DEMOS

Protected by Design

New fraud protections for people at risk.

Andrew Gloag
Polly Mackenzie
with Asli Atay

July 2019

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DEMOS

Cifas is the UK's fraud prevention community. A network of hundreds of organisations, large and small, we exist to protect everyone in the UK from fraud, including those less able to protect themselves. To achieve this we share data, intelligence and insight. Fraud affects the lives of millions and so we stand together to put the spotlight on it, and to protect every corner of our country.

Leaders in fraud prevention

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All errors and omissions are entirely our own.

Andrew Gloag & Polly Mackenzie - June 2019

Executive Summary

The financial services industry has worked tirelessly to remove friction from our lives, and make it easier to spend and send money than it has ever been before. For millions of us, this is welcome, if it makes it quicker and less stressful to pay our bills and manage our money. But there are also millions of us for whom a financial life without friction is more difficult, more stressful, and more dangerous.

This report looks in particular at the needs of a large, but distinct group: people with a health condition that affects their cognitive abilities and their capacity to make decisions without support.

As the arms race between fraudsters and the rest of society accelerates in the digital age, the harm caused to this group become all the more pronounced.

These consumers help to remind us that financial services shouldn't be built for a mythical 'average' person, with perfect economic and cognitive skills. They must be built for the real people who need them, complete with all their diversity, complexity, and individual needs.

This group includes the conditions:

- Acquired Brain Injury
- Mental Health crisis
- Dementia
- Learning disabilities

This group includes approximately 4.8m adults in the UK, all with overlapping characteristics which may include:

- Struggling to make and understand decisions
- Memory loss
- Impulsivity
- Isolation

There is some evidence, including from the FCA's own Financial Lives survey that this group, in particular, are more likely to be targeted or victimised by fraudsters, we show that those with these conditions - with the exception of dementia - are more likely to be poor, with low financial resilience, than the rest of the population. This means the harm from financial losses is likely to be greater.

When considering new protections, financial education is important, but it can only go so far. We need to change the way the system works, to give people who want it much better protection.

Banking shouldn't be a one-size-fits-all product. As financial technology develops, we can build a better model of protective financial services that can meet the needs of people who want that extra help, and are willing to have payments slowed down if it protects them from fraud and abuse.

Extra help does come with its own risks. Whenever a third party such as a family member, friend or carer becomes involved in finance, there is always a chance of abuse. However, third party involvement is inevitable. In a system that does not provide trusted third party access, many will use risky workarounds; over 16 million people know someone else's PIN Number with virtually no oversight. Instead of telling people not to involve third parties, they must find ways to bring that involvement into the light, where abuse can more easily be detected

Fraud is incredibly complex and hard to fight. No single organisation can successfully combat fraud; partnership working between law enforcement, financial services, and the care system are essential to all efforts to reduce both fraud and its impact. In this report, we make a series of recommendations which aim to provide a holistic blueprint for preventing fraud for people in this group.

Recommendations

1. Defining vulnerability

Recommendation 1: Efforts should be made to establish a more coherent approach to vulnerability focusing on an individual's ability to take steps to protect themselves, and the potential harm arising from losses resulting from fraud or abuse. Priority should go to identifying the additional needs people have, rather than labelling them as vulnerable. These needs should be met by providers as 'reasonable adjustments' under the terms of the Equality Act

Recommendation 2: The new voluntary Contingent Reimbursement Model Code for Authorised Push Payment Scams should include mental capacity limitations in practice.

2. Protective products and services

Recommendation 3: Customers at risk should be able to put a flag against their name in order to prevent new accounts being opened in their name. This would need to be held in a database, and would be most effective if it were a database that were already checked routinely as part of the account opening process, either Cifas' anti-fraud systems or the credit reference agencies

Recommendation 4: 'High Control' banking options such as limits on transaction volumes and sizes should be made available to all customers.

Recommendation 5: The FCA should continue to monitor the operation of Open Banking and ensure that its benefits and risks are regularly evaluated. Any regulatory changes identified to improve the system should be promptly introduced.

Recommendation 6: Providers should work towards offering customers the ability to receive notifications about unusual account activity, and allow third parties access to such notifications.

Recommendation 7: Cifas Protecting the Vulnerable Service should enable people to register as a third party, as well as themselves, to be notified if and when a new account is applied for.

