



ABI RESPONSE TO FCA MISSION: OUR FUTURE APPROACH TO CONSUMERS

About the Association of British Insurers (ABI)

The Association of British Insurers is the voice of the UK's world leading insurance and long-term savings industry. A productive, inclusive and thriving sector, we are an industry that provides peace of mind to households and businesses across the UK and powers the growth of local and regional economies by enabling trade, risk taking, investment and innovation.

Executive Summary

The ABI welcomes the additional clarity provided by the FCA's Approach to Consumers and supports the drive to deliver good outcomes for all consumers, including the vulnerable and excluded. The paper sets out an overview of a well-functioning market and we are encouraged by this vision and endorse the three themes of strategy the FCA sets out to achieve it. Insurance is by its nature a product that supports financial resilience in times of need and provides support to millions of consumers rendered vulnerable by flooding and other major life events.

The FCA states that it regulates for the real world and that wherever possible its approach will be based on how consumers really behave. We would emphasize the importance of this statement, although recognise that the vision of the Approach is aspirational. There is a risk that too much focus could be placed on the idea of the 'perfect transaction' in which consumers act according to economic theory. We therefore encourage the FCA to focus on outcomes as opposed to process and design pragmatic remedies that reflect real consumer behaviour.

The Approach looks at the responsibilities of firms and consumers in their transactions. The ABI agrees that consumers should take responsibility for their financial decisions, assuming that any information received by consumers is fair and not misleading. We agree that there are some circumstances in which mitigating factors may result in a diminished level of responsibility on the part of the consumer. However, it may not be possible to address the resulting 'responsibility gap' simply by assuming an increased level of responsibility on the part of the financial services firm. We want to avoid a regulatory landscape in which the FCA applies an overly prescriptive approach, or paternalistic remedies, when a more multi-faceted approach may deliver better outcomes

We welcome the FCA's work in identifying the four causes of vulnerability, although note that firms will face difficulties in operationalising them. Whilst these categories of potential vulnerability seem reasonable, it is unlikely that an insurer engaged in an online non-advised transaction with a new consumer will be able to identify all of them. In principle, we agree that firms should be expected to take reasonable steps towards identifying vulnerable customers but note that 'reasonable' will vary by product type and distribution arrangement.

We also have concerns regarding the fluctuating state of vulnerability and the fact that it can affect consumers once or many times, in varying circumstances and severity. The nature of insurance means that consumers may only interact with insurers once in a year, or even

fewer in the case of some products. This can make it challenging for insurers to have continual and up to date discussions with consumers about vulnerability.

We feel that in certain circumstances it is beneficial for the FCA to work in conjunction with other bodies such as the Government and third sector organisations to achieve its goals. As highlighted in the Paper, in the case of Flood Re the FCA was able to identify that it was a policy matter best handled by the Government and insurers, and this decision has produced excellent results. We believe that the same argument will apply to any similar proposal for greater mutualisation of risk to address a point of public policy.

To summarise, we broadly support the FCA's plan for its Approach to Consumers and look forwards to the publication of the Approaches to Supervision and Enforcement. We note there are some areas of challenge and emphasize the importance of the FCA considering real consumer behaviour as it regulates for the future.

Response to Consultation Questions

Q1. While having regard to the general principle that consumers should take responsibility for their decisions, do you agree that there are circumstances where consumers cannot be expected to take responsibility? What do you think these circumstances are? How could – and should – the FCA intervene in these cases?

- 1.1 We are of the opinion that consumers should take responsibility for their decisions, assuming that they have received fair and not misleading information. We believe this is a helpful principle, as consumers are likely to pay more attention to the quality of their decisions if they are aware that they are responsible for them and that there may be adverse consequences for the wrong decision. It should also be noted that in non-advised transactions the consumer is required to take more responsibility for their decisions, than when they have received regulated advice. The many factors which can affect consumers' capability to make good financial decisions are often issues of public policy and it may therefore be for Government, rather than FCA, to drive the agenda. However, where consumers have been misled or misinformed, or where products are unnecessarily complex or opaque and consumers are suffering as a result, the FCA should intervene.
- 1.2 We believe there are certain situations in which consumers have diminished responsibility for their decisions due to circumstances which make them vulnerable. Similarly, a small number of consumers have an extremely diminished level of ability to fulfil their responsibility for their decisions. In these circumstances it is likely that the firm has an enhanced role to play to assist the customer, but we do not believe it is desirable, or possible, for financial services firms to assume entire responsibility for customer's decisions.
- 1.3 Under Principle 6 of the Principles for Businesses, Outcomes 4 and 5 of the Treating Customers Fairly regime state that advice given to consumers should be suitable and take account of consumers' circumstances and that products provided should perform as consumers have been advised. These Outcomes must work in conjunction with FCA rules that require firms to have a clear understanding of the consumers that make up

their target markets. It is clear that there is a regulatory requirement that firms must not put customers in situations which may lead to harm occurring.

