

May 2019

## COMPLAINTS

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Complaints handling and vulnerable customers

## Vulnerability and complaints handling

Vulnerability and complaints handling remain hot topics across the financial services industry especially when it comes to ensuring customers are treated fairly and when the two topics are intertwined and a vulnerable customer makes a complaint against a firm, particular attention is paid to how firms handle these complaints.

Over the last few years, the FCA has either made changes or noted its intention to make further changes to complaint handling rules and the FCA is now exploring whether its guidance and approach to vulnerability should change, meaning that firms conduct in relation to vulnerability will be under more scrutiny now than ever. This is especially important because firm's considerations towards ensuring that customers experience good outcomes will be brought into sharper focus when handling complaints for vulnerable customers.

### What is a vulnerable customer?

A vulnerable customer is someone, who due to their personal circumstances, is especially susceptible to detriment particularly when a firm is not acting with appropriate levels of care.

### Complaints handling and vulnerable customer

The FCA has made it clear that firms should treat complaints with more care especially when they involve a vulnerable customer as the situation is likely to be more fragile. However, because it is difficult to identify all vulnerabilities, challenges arise for firms when trying to comply.

### What are the challenges firms face when handling complaints from vulnerable customers?

- ▶ vulnerable customers are hard to define and even harder to identify therefore, some vulnerable customers slip through the net and are not being correctly identified at the earliest possible instance and treated appropriately in the complaints process;
- ▶ vulnerability changes over time making it hard for firms to track as a customer can move between being potentially vulnerable and particularly vulnerable to experiencing temporary or permanent vulnerability;
- ▶ firms may not always "see" vulnerability as customers might not display physical signs of this or may decide not to disclose matters to a firm as they may be unwilling to accept that they are vulnerable or may not even realise that they are; and
- ▶ there is no "black and white" guidance on what vulnerability is, resulting in many firms becoming reliant on the experience of their staff or benchmarking against other firms.

### Why is it important to correctly identify vulnerable customers?

If a customer raises a complaint with a firm and that firm fails to identify a vulnerability, if that complaint is not resolved with additional care and attention and done so promptly, this may result in the customer feeling that the process is too time consuming to continue, so may feel too challenged to negotiate with the firm and may drop the complaint. Although unintentional, this would be seen as a firm having a barrier to complaint handling.

### Firm behaviour that could be seen as creating a barrier to complaint handling particularly for vulnerable customers

- ▶ **Repetition:** a customer who is under pressure due to personal circumstances has to repeat these circumstances to every complaint handler they speak to, causing the customer to re-live the situation time and become distressed. The need for the customer to repeat their circumstances may be because the complaint handler(s) have failed to identify vulnerability at the first instance and flag this on the customer's file, with a record of the customer's circumstances. The inconvenience of this may result in the customer withdrawing their complaint.
- ▶ **Updating:** vulnerable customers are more likely to want to be regularly updated on the status of their complaint for peace of mind and to be confident that they will get closure from this situation, and if a vulnerable customer has not been identified correctly as being vulnerable, this may not happen. This can have an unintentional impact on the customer's mental health, resulting in them withdrawing the complaint.
- ▶ **Communication needs:** not talking to the customer, not understanding the customers communication needs and relying too much on one communication method. For example, a customer, due to ill health, asks that the firm correspond with her in writing, but the firm write to her asking her to call them. The customer may give up on making a complaint due to this obstacle.

- ▶ **Asking insensitive questions:** for example, a customer with a terminal illness being asked how long they have left to live. The lack of empathy to such a sensitive situation may result in the customer deciding not proceed with the complaint.
- ▶ **Evidence:** asking a vulnerable customer for evidence/ information they do not have. For example, a customer calls up to complain about the level of service received by a staff member and the firm asks the customer questions surrounding who they spoke to, what was discussed and the time of day the call took place, when the firm could reasonably be expected to have access to that information directly. This may result in the customer feeling like their integrity is being questioned and that they are not being "believed" and may withdraw from making the complaint.

If a situation occurs where a complaint ends up with the Financial Ombudsman Service (**FOS**), and is in relation to a vulnerable customer, the FOS will review the circumstances and consider how the firm responded to the customer's needs and circumstances. If it feels that the firm failed to respond fairly or competently, it will think about the wider impact of that failing and this could involve FOS liaising with the FCA.

## What should you be thinking about?

- ▶ conducting reviews of internal complaints. There may be indicators within the information in a complaint file i.e. customer testimony or call recordings, that could point to a vulnerability being missed;
- ▶ reviewing findings from MI, RCA and QA reviews to help spot trends and understand whether vulnerability is being identified correctly, allowing you to act fast to address any identified issues;
- ▶ asking yourself whether your staff have the requisite skills to deal with the wide range of vulnerabilities that might exist and acting appropriately to address any gaps in knowledge i.e. consider specialist training to help staff identify potentially vulnerable customers, to ask the right questions and show empathy. FCA research has shown that complaints are made worse by firms applying rigid policies and procedures which do not cater for exceptional circumstances;
- ▶ if not already in place, ensuring there is a clear escalation process for all vulnerable queries and a specialist team within your firm that can process and deal with these queries and support teams in identifying vulnerable customers;
- ▶ analysing the total number of complaints with the FOS and ascertaining how many relate to vulnerable customers. Look to see why these complaints were not directly resolved with the firm and learn from FOS decisions. Remember- any case, whether the customer is vulnerable or not, that goes to FOS- is a negative customer experience;
- ▶ ensuring your complaint handling process is accessible to all customers (you may wish to review the considerations under the Equality Act 2010 for support);
- ▶ ensuring that communication is strong between different teams and departments to prevent a customer having to repeat themselves constantly to different people; and
- ▶ make the customer feel valued and listen to them. Whilst this is a good outcome for all customers, it is likely to have a bigger impact on a vulnerable customer.

## How can Addleshaw Goddard help?

We understand the challenges that in-house compliance teams can face juggling the ever changing, complex regulatory environment. We have an experienced team specialising in complaint handling who have experience of working:

- at one of the 'big 4' consultancy firms, undertaking complaint handling assurance reviews, drafting complaint handling policies and supporting firms with large scale complaint handling remediation projects;
- in-house in senior management complaint handling policy roles;
- at the Financial Conduct Authority, with complaint handling regulatory oversight; and
- at the Financial Ombudsman Service adjudicating customer complaints.

In addition to the above, we have designed and delivered vulnerable customer training and drafted vulnerable customer policies and procedures for clients.

We can provide as much or as little support as you require and we have the flexibility and resource within our team to support projects of all sizes, from providing secondees for on-site oversight and advice to dedicated remote compliance support.

If you would like to have a chat about any of the above and how to prepare for these changes, please get in touch with the contacts below.



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