Recommendation 8: When setting up restrictions, customers should be supported to set a procedure for what happens when they are removed, such as notifying a trusted third party, or requiring a mandatory cooling off period.

Recommendation 9: Transactions made immediately after the removal of restrictions should be considered potentially suspicious and flagged for additional checks

Recommendation 10: Companies should ensure front line staff are trained to identify potential capacity limitations, and ensure decision-making is supported where necessary

3. Identifying people

Recommendation 11: Restrictive financial products should be considered a reasonable adjustment under the Equality Act, and therefore that people with qualifying health conditions are entitled to them free of charge.

Recommendation 12: Access should in fact be freely available to all, in order to reduce stigma and increase take-up.

Recommendation 13: Efforts must be made to ensure that choosing these kinds of restrictions cannot be used as an indicator of risk in future credit decisions.

Recommendation 14: Proactive steps should be taken to encourage those who would benefit from these services to put themselves forward

Recommendation 15: Financial services companies should consider investing some of their marketing budgets in advertising more restrictive financial products and services, once they are available.

Recommendation 16: UK Finance, the Building Society Association and the Office of the Public Guardian should work together to develop a set of template options for people with variable or limited capacity, which banks could be expected to offer to customers, such as Transaction limits for the Donor, or attorney, and joint decision-making with the Attorney on larger decisions. This should be informed by ethnographic research with customers and carers, enabling them to co-design their preferred options.

Recommendation 17: There should be more oversight of the Power of Attorney system. A register of people with active Lasting Powers of Attorney, or under Court Order of Protection with real-time updates should be established, which consumer services companies are able to check against. The Office of the Public Guardian would need to be notified when someone has lost capacity; this information could be passed to them, with consent, by financial services companies.

Recommendation 18: Banks and their representative organisations should conduct research into the spending patterns of those with an Attorney registered on their account to better inform analysis of the financial footprint of abusive relationships.

Recommendation 19: Credit and criminal records checks should be offered before a Power of Attorney can be registered. This would enable a donor to have a fuller picture of their Attorney's finances before appointing them.

Recommendation 20: Attorneys should be required to submit an annual report, in line with deputies.

4. Cross-sectoral working

Recommendation 21: When police or trading standards departments discover 'Suckers lists', they should share them, and work collaboratively on outreach to those consumers, potentially involving Victim Support where they have the skills or capacity needed.

Recommendation 22: Police and financial services firms should establish an intelligence sharing network allowing information to be cascaded to banks and building societies to inform their own prevention tools and techniques. It should also be shared with Cifas to help inform their data analytic capabilities for identifying fraud.

Recommendation 23: Health and care providers need to recognise the harm associated with abuse and collaborate more effectively with local law and trading standards enforcement.

Introduction

Financial firms, regulators, government and civil society are working harder than ever to find new ways to protect and support vulnerable consumers. This work has risen up the priority list in recent years as understanding has risen about the profound effects of a wide range of circumstances - from poor mental health to ageing, from bereavement to redundancy - on people's financial and consumer lives.

Vulnerability, of all kinds, makes it more likely for people to suffer a range of financial harms. The reason a person is vulnerable may be a major life event like losing a job or a close family member, which often comes with a major income shock. People with poor health may struggle to maintain their income, or face higher costs meeting their health needs. They may end up paying more for goods and services because of their circumstances, or because those circumstances make it harder to shop around. And people may find themselves a victim of fraud, losing money to scam artists and imposters, often at a time when they can least afford it. That is the risk this paper seeks to mitigate.

Fraud is the volume crime of our age. It accounts for nearly a third of all crime reported in the Crime Survey of England and Wales.[1] About 3.6 million frauds were perpetrated against victims in England and Wales alone last year, according to the Office of National Statistics.[2] Fraud has a huge financial impact, but comes with an emotional impact too: victims often report feelings of shame, guilt, anger and regret that can be overwhelming.[3] And fraud comes in a range of guises: from fake police officers to fake lovers; from dodgy investments to shoddy and unnecessary house repairs; from cold call scams targeting people one by one to phishing emails sent to millions at a time.[4] Cyber criminals and fraudsters are constantly evolving, finding new and sophisticated ways to target vulnerable consumers. It is vital that efforts to protect those consumers keep pace.

