



UNIVERSITY OF
LEICESTER

School of Law

Centre for Consumers and Essential Services

Consumer Vulnerability – Mainstream, not Marginal



Consumer Vulnerability – Mainstream, not Marginal

Centre for Consumers and Essential Services

Mike George, Professor Cosmo Graham and Linda Lennard

The Centre for Consumer and Essential Services (CCES) combines legal and social policy expertise to explore the effects for consumers of regulation and provision of essential services. This combination enables it to provide an authoritative legal perspective together with deep experience and knowledge of consumer and social policy in essential services. Its current focus is on the energy, communications, postal, transport, health, social care, financial services and water sectors.

Because of the importance of these services, the Centre is particularly concerned to highlight and improve the problems faced by people in a wide variety of vulnerable situations.

CCES carries out research and consultancy and has done projects in the past for Which?, Consumer Focus, E.ON and UNISON

Contact: cosmo.graham@leicester.ac.uk

Table of Contents

1. Introduction	1
Changing the discourse: inclusive service	1
2. Consumers, companies and regulators	3
The reality of consumer vulnerability.....	3
Who is at risk?	3
The role of companies and markets	4
The role of regulators	6
3. Inclusive service – making it the norm	9
4. Challenges facing regulators and companies	11
Organisational commitment.....	11
Openness, planning and scrutiny	12
Organisational learning and expertise.....	14
5. Conclusions	16

1. Introduction

The services discussed here are part of the fabric of our lives. Energy, water and sewerage services are essential for life, health and well-being. Communications services are not only vital in life-threatening situations but also for participating in society. Similarly financial services, such as banking, savings and insurance, are essential for everyday life and as gateways to other services.

Given the critical roles that these services play, consumers need to be able to trust the companies involved not to place them at increased risk. Equally importantly, consumers should be able to have confidence that their needs are understood and addressed by the companies and the regulators in these sectors. This applies to all consumers but more than ever if someone is in vulnerable circumstances when the effects of detriment are likely to be especially serious.

This is why the Centre for Consumer and Essential Services (CCES) has carried out extensive work for over a decade on consumer vulnerability and disadvantage. Our focus has been – and continues to be – on shifting the debate away from artificial concepts of ‘vulnerable consumers’ towards a better understanding of the reality of consumer vulnerability.

Following previous extensive work on the topic and our detailed 2014 report for Citizens Advice on the role of the regulators¹, this paper discusses where we are now and where we need to be in tackling consumer vulnerability. Despite welcome developments, the risk remains that this is regarded as an issue mainly for consumer policy staff and assistance teams within regulators and companies.

However, addressing the needs of consumers in vulnerable circumstances does not only involve looking at crucial issues such as the accessibility of phone systems, clarity of bills and deals, complaint handling, and how well frontline staff are trained. Equally it is about eliminating exclusionary barriers and ensuring the availability of products and services designed to meet the needs of all consumers, including those in vulnerable circumstances.

Furthermore, it means looking at all aspects of companies’ policies and practices in order to eliminate misleading practices, poorly designed products and services, and other behaviour that is likely to cause consumer detriment. All consumers can be disadvantaged by such practices but the effects are likely to be severe and far-reaching for people who are in vulnerable circumstances.

Similarly, for the regulators, understanding and tackling consumer vulnerability should be part of everyone’s roles and responsibilities, not only those of consumer policy teams. Regulatory policies, decisions and interventions on aspects such as markets, competition and financial matters can have profound repercussions for people in vulnerable circumstances.

Changing the discourse: inclusive service

To some extent, the nature of the debate is changing in welcome ways. There is increasing recognition of the need to stop referring to ‘vulnerable consumers’ as though there is a separate group in the population, and instead use terms such as consumers in vulnerable circumstances, which may be longer but is more accurate.

¹ *Tackling consumer vulnerability: regulators’ powers, actions and strategies*, Centre for Consumers and Essential Services, University of Leicester, research report for Citizens Advice, 2014.

However, we need to go further to ensure that consumer vulnerability is recognised as a mainstream issue that affects all organisational policies and operations.

We recommend that the way to do so is to make inclusive service the aim to aspire to. It provides a framework for ensuring that services and products are designed and provided in ways that meet the wide range and diversity of consumers' needs, including consumers in vulnerable circumstances. It conveys a message that all parts of the companies and regulators involved in these sectors have a role in providing inclusive service. Inclusive service should become the norm and therefore part of everyday business. If we are serious about tackling consumer vulnerability in these essential services, this is where we need to be.

