

**A new consumer duty**

# **Mental Health and Money**

## **Advice response - July 2021**

# About us

Living with a mental health problem can affect many aspects of daily life, from your physical health to your home, your work and ability to manage money. Mental Health & Money Advice is the first UK-wide service to combine support for both mental health and financial problems. We're here for anyone living with mental health problems experiencing financial issues, as well as anyone whose financial problems are affecting their mental health.

Every year we provide thousands of people across the UK with practical advice and information to help understand and manage their financial and mental health. We're working hard to make financial systems better and fairer for people affected by mental illness and their families.

Mental Health UK welcomes the opportunity to respond to the Financial Conduct Authority's consultation on a new consumer duty. We are made up of four leading mental health charities across the home nations who support people affected by mental illness. We run the Money and Mental Health Advice service, and we recently won the contract to run the pilot of the Mental Health Crisis Breathing Space scheme.

Our response focuses on the experiences of people living with mental illness. As such, we have not answered every question in the consultation and we have grouped some questions together.

# Responsibility

We are pleased to see the FCA take action to improve customers' experiences and welcome the good intentions behind the consultation. However, we are concerned that as the proposals stand, they still place too much emphasis on customers taking responsibility for what happens to them, with not enough emphasis placed on firms taking responsibility for what they do to customers. The consultation document rightly acknowledges the imbalances of knowledge that exist between firms and their customers, but then does not do enough to account for those imbalances. Providing more information or more products will not redress these imbalances, for there is an inherent power imbalance between the company providing a service and the person who needs that service. There is also a risk of an oversaturation of information and products, which can also cause anxiety and inhibit decision-making.

# Reasonableness

One general theme that we are concerned about is that of “reasonableness” and the references to “reasonable customers”. The document does not describe what is meant by reasonable, nor how someone would be determined to be reasonable. This means that firms may not only have different ideas of what constitutes reasonable from their customers, they may also have different interpretations of the intentions of the regulator as well as different interpretations between themselves – which could ultimately lead to more confusion for customers.

Whilst we welcome the specific recognition in the document that “vulnerable” customers may have different needs, and we welcome the work that the FCA has done previously around people with additional needs, this focus on reasonableness remains a concern as this is the sort of language which could be used by firms to dismiss people affected by mental illness. People with mental illness are still stigmatised, and their concerns dismissed as irrational or merely a product of their condition.

The implications of this focus on reasonableness are that if a person affected by mental illness is dismissed by a firm for being apparently unreasonable, that firm will no longer have a duty towards that person – even though that could be the time when that person most needs the product or service offered by the firm. If a person falls outside of the company’s definition of reasonableness and so they are not able to access an emergency loan, for example, then that could have an immediate and devastating impact on their quality of life, exacerbating poor mental health in itself whilst also contributing to other factors which exacerbate poor mental health e.g. not being able to pay rent.

Despite the consultation’s general theme of empowering customers to make a decision, the focus on reasonableness reinforces the power imbalance between firms and their customers and so undermines other attempts to give power to the consumer.

We think the above points around reasonableness demonstrate the absence of lived experience in this consultation. Whilst the consultation recommends that companies “put themselves in their customers’ shoes”, this does not go far enough – the FCA and firms must consult directly with customers with lived experience of mental illness and demonstrate that they have done so.

**Q5) What are your views on the options proposed for the drafting of the Consumer Principle? Do you consider there are alternative formulations that would better reflect the strong proactive focus on consumer interests and consumer outcomes we want to achieve?**

**Q12) Do you agree that what we have proposed amounts to a duty of care? If not, what further measures would be needed? Do you think it should be labelled as a duty of care, and might there be upsides or downsides in doing so?**

The consultation presents two options for the wording of a new consumer principle, one centred on good outcomes and the other centred on acting in customers' best interests. We do not agree that the two should be presented in opposition to each other. A focus purely on good outcomes suggests that the treatment of the customer during the relationship doesn't matter so long as the end financial result is good; and a focus purely on acting in a customer's best interests implies that firms will be required to provide good customer service, but that the end financial result doesn't matter. We also have concerns around how an individual's best interests will be determined, and who by; and likewise who will be determining what makes an outcome a good one for that individual. We think the consumer principle should include both of these aspects.

The consultation asks if the proposals amount to a duty of care. We think that whilst good outcomes and best interests are presented as two separate and opposing principles, these proposals do not amount to a duty of care, as they both suggest that firms will only have duties towards their customers at particular points of the customer journey. The concerns around "reasonableness" as described above also prevent the current proposals from amounting to a duty of care. We recommend that the FCA consult separately on a statutory duty of care so as to be able to fully assess what this would look like for every stage of the customer journey.

## **Q8) To what extent would these proposals, in conjunction with our Vulnerability Guidance, enhance firms' focus on appropriate levels of care for vulnerable consumers?**

We reiterate that we are pleased to see specific recognition of customers with additional needs in the consultation document.