This report focuses on one group of consumers, in particular: those whose circumstances mean they are likely to experience limited, or fluctuating mental capacity. This includes those with profound learning disabilities, those who have an acquired brain injury, those experiencing dementia, and those with serious and enduring mental health problems.

All of these conditions can mean people's ability to understand and make decisions about their finances may be impaired, either all the time, or at moments of stress or crisis. This is especially true if they are not well supported through that decision-making process. Limited or fluctuating capacity can make people particularly vulnerable to a range of scams and deceptions by exploitative criminals. It can also put them at risk of exploitation by those close to them. Crucially, this is a group for which education or information interventions, like those promoted by the industry to combat fraud in the general population, are unlikely to be successful in preventing harm: a different approach is needed.

We have worked closely with a range of organisations representing groups of consumers with experience of the physical and mental health conditions set out above. We have also worked directly with consumers themselves, including those with brain injuries, dementia, and serious mental health problems. We wanted to co-design a set of interventions and policy measures with the kind of consumers who will benefit from them, in order to ensure we appropriately balance the goal of protection with the rights and liberties of the individuals we are seeking to protect.

This report starts with an analysis of the current policy debate about the nature of vulnerability in the context of financial services, and makes the case that those with limited or fluctuating capacity should be legally entitled to additional protection or support under the terms of both the Equality Act and Mental Capacity Act.

We then go on to scope the size, and particular needs, of the group of consumers on whom we have focused our research: those at risk of experiencing limited or fluctuating mental capacity. This chapter includes new analysis of the Financial Conduct Authority's (FCA) 2018 Financial Lives Survey[5], the latest available, assessing the particular financial experiences of the group under consideration, in comparison to the population at large.

Chapter three looks at fraud in the UK today, setting out its scale, and characteristics. It includes a simple typology of the kinds of fraud against which consumers might wish to be protected. This analysis is vital if we are to build successful fraud prevention tools that can interrupt the chain of events leading to a completed fraudulent transaction.

Many of those with limited or fluctuating capacity have a carer closely involved in their lives. We included carers in many of our consumer interviews, where they explained the role they play in supporting decision making, and preventing financial harm, for their loved ones. However, family members, carers and friends can also be the perpetrators of fraud and financial abuse. In Chapter 4 we look at the role carers, both informal and those with a Lasting Power of Attorney[6] in place, play in the lives of our target group. We analyse both the ways in which these carers could be helpful and harmful in the fight against fraud.

We conclude the report with a range of potential policy changes and proposed new products or services that could improve the lives of people with limited or fluctuating mental capacity. We hope all those reading this report will reflect on the role they and their organisation could play in bringing these changes to life, and establishing enduring protections for those at risk.

01.

Vulnerability and beyond

Effective strategies for supporting vulnerable consumers need to go beyond identifying them as being at risk, by analysing their specific needs and finding ways to accommodate them.

There has been an extensive debate in recent years about the best way to define and manage consumer vulnerability. In 2015, the Financial Conduct Authority (FCA) published an Occasional Paper on Consumer Vulnerability, which stated that:

> *"A vulnerable consumer 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."*[7]

In 2017, the FCA proposed an alternative definition, but after engaging with a wide range of consumer representative organisations, decided to stick with this definition, which had achieved widespread support and, in the words of the FCA, "provided a common understanding that allowed stakeholders to develop and adapt according to their specific business needs."[8]

However, the concept of vulnerability remains contested. Both the language and the substance of the approach adopted by the FCA, and financial services firms more broadly, remains controversial. Crucially, for this research, it does not reflect a shared understanding beyond the financial services industry of the nature of vulnerability; police forces, local government, health services, and non-financial consumer businesses operate under a range of different definitions of vulnerability. These definitions reflect a range of approaches to managing the needs of those identified as falling within this group.

Some organisations, particularly within the health and social care sectors, reject the use of the word vulnerable altogether. And many consumers reported to us that they did not like being labelled with this word, which they considered stigmatising.

This chapter sets out the range of approaches taken across sectors to identifying and responding to vulnerability. It explores the potential risks and benefits of seeking to establish a single, cross-sector definition of vulnerability. And it outlines the case for prioritising efforts to identify and respond to the particular additional needs consumers may have, and be entitled to under the Equality Act, in order to successfully interact with consumer services and - crucially - be better protected from fraud and abuse.