Structure of this paper

Section 2 below looks at the nature of consumer vulnerability, the often multi-dimensional contributory factors in consumers' circumstances and the role of companies and markets. It also discusses the role of regulators and current developments in their approaches to this topic, as well as some key implications for public policy. In section 3, we highlight the need to move towards policies and practices based on inclusive service and the links with tackling consumer vulnerability and meeting equalities duties. Section 4 sets out a number of significant challenges facing the regulators and companies involved in these services, and suggests some practical steps to be considered. Finally, section 5 summarises our conclusions.

2. Consumers, companies and regulators

The reality of consumer vulnerability

Vulnerability can affect any of us at any time, as our situations and needs change, and often in unpredictable ways. The factors that cause vulnerability can be short or long-term, and often stem from a number of causes.

Until recently, the regulators and companies involved in these sectors used to categorise consumers into groups of what were assumed to be 'vulnerable consumers', for example, disabled people or older people. However, this kind of approach that is based on pigeon-holing or stereotyping consumers is highly flawed. The reality of life is that 'vulnerable consumers' do not form a separate group in the population. Any of us can be in vulnerable circumstances at any time.

Our research over the years has been based on looking at the wide range of risk factors involved in creating and contributing to consumer vulnerability. This 'risk factor approach' provides a lens to explore the reality of consumers' needs and circumstances and – equally importantly – to understand how companies can contribute to consumer vulnerability and place consumers at risk.

Who is at risk?

The short answer is anyone. A wide range of factors linked to consumers' circumstances and needs, or those of other members of their household, can contribute to vulnerability. Some may be long-standing in nature; others may have short term or episodic effects. There is often more than one contributory factor.

Far from there being a static 'group' of 'vulnerable consumers' in the population, people's circumstances alter, frequently in unpredictable ways. For instance, current labour market trends show a rise in self-employment and increasing use of zero hours contracts, both of which can mean that people are in precarious financial situations and find it hard to manage and budget for essential bills. Such labour market events, with rises or falls in hours or earnings, were associated with well over half of all moves in and out of poverty, according to recent figures from the Joseph Rowntree Foundation.²

Moreover, any of us can be subject to other types of changes in circumstances that can tip us into vulnerability. Events such as relationship breakdown, changed housing conditions, and bereavement are common experiences. The changing demographics of the population mean that the number of people aged 65 + has increased and is continuing to rise. It is estimated that the number of people aged 75 and over will rise by over 89%, to 9.9 million, by mid-2039.³ Being older does not necessarily mean that someone is in vulnerable circumstances. However, older people can be at higher risk of vulnerability because of other factors in their lives, such as a long-standing illness or disability (which affects almost half of those over 75), and/or being on a low income.

An increasing number of people have caring responsibilities: 3 in 5 people will be carers at some point in their lives.⁴ One in four people in the UK will experience a mental health problem each year.⁵ Understandably these

² *Monitoring poverty and social exclusion 2015*, Joseph Rowntree Foundation and New Policy Institute, 2015.

³ *National population projections, 2014-based Statistical Bulletin*, Office for National Statistics, October 2015.

⁴ *Policy Briefing October 2015*, Carers UK.

⁵ <http://www.mind.org.uk/information-support/types-of-mental-health-problems/statistics-and-facts-about-mental-health/how-common-are-mental-health-problems/>

kinds of events and circumstances cause stress and can erode consumers' confidence in dealing with essential services.

Constellation of factors

Often there isn't a single factor that creates consumer vulnerability. As we have explored elsewhere, there may be a constellation of factors arising from personal or household circumstances.⁶ For example, carers are likely to be on low incomes and at greater risk of poor physical or mental health. Many people with literacy or numeracy problems, or mental health issues, are likely to be on a low income, for example.

Over 11 million people in Britain have a limiting long term illness, impairment or disability. Families with a disabled member are more likely to be living with poverty and low income than other families⁷ and the poverty rate among disabled people has risen over the last couple of years.⁸ Moreover, many disabled people face additional costs in order to secure their health and wellbeing and to ensure they have a reasonable quality of life.⁹ It can also be very difficult for disabled people to budget for essential bills because their needs – and income – may vary as a result of fluctuating medical conditions, such as arthritis or MS.¹⁰

The existence of these and similar factors can have a profound effect on our inter-action with essential services. The implications for consumers' lives, health and well-being can be serious and far-reaching, as well as potentially affecting children and others in the household.

The role of companies and markets

'The category-based approach towards consumer vulnerability fails to capture the dynamic and changing nature of people's circumstances, and effectively ignores the height and complexity of 'hurdles' placed in front of them by organisations...'¹¹

Consumer vulnerability is not only about consumers' personal circumstances and needs. Equally important is how markets and companies operate. Consumers who are already in a vulnerable situation may be caused significant harm as a result of the actions – or inactions – of a service provider or because the market is opaque and failing to meet their needs. Moreover, a consumer may well be just about managing to cope and then find themselves in a much more vulnerable position as a result of poor company behaviour or market failure.