- 1.4 There are a number of factors that can affect consumers' ability to make sound financial decisions. As shown in Figure 2 of the Consultation these factors fall into the categories of financial capability, financial resilience, health and life events. However, while 50% of UK consumers exhibit characteristics of potential vulnerability, not all of these consumers will suffer actual harm¹. It should also be noted that firms may have limited insights into their customers' abilities, depending on the kind of product they hold with them, how they bought it and the frequency of their interactions.
- 1.5 Information asymmetries and behavioural biases also impact on the ways that consumers make decisions, and the resulting outcomes from these decisions which may be negative. We believe that while it is important for the FCA to continue monitoring firms' interactions with consumers to ensure fair treatment, FCA intervention should be proportionate and recognise that there is no such thing as a perfect transaction. It is important to recognise that it is possible for a consumer to make a poor decision but still receive a good outcome and vice versa. Additionally it must be noted that these situations are influenced by factors outside the regulator or financial services' control.

Q2. Do you agree that firms have a responsibility to take reasonable steps to identify the signs of vulnerability, and to have processes in place to take appropriate action where they have identified a consumer with a particular need and at a particular risk of harm?

- 2.1 The ABI agrees that firms have a responsibility to take reasonable steps to identify signs of vulnerability and have processes in place to take appropriate action as a result.
- 2.2 The ABI has produced several documents to assist firms with their interactions with excluded or vulnerable customers. The ABI and BIBA Code of Good Practice regarding support for potentially vulnerable motor and household customers at renewal was published in January 2016 and subsequently reviewed in March 2017². The review confirms that significant resources are being committed by firms to support vulnerable customers and lists the eight areas of good practice which firms are adopting. The ABI has also produced a guide for long term savings providers to address customer vulnerability³ which aids firms in understanding vulnerability and determining what support is needed by customers.
- 2.3 We would look for clarification from the FCA of 'reasonable steps'. This is particularly relevant in respect of consumers who use price comparison websites (PCWs) to access insurance products. PCWs have empowered consumers who wish to shop around, but have intermediated the relationship between the insurers and end consumer. They represent an additional layer to firms ascertaining whether a consumer is at risk or

¹ FCA's Financial Lives Survey 2017, Page 14

² <https://www.abi.org.uk/globalassets/sitecore/files/documents/publications/public/2017/new-abi-document.pdf>

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https://www.abi.org.uk/globalassets/files/publications/public/its/abi_addressing_customer_vulnerability_final2.pdf

vulnerable, as only selected information about the customer is shared during the purchasing process. We feel it would be difficult for insurers to make informed judgments on consumers' health, financial capability or financial resilience throughout this kind of transaction. This would, therefore, hinder firms' ability to take appropriate action.

- 2.4 We also have concerns about processing and retaining significant amounts of consumer data in light of the General Data Protection Regulation (GDPR). In particular insurers will only be permitted to process 'Special Category Data' if it is 'necessary for insurance purposes' and must not retain data that is not needed.
- 2.5 As noted in the Consultation Paper vulnerable consumers are not a static subgroup of the entire consumer market, and vulnerability varies in severity or duration. However, insurers and particularly providers of long term savings products, may only interact directly with their consumers once a year, or even less in some cases. In this context, we would question whether firms would be expected to, or would be able to, retain information on vulnerable customers and be in a position to validate its ongoing accuracy and relevance.
- 2.6 Furthermore, we agree that processes are important for dealing effectively and appropriately with vulnerable consumers, but can run the risk of becoming too prescriptive and exclusive. Proportionality will be important, particularly to reflect the underlying level of risk in the product the consumer is buying, as this will vary considerably. An element of judgement, flexibility and common sense will always be required.

Q3. Which consumer issues do you think sit directly within the FCA's remit, and which are more a matter for Government? Are we right to commit our resources to working with other organisations, such as firms, other regulators, Government, courts, consumer groups etc., where improved consumer outcomes may require action that is not within the FCA's regulatory toolkit?