Approaches to vulnerability

We have identified three broad approaches to vulnerability, across the consumer, health and care, and crime and justice sectors. Within each sector, different organisations have taken different approaches, that further complicates the picture for defining vulnerability.

<u>Consumer sector</u>

In 2011, academic Peter Cartwright, at Nottingham University, created a useful typology of vulnerability in consumer services, which has informed a range of approaches.[9] He identifies:

- **Information vulnerability:** some people may face greater difficulties in obtaining and processing the information needed to make informed decisions.
- **Pressure vulnerability:** people may not act fully voluntarily but can be subject to

various pressures. These can stem from inequality of bargaining power, individual characteristics of the consumer, to the behaviour of the seller.

- **Supply vulnerability:** this relates to a lack of choice, where a consumer may need a service and have few options in terms of choosing a provider.
- **Redress vulnerability:** sometimes consumers may be vulnerable because they face greater difficulties in obtaining redress.
- **Impact vulnerability:** this relates to amplified effects on certain consumers. In many cases the poorest are least able to afford the consequences of bad decisions.

This breakdown helps us to understand the wide range of reasons why it might be important to identify groups of individuals as potentially vulnerable in consumer markets. Other major regulators have all adopted formal definitions of vulnerability that differ slightly from the FCA's:

Regulator	Definition
Ofcom	"Consumers who the Regulated Provider has been informed or should otherwise reasonably be aware may be vulnerable due to circumstances such as age, physical or learning disability, physical or mental illness, low literacy, communications difficulties or changes in circumstances such as bereavement;"[10]
Ofgem	"Vulnerability is when a consumer's personal circumstances and characteristics combine with aspects of the market to create situations where he or she is: Significantly less able than a typical consumer to protect or represent his or her interests in the energy market; and/or Significantly more likely than a typical consumer to suffer detriment, or that detriment is likely to be more substantial."[11]
Ofwat	"A customer who due to personal characteristics, their overall life situation or due to broader market and economic factors, is not having reasonable opportunity to access and receive an inclusive service which may have a detrimental impact on their health, wellbeing or finances."[12]

The FCA is perhaps the most important regulator for us to consider when it comes to financial crime, so we should analyse their approach in more detail. It identifies four key components to potential consumer vulnerability:

- **Low financial capability:** scores low on indicators of confidence and capability about managing personal finances
- **Low resilience:** over-indebted, struggling with bills, or not having enough money to avoid difficulties if faced with a financial shock
- **Health conditions:** experiencing a health condition lasting a year or more which substantially affects day-to-day living
- **Life events:** has experienced redundancy, bankruptcy, bereavement, serious illness or accident, or relationship breakdown in the last year

This definition is comprehensive, and reflects the broad range of personal circumstances that can affect people's ability to secure good outcomes from their interactions with consumer markets.