Company policies and behaviour can exacerbate consumer vulnerability or place someone at risk who was managing reasonably well previously. The ways in which companies can do so are unfortunately many and varied, and too numerous to set out in detail here. They include confusing and complicated information about pricing, terms and conditions; inaccurate bills; unsuitable products or services; and poor complaint handling.

⁶ *Too Many Hurdles: advice and information barriers in the energy market*, Centre for Consumers and Essential Services and eaga CT, 2011.

⁷ <https://www.gov.uk/government/publications/disability-facts-and-figures/disability-facts-and-figures#fn:2>

⁸ *Monitoring poverty and social exclusion 2015*, Joseph Rowntree Foundation and New Policy Institute, 2015.

⁹ *Driving down the extra costs disabled people face*, final report, Extra Costs Commission, 2015.

¹⁰ *The Energy Penalty: disabled people and fuel poverty*, Centre for Consumers and Essential Services, University of Leicester; and eaga CT, 2013.

¹¹ *At A Disadvantage, Discussion Paper*, Centre for Consumers and Essential Services, University of Leicester, 2006.

Information barriers

Any of us who are facing significant stress and time pressures because of personal circumstances are likely to find it particularly difficult to make informed decisions, especially when confronted by confusingly presented information about tariffs or contract terms.

For example, in the electricity and gas retail markets, consumers still face barriers in making informed choices between suppliers because of complex information in bills and in the structure of tariffs. Those particularly affected include people on low incomes and those without internet access.¹²

In the communications sector, Ofcom found that greater differentiation, bundling of services and more complex pricing strategies are making it harder for consumers to compare and engage with services from the same provider and across multiple providers. Problems also persist in terms of availability of both superfast fixed broadband and better mobile coverage. This is particularly pressing for people in less densely populated areas and for vulnerable consumers according to Ofcom.¹³ Citizens Advice research also found that misleading adverts are making it too difficult for most people to work out which broadband deal is cheapest. Three in four people (75 per cent) said that they find the information in most adverts for broadband is too complicated to compare deals easily.¹⁴

Communication barriers

How we inter-act with companies providing essential services is critical as the phone system can be a major help or major obstacle. Poorly designed call centres can waste consumers' time and often money in costly phone charges. If consumers finally speak to a human being, that person may be working to a rigid script or be poorly informed and unable to provide a satisfactory answer.

The effects of such barriers are likely to go well beyond irritation if we are in a vulnerable situation. For example, some communications systems now depend on automated voice recognition, which is likely to cause problems if people have speech difficulties, or are under stress, or do not have English as their first language. Some demand the use of passwords or PIN numbers that can be difficult for any of us to remember but especially so for people who are under stress or who have memory difficulties.

Online services can undoubtedly provide useful information and help but are frequently not a substitute for direct contact with a human being, especially if some in a vulnerable situation is trying to sort out a problem. Also, much depends on how well the website is designed and whether it is easily accessible for everyone. In addition, it is crucial not to assume that everyone has access to or using the internet. Despite the rapid growth in use of online services, about 10% of adults –had never used a computer in 2015.¹⁵

¹² *Energy market investigation: provisional findings report*, Competition and Markets Authority, 2015.

¹³ *Strategic Review of Digital Communications Discussion document*, Ofcom, 2015.

¹⁴ <https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/press-releases/misleading-broadband-adverts/>

¹⁵ *Internet Access – Households and Individuals 2015*, Office for National Statistics, August 2015.

Causing detriment

It is not only about how well or badly companies present information, run their telephone systems or train their staff. Company policies and practices can exacerbate consumer vulnerability, for example, through incentives that encourage staff to push inappropriate products, such as payment protection insurance.

Products and services can also exclude or disadvantage consumers in vulnerable circumstances, for instance, by restricting the cheapest deals to online customers. This is likely to affect disabled people among other consumers as internet access is significantly lower than for non-disabled consumers.¹⁶

Long-standing customers can be left on poor deals with the result that they are paying much more than new customers for a service such as home insurance.¹⁷ Consumers with medical conditions can be denied access to insurance because of exclusionary terms and conditions or the high cost.¹⁸

The onus should be on firms to pro-actively give clear information to consumers about deals and options. Many consumers in vulnerable circumstances may well not have the time or energy to plough through often complex information in order to switch between deals or suppliers.

This is why it is vital for companies to ensure that their approach to consumer vulnerability informs all their policies, practices and behaviour. Otherwise one part of a company, such as the customer service team, may be trying to help consumers in vulnerable circumstances whilst other departments are doing the opposite; for example, through poor debt management practices, selling them inappropriate products, locking them into unsuitable contracts, or excluding some consumers from the best deals.

The role of regulators

The regulators' ability to tackle consumer vulnerability in these essential services is not only by shaped by their formal powers and duties but also by their willingness to use their powers and influence to achieve positive outcomes for consumers.