The focus on improving firms' communications is also welcome, as is the recognition of the fact that new communications will need to be tested. However, we would like these proposals to go further, with new communications co-produced with people who have lived experience of mental illness. Co-production could be done directly by firms themselves, or they could ask charities and others for support doing this. Co-designing communications is the best way to ensure that they are appropriate, understandable, and inclusive of the information needed by customers. Getting this right means that customers affected by mental illness will have a better understanding of the decisions that financial firms make; in a survey of people severely affected by mental illness who had applied for protection insurance, 61% said they weren't told how their answers to the application's questions would inform the result<sup>1</sup>. Of those who were offered exclusions or were refused cover:

- 54% disagree that the decision was provided with some form of reason or explanation
- 52% disagree that the rationale for the decision was clear
- 68% believe they were unfairly discriminated against because of their mental health.<sup>2</sup>

The recognition of the need for improved product design is welcome, as is the specific acknowledgement of harmful "sludge practices". Mental illness can make it more difficult for people to manage their financial affairs and make decisions, due to common symptoms such as poor concentration, difficulties communicating, and disordered thinking, among others<sup>3</sup>. We also have concerns around the availability of suitable products for people severely affected by mental illness; 42% of people who were offered protection insurance said they were unsatisfied with the terms offered to them, double the number of people who were satisfied. This suggests there is more work to be done in providing products with terms that meet the needs and expectations of customers affected by mental illness.

The consultation talks of products having fair value but does not discuss basic affordability. The consultation assumes that people's financial objectives are in addition to having their basic needs met. For many people severely affected by mental illness, affordability of products and services is an essential consideration when managing money – this cohort of people are significantly less likely to be in paid employment.

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<sup>1</sup> Mental Health UK (2020). [Affording protection: mental health and insurance](#).

<sup>2</sup> See 1.

<sup>3</sup> Citizens Advice (2019). [The mental health premium](#).

For example, only 11% of people who experience psychosis are in any kind of work or study-related activity outside the home.<sup>4</sup>

Research shows that there is a mental health premium i.e. people living with mental illness have to pay more to access products and services; this premium amounts to an extra £1,550 a year for people severely affected by mental illness.<sup>5</sup> Product design which accounts for the specific needs of people affected by mental illness must take this premium into account, and so we recommend that the FCA revise these proposals to include a specific responsibility on firms to consider the affordability of their products.

Although our most recent research on this topic focused on insurance, our recommendations from that research have implications for this consultation:

- Firms should review the questions they ask to examine the underlying assumptions. All financial firms should examine their understanding of mental illness and ensure that internal knowledge is informed by people with lived experience.
- Greater transparency is needed from firms at the start and the end of their application process on what the implications of having a diagnosis of a mental health condition are for decision-making, to improve trust among consumers living with mental illness. This should include transparency about the data they use to assess risk or suitability. Firms should also use data appropriately to conduct proper affordability checks before approving loans.
- Insurers should proactively signpost those who need support to independent advice resources. This will help demystify the process for the significant proportion of people who are reluctant to engage with the industry.<sup>6</sup>

We understand that the FCA has a responsibility towards the firms it regulates to help them maintain competitiveness. However, competitiveness does not need to be viewed in opposition to fairness and good value for customers. Our research demonstrates a clear interest among people affected by mental illness in accessing insurance, so if firms can get their processes right, they could tap into a currently underserved market of potential customers.

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<sup>4</sup> Royal College of Psychiatrists (2018). [National Clinical Audit of Psychosis National report for the core audit](#), page 71.

<sup>5</sup> Citizens Advice (2019). [The mental health premium](#).

<sup>6</sup> Mental Health UK (2020). [Affording protection: mental health and insurance](#).

## **Q21: Do you have views on the PROA that are specific to the proposals for a Consumer Duty?**

A Private Right of Action (PRoA) should only be seen as one part of a suite of remedial options available when a firm breaches the consumer duty. Empowering the individual consumer to take action against firms, whilst potentially positive in that it may be a quicker way to take action, should not be at the expense of strengthening regulatory powers.

For people living with mental illness, taking advantage of a PRoA is likely to be unfeasible. Going to court at all can be an overwhelming, even traumatic, experience; this is only likely to be exacerbated in situations where you have an ordinary individual taking on a large, well-funded company. In addition to this, the financial risk associated with going to court itself will make the idea of a PRoA to resolve a financial problem seem counterintuitive to many people affected by mental illness.

Therefore, if a PRoA is introduced, it must still be underpinned by strengthened regulation with the ability for the regulator to take action so customers don't have to.

Overall, we think that the proposals outlined in the consultation are a positive start, but need to go much further to meet the needs of people affected by mental illness. We recommend the FCA do further consultation work alongside people with lived experience of mental illness and organisations such as Mental Health UK to ensure that the consumer voice is adequately represented throughout the duty. We look forward to further opportunities to engage with the FCA on the important issues raised in this consultation.

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