

How the Consumer Duty can transform responses to economic abuse

The new Consumer Duty (confirmed in Financial Conduct Authority 'FCA' publications PS 22/9 and FG 22/5) sets higher standards of consumer protection across financial services, and requires firms to put their consumers' needs first, with a particular emphasis on treatment of consumers with characteristics of vulnerability or who may be at a greater risk of harm. This provides financial services firms with an opportunity to transform their response to economic abuse.

Current responses to economic abuse predominantly focus on addressing negative outcomes for victim-survivors. However, these outcomes could be prevented from happening and minimised if an understanding of economic abuse was reflected within end-to-end product design.

For example, thinking about how existing products such as credit cards and loans are currently exploited by perpetrators of economic abuse and considering innovative ways to reduce and limit this. This might be through reviewing the account terms and conditions, restricting the option to add named card holders to credit cards and/or applying positive friction when lending. Taking steps like this will extend the protections afforded to victim-survivors of economic abuse and will make it harder for the perpetrator to exploit the product. It will also allow the financial business to act against abusive behaviours – with the goal to eradicate this entirely.

This briefing has been developed by the charity Surviving Economic Abuse (SEA) in partnership with the law firm Simmons & Simmons to help financial services firms consider economic abuse when interpreting what good outcomes (Principle 12) look like for victim-survivors vis-à-vis the rules the FCA believes are integral to driving good outcomes related to:

1. Products and services
2. Price and value

“The Duty builds on the FCA’s historical guidance on fair treatment of vulnerable customers, and through principle 12, imposes a higher standard on firms

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3. Consumer understanding
 4. Consumer support

These outcomes are in turn, supplemented by three cross-cutting rules which are intended to inform and help firms interpret the four outcomes intrinsically linked to work to prevent economic abuse:

1. Acting in good faith toward retail consumers
2. Avoid causing foreseeable harm to retail consumers
3. Enabling and supporting retail consumers to pursue their financial objectives

The Consumer Duty and vulnerable consumers

There is direct read-across between the focus on 'avoid causing foreseeable harm' and a vulnerable consumer. The FCA defines a vulnerable consumer to be someone who, due to their personal circumstances, is especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care.

The terms "vulnerable" and "vulnerability" collectively appear in PS 22/9 83 times and FG 22/5 appear 108 times. It is therefore clear that achieving good outcomes for vulnerable consumers is a core element of the Duty.

Moreover, the Duty builds on the FCA's historical guidance on fair treatment of vulnerable customers and, through Principle 12, imposes a higher standard on firms.

Outcomes for vulnerable consumers and links to economic abuse

In February 2021, the FCA published FG 21/1 which outlines the FCA's final guidance on the fair treatment of vulnerable customers. It highlights four drivers of vulnerability: health, life events, resilience, and capability. Within the 'life events' bracket the FCA highlight domestic abuse, including economic control, as being a characteristic of vulnerability.

The FCA repeatedly state that firms must treat consumers fairly, as per the FCA Principle 6. To achieve this firms are advised that they should (amongst other things):

- Understand the needs of their target market/customer base – this includes understanding the impact of vulnerability on the needs of consumers in a target market
- make sure that staff have the right skills and capability to recognise and respond to the needs of vulnerable customers
- respond to consumer needs throughout product design, flexible consumer service provision and communications – this includes delivering appropriate consumer services and communications to vulnerable consumers
- monitor and assess whether they are meeting and responding to the needs of consumers with characteristics of vulnerability and make improvements where this is not happening – this includes: monitoring, analysing, learning, and developing.

Economic control is referenced within FG 21/1 in the following places:

3.7: Firms should ensure that all relevant staff understand the potential needs from their target market's vulnerabilities and what this may mean in practice for their role. Example: Domestic abuse (including economic control): where relevant staff should be aware that this is widespread, with both immediate and long-term impacts on victim-survivors across all drivers of vulnerability. It is important that relevant staff are aware of how perpetrators of abuse can use financial services in their abuse and recognise how to safely provide victim-survivors with the support they need.

3.8: Case Study – good practice of increasing staff understanding of the needs of vulnerable consumers – example 4: An economic abuse charity has funding to support firms to implement the standards set out in 2021 Financial Abuse Code. For example, it is working in partnership with a firm to set up a specialist financial abuse team. It has a member of staff co-located within the team and advises on cases, including those where a decision needs to be made outside of usual policy.

The Duty builds on the FCA’s historical guidance on vulnerable customers and, through Principle 12, imposes a higher standard on firms in several ways:

1. The Duty introduces rules and a Principle for Business into the FCA Handbook (and guidance) that consistently and explicitly require firms to consider consumers with characteristics of vulnerability, whereas FG 21/1 was limited to guidance only.

The following examples exist alongside PRIN 2A.7.4G which specifically covers characteristics of vulnerability in the final rules.