Since we previously examined the regulators' understanding of and approaches towards consumer vulnerability¹⁹, there has been a discernible and increasing readiness among the regulators to develop their understanding and policies. This is being accompanied by welcome action to share knowledge, experience and good practice about consumer vulnerability among other issues, notably through the UK Regulators' Network (UKRN).²⁰

For example, following publication of Ofgem's consumer vulnerability strategy, the energy regulator has published a progress report and is planning more measures to ensure a more transparent and consistent approach and to embed this within the organisation.²¹

In 2015, the Financial Conduct Authority (FCA) published a detailed and wide-ranging paper on consumer vulnerability with practical suggestions for companies.²² At the time of writing, the FCA was carrying out work

¹⁶ *Disabled consumers' use of communications services A Consumer Experience report*, Ofcom, 2015.

¹⁷ <http://www.theguardian.com/money/blog/2015/jan/10/end-home-insurance-rip-off>

¹⁸ *Vulnerability exposed: The consumer experience of vulnerability in financial services*, FCA and ESRO, 2014.

¹⁹ *Tackling consumer vulnerability: regulators' powers, actions and strategies*, Centre for Consumers and Essential Services, research report for Citizens Advice, 2014.

²⁰ *UK Regulators Network report on 2014 - 15 and work programme for 2015-16*, UKRN, 2015.

²¹ <https://www.ofgem.gov.uk/about-us/how-we-work/working-consumers/protecting-vulnerable-consumers>

²² *Consumer Vulnerability – Occasional Paper 8*, Financial Conduct Authority, 2015.

on access to financial services and financial inclusion with a view to exploring the proposition that consumers expect to be able to have reasonable access to the products and services that they require. This programme aims to scope the issues that contribute to access barriers and financial exclusion, culminating in a range of regulatory options available for the FCA to consider.

In the communications sector, Ofcom has set out its approach which recognises that anyone can experience vulnerable circumstances. It has also announced that it is taking steps to promote and ensure effective co-ordination of its work on participation and vulnerability.²³ In relation to the water sector in England and Wales, Ofwat has commissioned research to inform its approach to vulnerability.²⁴ Its Focus Report explores the drivers and patterns of consumer vulnerability in the water sector.²⁵ It is intended to create a framework for the sector to tackle this fundamental issue, along with a practitioners' pack offering practical guidance on identifying and supporting customers in vulnerable circumstances.

Clearly these are welcome developments but more needs to be done to ensure that the regulators and companies involved in essential services are well-equipped and committed to tackling consumer vulnerability in practice.

In addition, it is crucial that the regulators make it clear how their duties to protect consumers' interests, and their commitments to tackle consumer vulnerability, are taken into account in decision-making, and viewed in relation to their other duties. Regulators have a range of objectives and duties depending on the statutory framework for their respective sectors. So there is clearly a need for regulators to engage in 'joined-up thinking', to help ensure that – as far as possible – their operational interpretation of their different duties is clear, and does not result in consumer detriment.

Public policy implications

The regulators are not elected and they have limited remits, which means that the role of policy-makers is critically important. Their objectives, duties and ability to intervene are underpinned by legislative frameworks and by government guidance. It is therefore crucial that public policy-making provides a proper basis for the regulators to protect consumers' interests, including policies and actions to tackle consumer vulnerability.

However, there can be confusion about the weight that individual regulators should give when balancing different objectives, and the relationship between the roles of regulators and that of government. For example, the CMA commented that the role of competition in pursuing Ofgem's objectives could be considered to be unclear and in need of clarification. It also noted that the delineation between the powers and roles of DECC, Ofgem and the industry can be blurred, and that the overlap of roles between DECC and Ofgem can lead to delays to implementing certain policies.²⁶

The regulators should be prepared to highlight issues of concern that affect consumer vulnerability which are beyond their statutory remits to government and Parliament. However, this is not necessarily straightforward. For instance, the CMA has remarked that the absence of any formal mechanism through which Ofgem can set out its views on particular DECC policy proposals may risk harming transparency, the independence of regulation, and consumers' confidence in the regulatory and policy decisions that are taken.²⁷ This underlines the need for a clear mechanism for all the regulators to be able to comment on government proposals and on

²³ <http://consumers.ofcom.org.uk/disability/consumer-vulnerability/>

²⁴ <http://www.ofwat.gov.uk/regulated-companies/improving-regulation/ofwat-regulating-the-industry-improving-regulation-consumer-policy-consumer-policy/>

²⁵ <http://www.ofwat.gov.uk/publication/vulnerability-focus-report/>

²⁶ *Energy market investigation: provisional findings report*, Competition and Markets Authority, 2015.