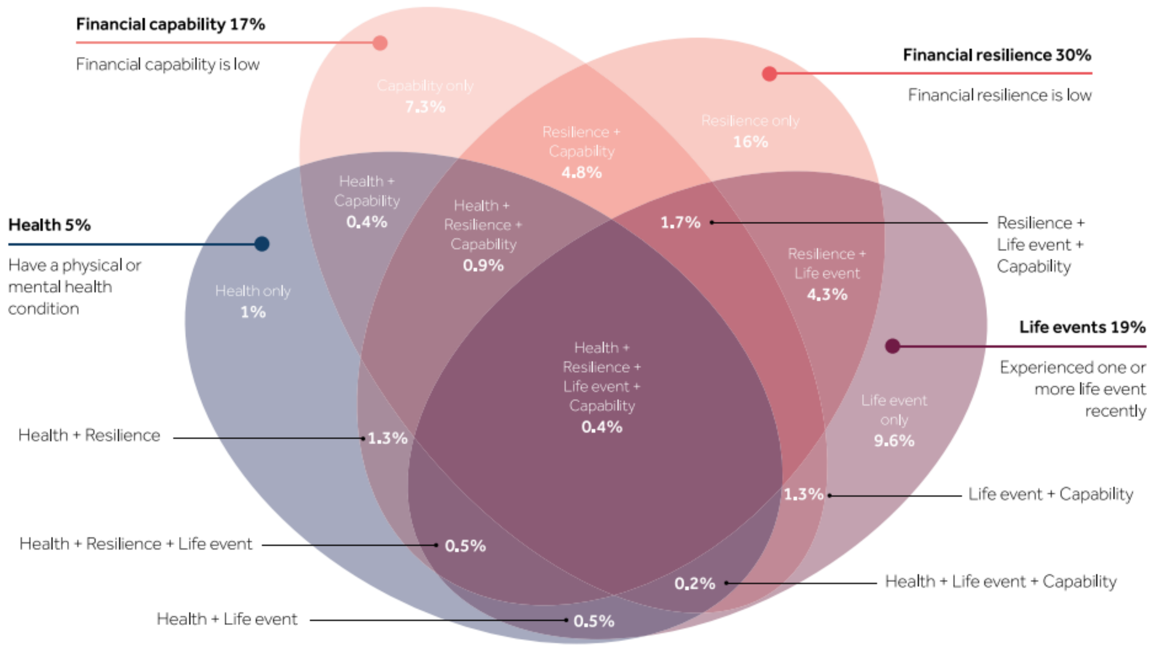

Figure 1: FCA Diagram on Vulnerability (2017)[13]

This definition is so wide ranging that it incorporates more than 50% of the population at any one time.[14] 30% of the population have low financial resilience, as shown in Fig 1, 17% have low financial capability, 19% have experienced a significant life event in the last year, and 5% have a health condition that significantly affects day to day living.[15]

Health and Care sector

The health and care sectors, including local government, take a different approach to assessing vulnerability, and no longer use the word. The word vulnerable was replaced in the Care Act 2014 with an approach based around safeguarding for adults who are "at risk of abuse or neglect because of their needs for care and support".[16] These safeguarding duties are led by local authorities, and the definition of abuse includes financial abuse.

> *"In social care, you would have people shouting at you if you talked about vulnerable people; it's firmly 'adults at risk', as defined in the Care Act."*
>
> Lawyer, roundtable participant

Prior to the Care Act, safeguarding duties were defined in the Safeguarding Vulnerable Groups Act 2006 as owed to "vulnerable adults", which included those:[17]

- in residential accommodation
- in sheltered housing
- receiving domiciliary care
- receiving any form of health care
- detained in lawful custody
- under a community order

- receiving a welfare service of a prescribed description
- receiving any service or participating in any activity provided specifically for persons
    - with particular needs because of age
    - with any form of disability
    - with a physical or mental problem
    - an expectant or nursing mother in receipt of residential accommodation
- receiving a healthcare personal budget
- requiring assistance in the conduct of their own affairs

Under the Care Act, local authorities are required to make enquiries, or ensure others do so, if they believe an adult is experiencing, or is at risk of, abuse (including financial abuse) or neglect.[18]

Three observations can be made about how this approach differs from that used in the consumer vulnerability sector:

1. The target group to whom these duties are owed includes all of those in receipt of services. This is because - unlike consumer services which serve the whole population - health and social care services by definition largely serve those with additional needs.
2. The approach is focused on identifying those at most risk of harm, and the goal is to minimise the risk.
3. Local authorities' duties are to act proactively in the case of any belief that an adult may be at risk.

Crime and Justice sector

Within the crime and justice sector, there are three distinct concepts of vulnerability. One, which need not concern us here, is focused on identifying vulnerable offenders, for whom punishment and rehabilitation needs to be tailored. The others look at:

- the risk of being a victim of crime
- characteristics which make a victim more likely to experience serious harm if they are a victim of crime.

The Code of Practice for Victims of Crime 2015 specifies that vulnerable victims are entitled to enhanced services.[19] Qualification for these services includes those who:

- are under 18 years of age at the time of the offence
- the quality of your evidence is likely to be affected because they:
    - suffer from a mental disorder
    - otherwise have a significant impairment of intelligence and social functioning
    - have a physical disability or are suffering from a physical disorder

Guidance from the Association of Chief Police Officers offers a different definition of vulnerability:

"A vulnerable adult is any person aged 18 years or over who is or may be in need of community care services by reason of mental, physical, or learning disability, age or illness AND is or may be unable to take care of him or herself or unable to protect him or herself against significant harm or exploitation."[20]

There is a wide range of approaches across the sector. In 2015 HM Inspector of Constabulary, Fire and Rescue Services in 2015 published a report called Fraud: Time to Choose.[21] This found that, despite every force having a stated priority on the importance of responding to vulnerability or placing a focus on this in another way, they approached it differently. The majority of forces, HMICFRS found, use one of the definitions given above. But nine forces use their own definition, or a combination of the definitions above.