- In relation to the cross-cutting rules: PRIN 2A.2.25G: Each of the cross-cutting obligations in this section requires firms to understand and take account of cognitive and behavioural biases and the impact of characteristics of vulnerability and/or lack of knowledge on retail consumers’ needs and decisions.
- In relation to Products and Services outcome: PRIN 2A.3.4(2) and (3)R: For each product that is not a closed product, a manufacturer’s product approval procedures must: take account of any particular additional or different needs, characteristics and objectives that might be relevant for retail consumers in the target market with characteristics of vulnerability; ensure that all relevant risks to the target market, including any relevant risks to retail consumers with characteristics of vulnerability, are assessed; and ensure that the design of the product does not adversely affect groups of retail consumers in the target market, including groups of retail consumers with characteristics of vulnerability Under PRIN 2A.3.9 Manufacturers are required to test products appropriately to assess whether the product meets the identified needs, characteristics and objectives of the target market, including identified needs, characteristics and objectives of retail consumers in the target market with characteristics of vulnerability.
- In relation to Price and Value outcome: 2A.4.11: In considering the value assessment and how it applies when manufacturers have different groups of retail consumer in their target market for a product, they should have regard to whether any retail consumers who have characteristics of vulnerability may be less likely to receive fair value.

- In relation to Consumer Understanding outcome: PRIN 2A.5.8(1)R: In supporting the understanding of retail customers, the firm must tailor communications provided to retail customers, taking into account: the characteristics of retail customers, including any characteristics of vulnerability.
- In relation to Consumer Support outcome: A firm must design and deliver support to retail customers such that it meets the needs of retail customers, including those with characteristics of vulnerability.

2. The FCA is clear in FG 22/5 that the Duty raises the standard of care afforded to all consumers, whilst their guidance in FG 21/1 sets out what firms should do to ensure vulnerable consumers experience outcomes as good as other consumers.

This means that whilst FG 21/1 remains relevant in outlining the FCA's expectations in relation to vulnerable consumers, and the guidance is consistent with and should inform the Duty's rules, ultimately, the Duty is raising standards for all consumers and therefore consumers with characteristics of vulnerability should benefit from the overall improvements in outcomes delivered by the new Duty. For example, firms will be expected to identify and take action when particular groups of consumers, such as consumers with characteristics, receive systematically poorer outcomes. Please refer to appendix 1.

How SEA can support firms meeting the Duty

Whilst FG 21/1 has helpful for guidance for firms, FG 22/9 and FG 22/5 does not expressly cover topics such as 'economic control', even within the context of good and poor practice examples. **As such, firms need additional guidance to support them with understanding and imagining what driving up standards above and beyond FG 21/1 might look like to comply with the Duty.**

One piece of guidance is the Financial Abuse Code developed by UK Finance in 2018 and refreshed in 2021 to reflect FG21/1 and Royal Assent of the Domestic Abuse Act (2021) which, for the first time, names and defines economic abuse in legislation. SEA played a key role in shaping the development of the Code and led the call to name and define economic abuse within the Act.

Financial services firms who are signatories to the Code and/or following FG21/1 (e.g., with Policies for Vulnerable Consumers in place today) have responded positively to tackling the issue of economic abuse, creating life-changing outcomes for some consumers. However, much of this support is provided on a case-by-case basis and, as the table below illustrates, focuses on consumer understanding and consumer support outcomes for retail customers.

Adopting the Consumer Duty allows firms an opportunity to review their products from the design stage and prevent economic abuse from taking place by closing-down opportunities for abusers to control their partners/family members, both when they are in a relationship with them and post-separation. This will deliver even better outcomes for vulnerable customers.

The practical measures that financial services adopt and/or enhance will, of course, depend on the size and nature of the business.

“Adopting the Consumer Duty allows firms an opportunity to review their products from the design stage and prevent economic abuse from taking place”