²⁷ *ibid*

developments affecting their sectors. Moreover, the regulators should be able to take the initiative in doing so pro-actively without having to wait for particular inquiries or Parliamentary investigations.

More broadly, as we said in our report in 2014,²⁸ there are still the key questions about the role of public policy in ensuring affordable access to essential services, and about what interventions are required in terms of wider public policy particularly to protect the interests of consumers in vulnerable circumstances.

²⁸ *Tackling consumer vulnerability: regulators' powers, actions and strategies*, Centre for Consumers and Essential Services, research report for Citizens Advice, 2014.

3. Inclusive service – making it the norm

‘Design for All is design for human diversity, social inclusion and equality.’²⁹

The concept of inclusive service offers a broad framework that seeks to take account of the needs of all consumers. As such it provides a way of ensuring that the needs of consumers in vulnerable circumstances are regarded as part of the mainstream of organisational policies and practices instead of a marginal issue. Having an overall strategy of inclusive service also sends a clear message that these issues are part of everyone’s role and remit, including board members, marketing teams, and call centre staff.

Inclusive service builds on the concept of ‘design for all’ which aims to enable all people to have equal opportunities to participate in every aspect of society.³⁰ It is about ensuring that services and products are designed and provided in ways that meet the wide range and diversity of consumers’ needs. It means that instead of asking ‘What is wrong with this person?’ service providers should ask themselves ‘What is wrong with my service if this person cannot access it?’³¹

The umbrella of inclusive service does not negate offering services that are designed specifically to meet certain needs, such as providing bills and other information in a range of formats, or ensuring that services are designed to be easily accessible for people with hearing or visual impairments. On the contrary, inclusive service is about designing and providing services and products that meet specific consumer needs. But the emphasis is on doing this as an integral part of an organisation’s mainstream operations.

For example, priority service registers (PSR) are an example of specific schemes that have been established in the energy and water sectors. In order to access PSR services, consumers have to be on the companies’ registers. However, why is it necessary to be entered onto the PSR in order to receive large print bills? Instead, information about a consumer’s need for bills in a specific format could simply be recorded on the supplier’s customer information system.

Some welcome changes are taking place. For example, at the time of writing, Ofgem was consulting on proposals to change the eligibility criteria for PSR services in energy. The proposals include replacing the current ‘core’ eligibility groups with an outcomes-based model that will require suppliers to offer services to customers in vulnerable situations based on their needs (whilst retaining core eligible groups for safety-related services).³² However, it appears that energy consumers in vulnerable circumstances would still need to be on a company’s priority service register in order to access specific services.

Why inclusive service makes sense

Consumer vulnerability can affect large numbers of consumers and it is often dynamic and multi-dimensional. An approach based on inclusive service provides a way of addressing this reality, instead of pigeon-holing ‘vulnerable consumers’ as a separate group.

²⁹ <http://dfaeurope.eu/what-is-dfa/>

³⁰ *ibid*

³¹ *Access for all: The importance of inclusive services*, Citizens Advice, 2011.

³² *Priority Services Register Review – Final Proposals*, Ofgem, 2015.

Adopting a policy of inclusive service also provides a basis for ensuring that services for consumers in vulnerable circumstances are not seen as a matter only for specialist teams but are integral to everyone's sphere of work within and across companies and regulators.

A policy based on inclusive service is also entirely coherent with companies' and regulators' equalities duties³³. The interlinking of equalities duties with the inclusive service approach is illustrated by the approach of the Financial Ombudsman Service (FOS). Under the framework of its equality and diversity policy, FOS outlines its commitment to access and inclusion stating that:

'We aim to meet the needs of our customers and stakeholders by:

- *creating a work culture that values diversity, inclusiveness and respect, and empowers our employees to reflect those values in their dealings with the people who use our service and all other stakeholders;*
- *promoting equal access to the Financial Ombudsman Service for all users and potential users;*
- *providing clear, meaningful information about what we do and how we do it to our customers, potential customers and other stakeholders, in ways that best suit their individual needs;*
- *identifying as early as possible any individual requirements that may need to be met in order for a customer to fully access our service; and*
- *being responsive to changing needs and requirements.'*³⁴

This approach exemplifies the links between policies aimed at inclusion, meeting equalities duties and tackling consumer vulnerability.

There are practical tools available to help companies and other organisations, such as the *British Standard for Inclusive Service Provision*, which sets guidelines to help organisations provide a fair, flexible service that can be used by all consumers equally, regardless of their health, age or personal circumstances.³⁵ The Standard seeks to embed a more sophisticated understanding of the nature of vulnerability which recognises its dynamic and multi-dimensional nature.

³³ <http://www.equalityhumanrights.com/legal-and-policy/legislation/equality-act-2010/what-equality-act>

³⁴ http://www.financial-ombudsman.org.uk/about/diversity_policy.html

³⁵ *BS 18477:2010, Inclusive service provision. Requirements for identifying and responding to consumer vulnerability*, BSI, 2010.

