment of vulnerable customers. Although we are not involved in FCA-regulated activity, we frequently see the tax and related welfare benefits impacts of investment decisions on low-income and often vulnerable customers. For example, we see people who have little in the way of capital and have a low household income, but have created for themselves a tax liability and/or tax compliance issues because of an ill-advised or ill-timed withdrawal under pension freedoms.

1.2 We therefore believe that the FCA's vulnerable customer guidance should be clear that lack of knowledge or capability when it comes to dealing with tax and welfare benefits is a key driver of vulnerability. While the existing draft refers to lack of financial capability generally, we recommend specific mention of tax and welfare benefits, so that these matters are fully incorporated into regulated firms' way of thinking.

1.3 If this is not incorporated, and firms are not pressed to stop and think about these issues, the result will be poor customer outcomes. Potentially vulnerable customers will continue to become actually vulnerable as a result of financial decisions creating an unexpected tax liability, benefits overpayment or compliance problem (such as a penalty).

1.4 We would be very happy to meet with the FCA to discuss these matters further.

2 About Us

2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low-income workers, pensioners, migrants, students, disabled people and carers.

2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.

2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3 Introduction

3.1 LITRG's interest in the FCA consultation on guidance for firms on the fair treatment of vulnerable customers stems from our parallel interest in how individuals may be 'vulnerable' (or potentially in need of additional support) in relation to their tax affairs.

3.2 Capability when dealing with one's tax affairs, and related welfare benefits, is a subset of financial capability more generally. Indeed, the inability to understand or deal with tax obligations can in itself make a person vulnerable. It can also mean that outcomes for individuals might be particularly poor in terms of investment choices. One example of this that we see frequently is individuals triggering large and often avoidable or mitigable tax charges as a result of pension withdrawals, together with a potential knock-on effect to means-tested benefits entitlement.[1]

3.3 This means that firms offering financial products and financial advice must consider the individual's financial circumstances in the round: their tax position; whether they are a welfare benefits claimant or potential benefits claimant; what their understanding of tax and benefits matters is; and whether they are capable of dealing with them without further support.

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[1] See for example our article warning of 'Pension pitfalls', 11 July 2019: https://www.litrg.org.uk/latest-news/news/190711-pension-pitfalls

3.4 It is welcome that the consultation document at para 2.10 flags up that one of the consequences of vulnerability is that individuals might not fully understand the broader implications of their decision.[1] However, we think that it would be extremely helpful to vulnerable or potentially vulnerable customers if the FCA's proposed guidance could specifically flag up tax and benefits matters in the context of individuals fully understanding the consequences of their decisions. The guidance could then suggest ways in which financial services firms could ensure that their customers are directed to appropriate sources of advice. In the existing draft, this is done to an extent in the context of benefits claimants, but financial capability in the context of dealing with **tax** matters is not mentioned at all.

3.5 We appreciate that tax and benefits are peripheral matters to the core of the consultation, however they are essential parts of overall financial capability. Vulnerability in relation to them is hard to identify in advance, as an individual often does not know that they have an issue until it is too late – that is, when they have an unexpected tax liability, or benefits overpayment and/or have failed to comply with an obligation. Therefore, anything that can be done by way of identifying potential vulnerability – and thereby preventing problems arising – would be welcome.

3.6 We comment below on the sections of the draft guidance where relevant points could be included.

4 Q3: Do you have any comments on the distinction between actual and potential vulnerability (Annex 1, Section 1)? (Please note we are not seeking views on the meaning of vulnerable consumer because we have consulted on that previously.)

4.1 We think this distinction is fair and well expressed in the proposed guidance. In the context of tax and welfare benefits matters, we would emphasise that failure to understand them in advance can lead to very poor outcomes for customers and quickly put a potentially vulnerable person into an actually vulnerable situation. For example, they might have to deal with HMRC enforcement action relating to non-compliance (and all the stress and difficulty that entails), and incur a financial shock in the form of an unexpected tax bill or penalty.

5 Q4: Do you have any comments on our view of what firms should do to understand the needs of vulnerable consumers (Annex 1, Section 2)?

5.1 Section 2, paras 30 to 33, of the proposed guidance discusses how 'firms should understand the nature and scale of drivers of vulnerability present in their target market and customer base'.

[1] Para 2.10 of the consultation document, fifth bullet.

5.2 While it is helpful to set out the four key drivers of vulnerability in Table 1, together with details of each, we would welcome the addition of some emphasis, perhaps at para 31, that **any one** of the issues identified in the table might lead to vulnerability. While it is true (as mentioned at para 32) that the drivers may be overlapping, this is not necessarily the case. For example, a person might be extremely financially literate but lacking in digital skills (or access to digital services). Their vulnerability might therefore be readily pinpointed and dealt with (by providing alternative access to services) and therefore the firm has no further concerns to address.