The National Trading Standards Scams Team (NTSST) uses a "situational definition of vulnerability which takes into consideration factors including loneliness, isolation, recent bereavement, relationship breakdown, cognitive decline, mental capacity and financial and computer literacy."[22] This approach seems to be focused on prevention, identifying consumers whose characteristics or circumstances put them at the highest risk of falling victim to a scam.

A more coherent approach?

In the light of this smorgasbord of vulnerability approaches and definitions, it feels tempting to argue that a single, consistent definition under which all can operate would help crime, financial and care sectors work more successfully together to minimise harm.

A range of stakeholders have argued for a more consistent approach. In a submission to the All Party Parliamentary Group on Scams' recent inquiry, the conclusions of which will be published shortly, the Deputy Police and Crime Commissioner (DPCC) for Staffordshire stated that different definitions of vulnerability can hinder collaborative working.

"Age Concern focus on the elderly, Adult Safeguarding Boards focus on those defined by the Care Act, and police focus on entirely different vulnerability criteria. A universal definition on vulnerability would help protect more vulnerable citizens from fraud and scams."[23]

Responding to the same inquiry, the National Centre for Post-Qualifying Social Work and Professional Practice (NCPQSWPP) argued that the absence of a consistently used definition of the term vulnerability creates potential for differing priorities between professional groups and the public.[24]

Certainly the variance in approaches seems to result in wildly differing levels of recording crimes as being perpetrated against vulnerable victims. The chart below is reproduced from the HMIC report, and shows variance of nearly 35 percentage points in estimates of the vulnerable victim rate.

Figure 2: The proportion of police recorded crime with a vulnerable victim identified, by force, for the 12 months to 31 March 2015

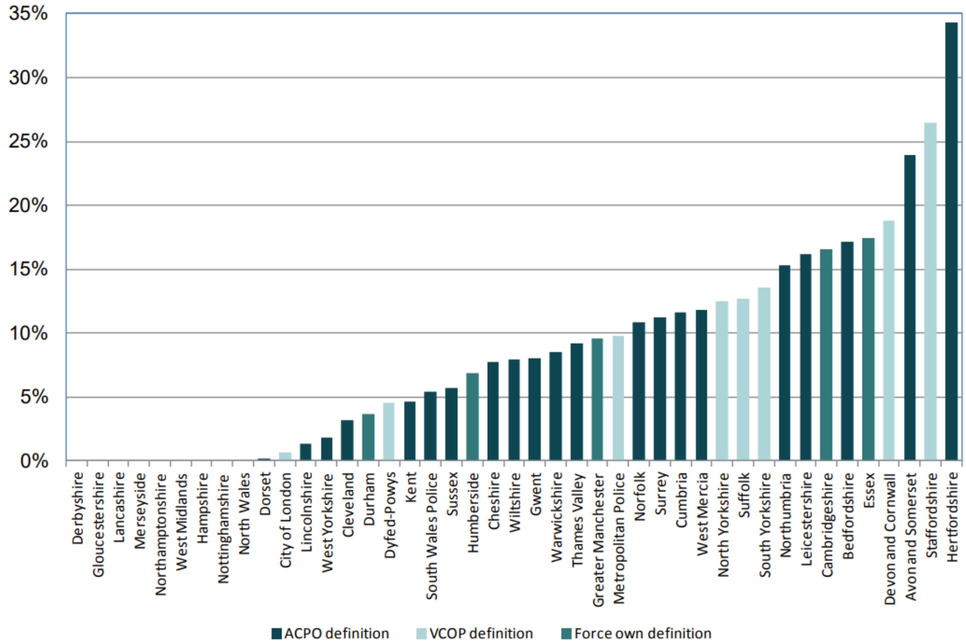

Figure 2: HMIC Data[25]

However there are some good reasons why different sectors have taken different approaches, in accordance with their priorities. It is not a surprise that crime and justice organisations focus first and foremost on minimising the direct risk of victimisation, by assessing vulnerability primarily in terms of the likelihood of experiencing a crime.