4. Challenges facing regulators and companies

Without wishing to replicate work we have previously carried out in this area and detailed practical guidance now available from bodies such as the FCA, we feel it is important to highlight a number of significant challenges facing the regulators and companies involved in these services. These issues need to be addressed in order to ensure that approaches to consumer vulnerability are embedded across all organisational policies and operations. In addition, it is important to point out that these issues are equally significant for new entrants in these sectors as well as for established providers.

Organisational commitment

Undoubtedly there are welcome steps being taken by regulators and some companies to understand and address the factors that cause consumer vulnerability. But we are concerned about the speed at which this is happening and the extent to which this approach is demonstrated in all their work.

This should not be regarded as an issue that is only of interest to regulators' consumer policy teams or companies' specialist assistance teams. One fundamental question is whether everyone within an organisation recognises their own role and the need to take account of the potential impact for consumer vulnerability in their decision-making and work.

Policies and decisions on markets or economic regulation, for example, can have far-reaching consequences for consumers who are in vulnerable circumstances or indeed tip someone into vulnerability. Similarly, a wide spectrum of company policies and practices, including marketing techniques, design of products and services, and debt management and collection policies can either exacerbate consumer vulnerability or help to tackle it.

Staff in both regulators and companies should be encouraged to raise issues with senior management where they spot problems or have suggestions for improving policies and practices that affect consumer vulnerability.

Board members, CEOs, and senior management across regulators and companies involved in essential services need to be committed to understanding and addressing consumer vulnerability, and ensure that this is embedded in their decision-making and operations. Action is taking place in some sectors in this important respect. For example, the FCA has recently introduced a programme of work to embed an understanding of vulnerability within the regulator³⁶. Also in the financial services sector, building on the FCA's paper on vulnerability, the Financial Services Vulnerability Taskforce has published a report outlining best practice recommendations for the industry to improve outcomes for customers in vulnerable circumstances.³⁷

However, there needs to be more consistency across all the regulators and companies, together with a recognition that work on consumer vulnerability needs to be properly resourced to improve outcomes for consumers.

Key practical steps

- ✓ **A clear statement** of the importance of addressing consumer vulnerability is critical to ensure that this informs all decision-making and operations.

³⁶ *Consumer Vulnerability – Occasional Paper No 8*, Financial Conduct Authority, 2015.

³⁷ *Improving outcomes for customers in vulnerable circumstances*, BBA, 2016.

- ✓ **Governance structures** need to ensure there is regular monitoring and reporting of how consumer vulnerability is being addressed, and to update and inform board members about developments. At least one board member should have specific responsibility for this. However, this should not be seen as their responsibility alone. All board members need to be committed to and understand the importance of tackling consumer vulnerability.
- ✓ **All teams** should be required to view consumer vulnerability as integral to their work, not as an add-on.
- ✓ Embedding consumer vulnerability across regulatory bodies requires **resourcing** to do it properly, including resources for training and research, and to enable dedicated teams to work across the regulator and share knowledge and expertise.
- ✓ **Sharing ideas and information across teams** is vital: it is important to have a mechanism to bring together all senior managers in regular discussions as part of a common approach. It also offers a way of spotting possible impacts and other issues that may otherwise have been overlooked.
- ✓ Regulators should publish how their commitment to tackling consumer vulnerability has been taken into account in **decision-making**, including policies and decisions on competition, markets and economic growth.

Openness, planning and scrutiny

All parties need to be able to understand how regulators and companies view consumer vulnerability in the sectors they cover and how they aim to tackle the factors that contribute to it.

A number of broad definitions of vulnerability are available, from Citizens Advice, Ofgem, the FCA and other bodies.³⁸ Underpinning these is the acceptance that consumer vulnerability involves a wide range of factors, including consumers' needs and circumstances and company policies and behaviour.

Putting the above approach into practice should be underpinned by a plan and set of priorities, making it clear what is expected across all sections of the regulatory authority or company. For this to be effective, regulators and companies need to be able to monitor what is happening and to measure the impact. The latter can often be tricky to achieve, especially when complex issues are involved and the effects may be intangible. For example, it may be difficult to assess precisely the effects of early intervention that prevents something happening in the first place, which would otherwise have increased the risk of vulnerability.

However, this underlines the need for a more expansive and flexible approach that does not rely solely on quantifying the impact of particular measures. This should be buttressed by input and scrutiny from independent external experts and organisations.

It is also crucial that training and evaluation processes encourage and empower staff to have a flexible and inclusive approach to consumers in vulnerable circumstances. The emphasis should be on achieving positive outcomes for consumers.