5.3 Also, the items listed in Table 1 are not absolute. Under 'Capability', 'low knowledge or confidence in managing financial matters' is listed as a driver of vulnerability. However, it is perfectly possible for an individual to be knowledgeable about one area of financial matters, such as investments, yet be far less so in respect of another area, such as how their financial decisions might affect their tax position. We again think this should be drawn out in this part of the guidance.

6 Q5: Do you have any comments on our view of what firms should do to ensure staff have the necessary skills and capabilities when engaging with vulnerable consumers (Annex 1, Section 3)?

6.1 The view outlined in Section 3 appears sensible. The only comment we have is that the reader tends to get the impression that specialist support – for example engaging with external organisations for support or training – is only required in respect of physical or mental capacity issues.

6.2 It is indeed very sensible to have third party specialist involvement in this sense. For example, we are aware that in the past our colleagues at Tax Help for Older People[1] have had training from the Royal National Institute for Deaf People[2] in handling calls from people with hearing difficulties.

6.3 However, we are keen to emphasise that financial services firms might not necessarily be experts in terms of financial capability in the context of the vulnerability that potentially stems from a lack of tax or welfare benefits knowledge. In this sense, it would be helpful to give an example in Section 3, perhaps in the table beneath para 57 of the draft guidance, as to how organisations expert in those areas (such as ourselves on tax and related welfare benefits) might be possible partners for firms in terms of training on how the tax system can drive vulnerability.

[1] A separate charity, originally set up as a pilot service by LITRG. See www.taxvol.org.uk.

[2] Trading as Action on Hearing Loss.

7 Q6: Do you have any comments on our view of what firms should do to translate their understanding of the needs of vulnerable consumers into practical action on product and service design, good customer service and communications (Annex 1, Section 4)?

7.1 When designing products (and communications relating to products), clear information is always required relating to tax and welfare benefits consequences. It would therefore be helpful for the guidance to explicitly state – for example in Figure 6 beneath para 63 – that the likely tax and benefits impacts of a product must be considered at design stage and addressed in information provided about it. Additionally, or in the alternative, this could be incorporated in the table beneath para 73 of the proposed guidance. In addition, such design and communications should be developed in the context of the target customers' likely tax and benefits knowledge, which should of course be established in the context of understanding consumers' vulnerabilities when following section 2 of the proposed guidance.

7.2 'Specialist services' are referred to in paras 81 to 83 of the proposed guidance. There, pertinent points are made in respect of third parties, such as formal attorneys or others, becoming involved in assisting individuals with their affairs. It is entirely appropriate that firms should facilitate the involvement of third parties where required. In addition, but not mentioned in the proposed guidance, is that in some cases, it might be necessary for a legal professional to be involved to help a vulnerable taxpayer consider their asset protection options. This might include, for example, setting up a trust where there is a risk of the individual being exploited or losing capacity in future. We recommend that this point is flagged in the guidance.

7.3 In paragraph 87, we believe that **tax advice** should also be flagged as another area – in addition to benefits advice or mental health support – in which specialist support and partnerships could be sought.

7.4 We note that in case study 16, an insurer created a partnership with a voluntary organisation to which it can refer customers in vulnerable situations for a home visit. This is something that the charity Tax Help for Older People does regularly, via a nationwide network of volunteers, in the context of helping people deal with their tax affairs. Partnerships between firms and such organisations do, however, need to be properly structured. While it is noted that the firm in the case study 'makes a donation for each referral to prevent burdening the charity's resources', this implies that the donation is made after the referral. This does seem to assume that the core operation of the charity is itself adequately funded. In some instances, to aid cash flow and work planning of voluntary organisations, it might be necessary to agree in advance that a certain number of referrals might be made, with some payment on account. We recommend that some additional wording is included in the proposed guidance to reflect this.

8 Q7: Do you have any other comments on the draft Guidance?

8.1 The consultation paper in chapter 2, para 2.14 (point e) refers to scams and highlights some of the reasons why vulnerable individuals are more likely to fall victim to scams. However, the proposed guidance itself makes no reference to the link between vulnerability and scams.

8.2 We believe this point should be made clear in the guidance. For example, what are firms expected to do where a customer reports a suspected scam? Such customers are clearly in a vulnerable and stressful position – the scam making them vulnerable, even if they were not before it occurred. It would therefore be helpful to outline some suggestions in the guidance as to what firms might do to support customers in this situation.

8.3 In this context, we are also especially concerned that the victims of scams might have unwittingly triggered tax charges. This is particularly so in 'pensions liberation' cases where a tax charge of up to 55% of the amount withdrawn can be levied. Firms contacted by victims should have processes in place to ensure that customers are signposted to appropriate support and advice. This would include how to get assistance on the tax consequences. In that respect, low-income customers might be directed to the tax charities,[1] and those with greater means could be directed to find a suitably qualified tax adviser, such as a member of the Chartered Institute of Taxation or Association of Taxation Technicians.

LITRG
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[1] TaxAid and Tax Help for Older People – see www.taxaid.org.uk and www.taxvol.org.uk respectively.