Products and Services	- Ensuring products are designed in a way that protect victim-survivors from further harm and enhance economic safety where there are known issues – for example, considering how accessible it is to obtain credit online when there is no human interaction or how existing products can inadvertently facilitate abuse (using child maintenance payment references to pass abusive messages/threaten the victim-survivor). - Reviewing the end-to-end journey on joint financial products and identifying key moments when perpetrators may seek to control victim-survivors. For example, firms might consider the application process on joint mortgages and how identification documentation is obtained. Firms might also consider what options are available when perpetrators refuse to sign for better rates which can force victim-survivors to pay more on their mortgage. - Establishing an approach to coerced debt – this might include adopting the Economic Abuse Evidence Form (EAEF) being piloted by SEA and Money Advice Plus (MAP) and thinking about how information relating to coerced debt is recorded on the victim-survivors' credit file.
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	■ Reviewing account terms and conditions to tackle economic abuse. This might include making it clear that firms will not tolerate abusive behaviours and can enforce account closures when these behaviours have been identified. Terms and conditions can also consider clauses which make it easier to delink a victim-survivor from perpetrators on joint accounts. ■ Insurance companies may consider offering individual life insurance policies as a default setting. This could prevent perpetrators taking out policies on a victim-survivors life and using this as a tactic to threaten and coerce them¹. ■ Reviewing how digital footprints are being used as a tactic to stalk and harass victim-survivors and exploring ways to tackle this such as having the option to remove transaction names from statements. ■ Monitoring abusive behaviour and known patterns of abuse/ changes in account behaviours through artificial intelligence. ■ Adapting discreet processes to record details of abuse on a consumer's record with their consent. Records of economic abuse recorded by financial services can be used in criminal prosecutions of coercive and controlling behaviour under the Serious Crime Act 2015.
Price and Value	■ Ensuring that the firm does not gain financially as a result of economic abuse – for example, considering putting a freeze on interest or writing it off/ removing fees and charges after becoming aware of economic abuse ■ Ensuring victim-survivors are not being charged more because of economic abuse (for example, access to credit if their credit file has been impacted) ■ Introducing 50:50 liability from the outset on joint products such as mortgages – allow consumers to consider whether the contract will be joint and several liability². ■ Considering the option of restricting additional card holders on credit cards to reduce exploitation³. ■ Ensuring the victim-survivor does not incur a fee for using a specific account as a result of the abuse they have experienced.

¹ Johnny Timpson, Timpson appeals for protection industry to root out economic abuse in life cover – Health & Protection (healthcareandprotection.com)

² Design to Disrupt, Centre for Women's Economic Safety, 2022 CWES_DesigntoDisrupt_1_Banking.pdf

³ Design to Disrupt, Centre for Women's Economic Safety, 2022 CWES_DesigntoDisrupt_1_Banking.pdf

Consumer Understanding	- Increasing consumer awareness of economic abuse and how to spot perpetrator tactics when joint products are entered into. - Include discreet warnings when a consumer applies for a lending or makes a payment online which advises the consumer who they can contact if they are being pressured or forced the lending/ making the payment. - Use positive friction where concerns have been identified⁴. - Consider innovative ways to educate consumers – such as support modules for young people accounts which will enhance their financial capability - Making sure details of how to reach a specialist team for support is clear and accessible on the firms’ website and in face-to-face settings. - Sending clear messages that abuse will not be tolerated through designated consumer support webpages, advertisement, and consumer literature. - Educate consumers to understand what economic abuse is and inform consumers of their rights Examples of good practice as per the 2021 Financial Abuse Code⁵: - Ensure consumers are aware of the support available – empowering victim-survivors to disclose and challenge the control of the abuser where safe to do so. - Supporting victim-survivors to access information about all the products they hold with them and how to access their credit report. - Having robust processes in place to respond to disclosures of abuse. - Keeping consumers safe – ensuring information about a victim-survivor is not inadvertently disclosed to the perpetrator.
Consumer Support	- Ensuring that there are specialist teams in place who can provide support to victim-survivors and help them gain financial independence from the perpetrator. - Supporting the consumer to regain financial independence – such as considering taking a different approach to lending when a victim-survivors’ credit score has been impacted by a perpetrator. - Offering an emergency flee fund or grant for victim-survivors.

⁴ Design to Disrupt, Centre for Women’s Economic Safety, 2022 CWES_DesigntoDisrupt_1_Banking.pdf

⁵ Financial Abuse Code, UK Finance 2021 <https://www.ukfinance.org.uk/system/files/Financial-Abuse-Code-151221-FINAL.pdf>