Companies need to review their policies, practices and communications systems to ensure that they are inclusive, and remove barriers that exacerbate consumer vulnerability. This should include the entirety of their operations, including design and marketing of products and services and consumer information. One practical

³⁸ For example, see: <https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/citizenship-policy-research/access-for-all/>; <http://www.fca.org.uk/news/occasional-paper-no-8>; <http://consumers.ofcom.org.uk/disability/consumer-vulnerability/>; <https://www.ofgem.gov.uk/about-us/how-we-work/working-consumers/protecting-vulnerable-consumers>; http://www.ofwat.gov.uk/wpcontent/uploads/2015/12/prs_spe20151112vulnerability.pdf;

way of doing this is to use the BSI standard on *'Inclusive service provision. Requirements for identifying and responding to consumer vulnerability'* (BS 18477:2010) as a review tool.³⁹ This sets out the critical procedures needed to ensure that inclusive services are available and accessible to all consumers equally, regardless of their personal circumstances.

There is rightly an increasing recognition of the need for companies involved in essential services to share information about good practice and lessons relating to consumer vulnerability. However, it is crucial that regulatory rules and processes do not get in the way, for example, by putting the emphasis instead on encouraging the companies to compete in how they deal with consumer vulnerability. Consequently the regulators need to review how they regulate and remove unnecessary barriers to sharing information and collaboration between the companies where this is in consumers' interests.

More broadly, regulators and companies need to find ways of involving and engaging with a wide range of organisations that work with consumers in vulnerable circumstances to inform their own understanding and help to spot problem areas as they arise. This can be a valuable two-way street that also enables the regulators to publicise their work on consumer vulnerability and obtain more external input.

It is welcome that the regulators are increasingly engaging with external bodies, including advice and debt agencies and voluntary organisations. However, it needs to be recognised that many of these bodies are facing considerable pressures and have stretched resources. Regulators need to consider how they can make best use of their expertise and experience without placing undue pressures on them.

This is another area that lends itself to collaborative efforts, for example, more than one regulator may well be trying to engage with the same organisation. There is not necessarily an easy answer to this. We suggest that the regulators consider how and when it is useful to involve these kinds of external bodies and talk to them about the most effective ways of doing so, and show that they understand the pressures that these organisations are facing.

Key practical steps

- ✓ **Regulatory impact assessments** should routinely report on the potential distributional impacts and other implications for consumers in vulnerable circumstances.
- ✓ **Senior managers** across all regulatory teams should be required to report regularly on how they have explored and identified potential implications for consumer vulnerability in their work and activities.
- ✓ **External organisations and experts**, including those who work with consumers in vulnerable circumstances, should be involved in commenting on and, where necessary challenging, regulatory approaches and work plans relating to consumer vulnerability.
- ✓ **Company frontline and regulators' customer contact teams** should be trained and empowered to respond in flexible and inclusive ways to consumers in vulnerable circumstances.
- ✓ **Regular reviews** of company policies and practices are vital to remove barriers, including eliminating practices that may exacerbate vulnerability, and ensure that the needs of consumers in vulnerable circumstances are properly understood and addressed. The BSI standard on inclusive service offers a relevant and practical audit tool in this regard.
- ✓ **Regulatory processes**, such as performance measurement, should not impede companies from sharing information and lessons about consumer vulnerability where this is in consumers' interests.

³⁹ <http://shop.bsigroup.com/en/ProductDetail/?pid=000000000030213909>

- ✓ Regulators should consider ways of building in **independent scrutiny and assessment** of their activities in relation to consumers in vulnerable circumstances.
- ✓ Talks should be held with **external organisations** working with consumers in vulnerable circumstances to find out how they can be effectively involved in the work of the regulators. If possible, this should be done by the regulators working together to see if there are ways that networking can be carried out jointly to reduce resource demands on these organisations.

Organisational learning and expertise

A significant challenge for regulators and companies is how to ensure they develop a good understanding of consumer vulnerability in their area of work, keep up-to-date with changing situations, and keep alert to the possible impact of future developments. Key knowledge and awareness of developments should be at everyone's fingertips.

It is clear that the regulators are exploring a variety of ways to improve understanding of consumer vulnerability, including direct consumer research. But as we said in our earlier report⁴⁰, this is a ripe area for collaboration between the regulators, particularly to discuss good practice and also possibilities for co-ordinating some research. It is vital to remember that the same consumers are normally dealing with all these sectors and often face similar difficulties across the board.

Another important issue is about how to transfer information and knowledge on consumer vulnerability to board members, senior management and other staff to enhance understanding and inform their work. Regulators also need to be aware of the importance of retaining institutional learning and memory, and avoid situations where knowledge and expertise are lost when a key staff member leaves.