In the financial services sector, however, the duty to treat customers fairly needs to stretch far beyond protecting them from fraud.

> *"Average person who is a victim of fraud is an older man - who does not look like an average vulnerable consumer in the financial services sector, who is more likely to be someone with a health problem and mounting debts. Those at greatest risk of fraud aren't those in greatest need in a wider consumer services sense."*
> Roundtable participant, financial services industry

This raises a fundamental question. Consider a wealthy, healthy, intelligent man in his 50s with a 1 in 100 chance of losing £20,000 to a scammer. Compare an 80-year old woman with Alzheimer's and disposable income of £20 a week, facing a 1 in 1000 chance of losing £100 to an abusive carer, and thus going without adequate food for a month. From a crime prevention perspective, it is the former who is most at risk. But once you consider the impact of the loss on wellbeing, and the likely inability of the victim to take steps to protect themselves, it is legitimate to argue that it is the latter who should be the target of our most aggressive efforts at crime prevention.

This is the approach consumer services have, in fact, taken: those entitled to additional protection are not those most likely to lose large amounts of money - investors, for example - but those most likely to experience harm as a result of financial losses. This is why vulnerability in the water sector includes people on dialysis, no matter how wealthy, because they need access to water more than others.[26] Similarly, a diabetic needs electricity to refrigerate their insulin, and is vulnerable in the energy sector, if not elsewhere.[27]

There is therefore, a strong case for a definition of vulnerability within fraud prevention that goes beyond simply measuring who is the most likely to experience a crime, and considers who is the most likely to experience serious harm as a result of a crime. A typology of the harms potentially created by fraud is included in chapter 3.

However, given the varying priorities of the different sectors involved in protecting people with complex needs, there will never be a single definition of vulnerability that can be used for every sector, in every circumstance. Instead, we would argue that increased coherence within sectors - a consistent approach between police forces, between local authorities, and within the financial services sector for example - would improve the situation.

Consumer attitudes

Our interview participants were mixed in their opinion of the utility of using 'vulnerability' in order to describe them. Most recognised the need to inform financial services providers of their circumstances in order to receive a service suitable for them. However, they made clear that their individual needs should always be recognised.

> *"We know a lot of people who have had brain tumours and we are all different."*
> Interview participant, with a brain injury

> *"You can't put an umbrella over it, we're all different and have different needs, and it has to be looked at for each individual."*
> Interview participant, husband has a brain injury

The term vulnerability itself carries with it a certain degree of baggage. Some see it as patronising, and argue that it denies them agency. Even though they may have significant issues around vulnerability, they may not identify as such. The social care sector is careful not to use the word to describe people with disabilities. For example, the 2014 Care Act conspicuously does not reference vulnerability, instead choosing to focus on 'adults at risk'.[28] When asked, many of our interview participants found the term deterministic. Evidence from the energy sector shows how some older people eligible for their supplier's priority service register resent being seen as vulnerable and do not take up the offer.[29]

> *"I wouldn't identify as vulnerable even though I have a learning disability"*
> Interview participant, has a learning disability

These views were reflected by the participants at our expert roundtable, who agreed that the word 'vulnerable' was often stigmatising, and not ideally used in direct customer-facing situations.

Of course, the concept of vulnerability may be useful in designing services and protections for consumers, whether or not those consumers are comfortable using the term. But for consumer-facing engagement, it is vital that we focus on identifying language and approaches that are less alienating and stigmatising.

> *"It's the word that's used in regulatory circles, to understand who is at risk of detriment. But it doesn't work well for discussions with customers. And as a blanket term it doesn't actually tell you much about what to do to help."*
>
> Roundtable participant

Identifying additional needs

There is an emerging consensus for a more granular approach to supporting customers who might be classified as at risk of vulnerability: focusing on the additional needs that must be met to enable them to interact with services on a level playing field with an "average" consumer. [30]

This is well understood in relation to physical access, where we now expect - and largely mandate - the provision of ramps to enable wheelchair access to buildings and public transport, and subtitles to enable people with hearing loss to enjoy video content. But the adaptations needed to help people with the cognitive impairments explored in this research, and outlined in more detail in the next chapter, are less well understood, and even less well embedded in service design and delivery.