	- Consider partnering with relevant charities to reduce risk of foreseeable harm and allow consumers to access specialist support - Ensuring account safety – setting up a code word or passcode. - Ensuring that a victim-survivors' information is not inadvertently disclosed to a perpetrator. - Become a signatory of the UK Finance Financial Abuse Code - Consider cross industry sharing to ensure the consumer does not have to repeat their story to multi-agencies (as seen in the 'One stop, One story hub'⁶ (Thriving Communities Partnership in Australia) Examples of good practice as per the 2021 Financial Abuse Code⁷: - Ensuring staff have received the relevant training to identify economic abuse and respond to it. - Supporting victim-survivors to open an alternative bank account. - Implementing 'tell us once' policies to reduce re-traumatizing the victim-survivor.
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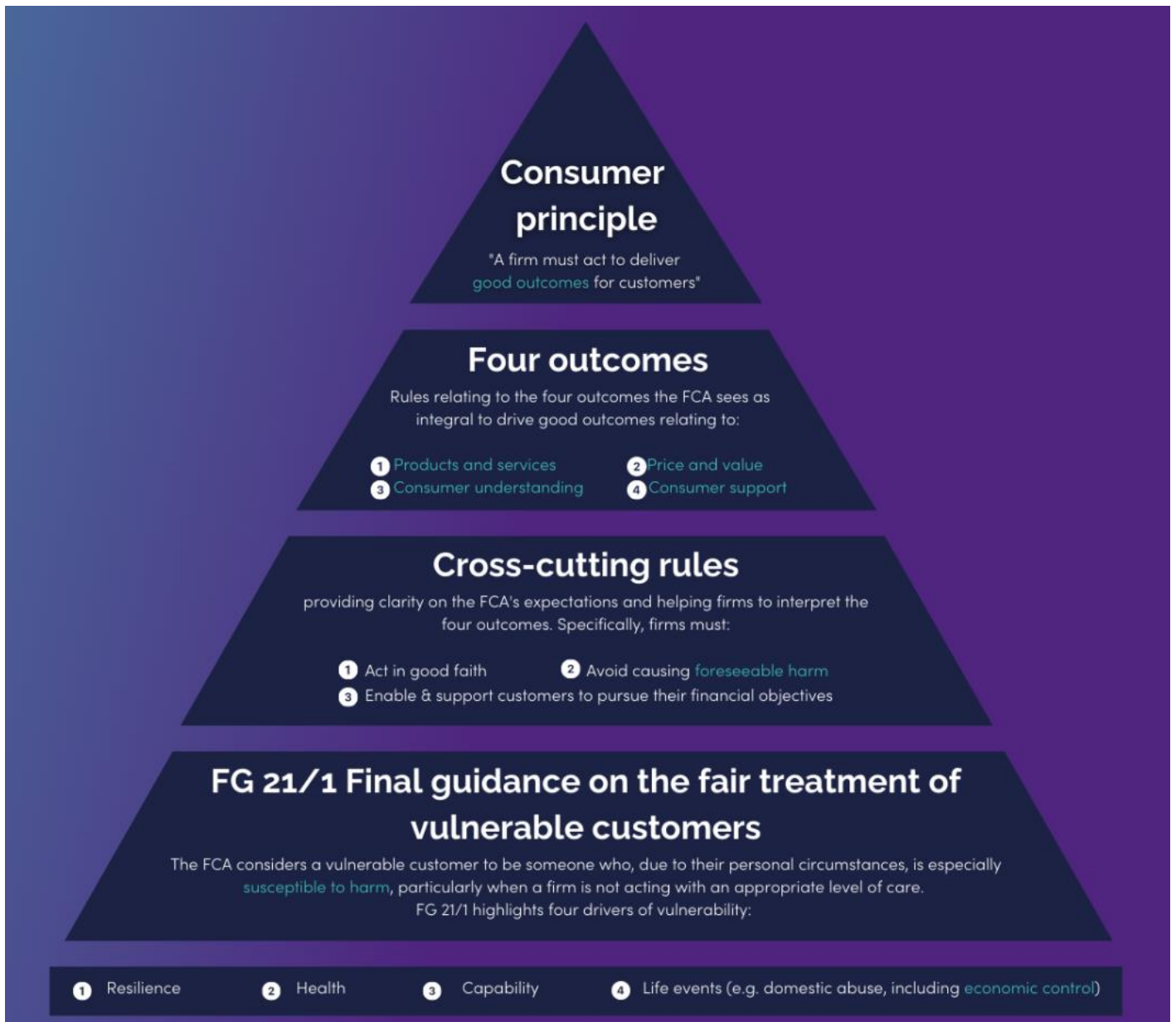
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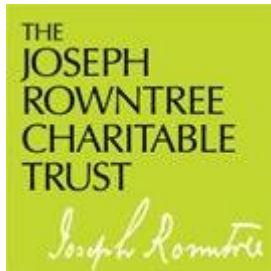
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⁶ <https://thriving.org.au/what-we-do/the-one-stop-one-story-hub>

⁷ Financial Abuse Code, UK Finance 2021 <https://www.ukfinance.org.uk/system/files/Financial-Abuse-Code-151221-FINAL.pdf>

Appendix 1.





The Joseph Rowntree Charitable Trust is a Quaker trust which supports people who address the root causes of conflict and injustice. It is a charity registered in England and Wales (210037).



abrdn Financial Fairness Trust funds research, policy work and campaigning activities to tackle financial problems and improve living standards for people on low-to-middle incomes in the UK. It is an independent charitable trust registered in Scotland (SC040877).



Surviving Economic Abuse (SEA) is the only UK charity dedicated to raising awareness of economic abuse and transforming responses to it. The charity works day in, day out to ensure that women are supported not only to survive, but also to thrive.



Simmons & Simmons is one of the largest global law firms: collaborative, agile, and partner-led. We are trusted legal advisors in the financial sector leading in advising a significant number of banks, investment firms, asset managers and payments firms on the implementation of the Consumer Duty.