It is also vital that the regulators find ways of regularly sharing their knowledge about consumer vulnerability with the companies involved in these sectors. Similarly the companies need to be able to feedback information arising from their own operations and experiences. The FCA's recent paper on consumer vulnerability sets out detailed suggestions for companies involved in financial services that can in many instances be carried across to other sectors.⁴¹ In addition, there have been a number of welcome debates recently involving some of the companies in these sectors aimed at gaining a better understanding of consumer vulnerability.

In our view it would be beneficial for everyone for the regulators to be pro-active in sharing their knowledge about key aspects of vulnerability, examples of good practice, as well as information about what hasn't worked and the lessons to be learnt. In some respects, regulators could consider combining their efforts, for example, in publishing information or holding seminars on topics of cross-sector interest. At the same time, individual regulators need to consider publishing information on consumer vulnerability relating to their sector on a regular basis, and other initiatives to engage with the companies they regulate. This should include companies who are new or recent entrants to these markets.

⁴⁰ *Tackling consumer vulnerability: regulators' powers, actions and strategies*, Centre for Consumers and Essential Services, research report for Citizens Advice, 2014.

⁴¹ *Consumer Vulnerability – Occasional Paper No 8*, Financial Conduct Authority, 2015.

Key practical steps

- ✓ An **evidence base** of key information relating to consumer vulnerability should be developed and made available to all board members and teams, who should be encouraged to use it and contribute. How this information is structured will depend on what is appropriate for the sector. But it needs to be easily accessible, user-friendly, and provide links to other sources of information and expertise.
- ✓ **Induction and training** should be reviewed to build in awareness of consumer vulnerability so that everyone – board members, senior managers and other staff - understands how this applies to their roles and areas of work.
- ✓ **Recruitment** to boards and staff should aim to ensure that they include people with a range of backgrounds and life experiences, as part of policies based on equality and diversity. Board members and staff should be enabled where appropriate to talk about circumstances in their own lives that relate to vulnerability: the message should be that openness is encouraged and valued.
- ✓ **Regular in-house seminars** and similar activities should be routine in order to inform and update board members and staff on issues relating to consumer vulnerability. These should include speakers from a range of external organisations that work with consumers in vulnerable circumstances. Participation should be seen as integral to people's roles, not as a marginal activity.
- ✓ The regulators should help to inform understanding among the companies they regulate by **sharing key knowledge** on a regular basis, and encouraging the companies to collaborate and share experience. This should include new entrants to these markets.
- ✓ **Arranging placements** with organisations that work with consumers in vulnerable circumstances should be actively explored as a possibility for board members, senior management and other staff, without placing undue pressure on those organisations. This should include teams working on economic and market issues.
- ✓ Regulators need to build on recent initiatives to improve cross-sector **collaboration** and develop ways of sharing expertise and knowledge about consumer vulnerability on an ongoing basis.

5. Conclusions

Attitudes towards consumer vulnerability in these services are changing in positive ways. There is growing acceptance of the need to look at the nature and extent of consumer vulnerability, instead of narrowing the debate to one that focuses on 'groups' of 'vulnerable consumers'. A number of welcome steps are being taken to put this into practice on the part of the regulators and the UK regulators' Network (UKRN) and by some of the companies involved.

But, whilst there are examples of good practice, consumers are still facing barriers and problems in these essential services with potentially serious repercussions for consumers in vulnerable circumstances. Fundamental changes are needed in many aspects of company policies and behaviour.

The types of difficulties encountered include products and services that are excluding and ignore the range of consumers' needs; inaccessible telephone systems and call centres; inadequately trained frontline staff; and barriers for consumers wanting to switch suppliers. When things go wrong, a bad situation can be made even worse by poor complaint handling.

Moreover, whilst specialist teams in a company may be doing their best to help consumers in vulnerable circumstances, another part of the same company may be working in the other direction with policies designed to mislead or exploit people. Practices such as pressurising consumers to buy inappropriate products or services, or misleading terms and conditions may well put someone already in a vulnerable situation at serious risk or tip a consumer into vulnerability.

For real and lasting change to happen, policies to tackle consumer vulnerability need to become integrated into all aspects of companies' operations, and viewed as part of their mainstream business activities – not as a marginal side issue. Similarly, strategies and approaches towards consumer vulnerability should be embedded in all aspects of regulatory policies and decision-making. This means making inclusive service the underlying driver for all activities. Alongside this, there are a number of critical challenges for the regulators and companies to address, including how to achieve meaningful organisational commitment, openness and accountability, and lasting organisational learning.

For more information

Leicester Law School
University of Leicester, University Road,
Leicester, LE1 7RH, UK

t: +44 (0)116 252 2363

f: +44 (0)116 252 5023

e: law@le.ac.uk

w: www.le.ac.uk/departments/law



UNIVERSITY OF
LEICESTER

© University of Leicester