- 3.1 The FCA has substantial powers and the FCA Handbook rules can be interpreted extremely widely. While it appears appropriate to apply a greater focus on the FCA's consumer protection objective for vulnerable consumers, this should not become a precedent. Such a decision is inherently subjective and it is likely that there will be some non-vulnerable consumers who would not want the FCA to do this and would consider any decision to channel resources and priorities towards one group of consumers as inappropriate. In reality, many issues impact both the FCA and Government and we believe that the FCA should collaborate with other bodies in order to achieve the best possible outcomes for consumers. Generally we believe that matters of public policy are for Government but recognise that the FCA has a role to play in informing public debate.
- 3.2 We would like greater clarity on how the FCA assesses and prioritises issues that are raised by organisations in the third sector. The third sector plays a valuable role in highlighting consumer issues, however the evidence used to support existence of issues can be broad and we believe it would be helpful if the FCA had a consistent mechanism to assess and prioritise the impact of issues flagged.

- 3.3 We have seen previously that Government-led initiatives have produced excellent results, with Flood Re being a notable example. The insurance industry and the Government worked together to create a scheme which addresses the affordability of home insurance for those most at risk from flooding. Other benefits are that the Government, local authorities and communities are better prepared for the effects of flooding, and consumers have increased access to, and choice of, insurance. The FCA has rightly pointed out that this was a matter for Government policy. We believe that this would also be the case for any proposals to further mutualise risk in respect of access issues for certain product types or consumer groups.
- 3.4 There are some situations where consumer issues may be aided by the FCA engaging Government more. One such example is that under the Data Protection Act (1998) firms have the ability to process personal data in order to protect a consumer's vital interests in a life or death situation. Firms would argue that there are other cases in which they should be given authority to act to protect vulnerable customers.
- 3.5 We also believe that a stronger partnership between the FCA, the Government and third sector organisations could play a key part in improving consumer financial capability and awareness. We believe that better financial education for consumers would ultimately lead to better results for financial bodies, insurers and the regulator.

Q4. Do you agree with the aspirational vision and outcomes that we explore? Are there any further barriers or risks to us achieving it?

- 4.1 On the whole the ABI agrees with the vision as set out in the Consultation Paper, however we note that the outcomes are representative of an idealistic state which may not be achievable. We note the FCA's concession that the vision is aspirational.
- 4.2 We would like to emphasize the importance of the regulator working in conjunction with other organisations such as firms, charities and the Government in order to achieve their vision. This is particularly important for vulnerable or excluded customers for whom the third sector can be a trusted partner and may be able to play a role in their interactions with financial services firms.
- 4.3 One issue we have identified as a possible barrier to success would be meeting the needs of all consumers. Whilst the three commitments that define the FCA's approach to vulnerable and excluded consumers are a good foundation for focussing on identifying harm, there is little coverage of consumers' financial resilience and whether they will be able to afford the products which meet their needs. For someone with limited financial resources, insurance products may legitimately be lower down their hierarchy of needs than food, shelter and other fundamental basics. These consumers should not be forced to do what is perceived to be in their best interests by a third party, nor would it necessarily be in the needs of other consumers to be asked to cross-subsidise them.
- 4.4 We have concerns about the risk of remedies becoming too prescriptive and leading to a paternalistic approach to remedies, for example, firms choosing on behalf of consumers what is best for them.

Q5. What further metrics would you use? Are there any specific data sources or tools that may be of benefit?

5.1 The ABI has found the Financial Lives Survey to be very useful source of data. There are no other sources of data or tools that we would recommend for the FCA to use.

Q6. Do you agree with this framework? Would you like us to consider any additional or alternative factors in how we regulate:

- a. For all consumers
- b. For the most vulnerable or excluded, and
- c. To meet the challenges of the future?

6.1 Overall we agree with the FCA's framework for its Approach to Consumers. Figure 3 of the Consultation provides a clear steer for the approach to vulnerable customers, the future and the current financial climate.

6.2 We would point out the importance of the need to design remedies around real, rather than idealised, consumer behaviour. In addition, we are keen to see the publication of the Approaches to Supervision and Enforcement as stated in the Mission, ahead of the next round of business planning.

6.3 It would be helpful for the FCA to clarify its expectations regarding mainstream and specialist firms. The majority of consumers have benefitted from developments such as digitalisation and competition between firms that have developed economies of scale. Amongst others, it has led to a greater choice of products, which are easier to access in a comparable manner and at lower cost. However, in general these benefits are felt most by those who are, for the most part, non-vulnerable. Requiring firms that serve mostly non-vulnerable consumers to develop comprehensive mechanisms, processes and products to properly serve all types of vulnerability, will impact the benefits realised by the predominantly non-vulnerable.

6.4 Specialist providers are better placed to understand and serve the varied needs of different types of customer, but may not be able to offer the same levels of competition or economies of scale of firms which predominantly serve the non-vulnerable. We are of the view that this is an acceptable compromise, when considering the greater technical expertise provided and need for non-automated processing and decision making that is often required of these firms. This is also subject to the caveat that all firms need to have policies and processes in place to reflect that all consumers can, at some point, become vulnerable.