To design an effective strategy to protect people at risk of harm from fraud, the first step must be to identify the additional needs they have, which must be met to offer them equal access. This is the approach required under the UN Convention on the Rights of Disabled Persons[31] - signed by the UK in 2009 - which adopts the social model of disability as its framework. The social model of disability is well-expressed within the Convention itself, which states in its preamble that:

> *"Disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others."*[32]

Because disability arises from the environment in which people with disabilities find themselves, there is an obligation on us all to adapt the environment to meet people's additional needs. This shifts the burden from the individual to navigate an unsuitable environment, to state, private and civil society actors, who should work to build a suitable environment.

One of the state's obligations under the Convention is towards this kind of universal design. It says states should:

> *"Undertake or promote research and development of universally designed goods, services, equipment and facilities ... which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines."*[33]

Adapting services to meet the needs of people with disabilities of any kind often comes at a cost. Businesses can be resistant to spending money to meet the particular needs of consumers who are expensive to serve well. However, when a customer's additional needs are a direct result of a disability, or impaired mental capacity, there are legal protections to ensure they are met. The two key pieces of legislation are the Mental Capacity Act 2005 and the Equality Act 2010.

The Equality Act provides a legal protection from discrimination on the basis of protected characteristics, including disability.[34] Disability includes health problems which have a substantial and long-term adverse impact on a person's ability to carry out normal day-to-day activities. If a person is protected under the Act a service provider may be under a duty to make 'reasonable adjustments' to adapt its serve, where that person is at a major disadvantage compared to other people who do not have a disability.[35]

This may mean that if a customer is either:

a) at a heightened risk of fraud; or
b) at a heightened risk of harm resulting from fraud.

Because of their disability, they would be entitled to 'reasonable adjustments' to protect themselves from that harm.

The Mental Capacity Act (MCA) 2005 applies to everyone involved in the care, treatment, and support of people aged 16 and over living in England and Wales who are unable to make all or some decisions for themselves.[36]

Mental capacity is a person's ability to make informed decisions at a particular point in time.[37] Law and regulatory guidance require organisations - including financial services companies, health and care providers, and people within the criminal justice system - to presume that an individual is able to make their own decisions unless they know or have reasonable grounds to suspect that individual has a capacity limitation.

The FCA sets out a wide range of requirements and guidelines for financial services companies in its Handbook.[38] One part of this handbook, referred to as a specialist sourcebook, sets out particular guidelines for consumer credit decisions. It is known as CONC, for short. CONC deals with mental capacity in the following way:

> *"Unless the firm knows, or is told by a person it reasonably believes should know, or reasonably suspects, that the customer lacks capacity."*[39]

The document continues:

> *"Where a firm reasonably suspects a customer has, or may have, some form of mental capacity limitation which would constrain the customer's ability to make a decision to borrow, the firm should not regard the customer as lacking capacity to make the decision unless the firm has taken reasonable steps without success to assist the customer to make a decision."*[40]

This suggests that, in order to comply with law and regulation, organisations suspecting a customer has a capacity limitation ought to take “reasonable steps” to assist the customer in making decisions.

CONC refers to consumer credit decisions. However, it provides a useful framework for a broader approach to handling capacity limitations, which we believe is relevant far beyond the credit environment and the financial services industry.

Taken together, the Equality Act and the Mental Capacity Act suggest that all organisations should work to identify and meet the needs of individuals with disabilities and mental capacity limitations,this should be highly relevant to all areas including the fraud prevention agenda.

Conclusions

This chapter shows how hard it is to establish a single definition of vulnerability that could work for all organisations, in all sectors, who might need to work on preventing fraud. It argues that the impact of fraud victimisation should be a key consideration in determining the priority customers for protection.

Effective strategies for supporting vulnerable consumers need to go beyond identifying them as being at risk, by analysing their specific needs and finding ways to accommodate them. The Equality Act 2010 and Mental Capacity Act 2005 provide a legislative framework under which those adjustments should be proactively provided, and free of charge. Where an individual’s ability to protect themselves from harm is impaired due to a disability or capacity limitation, companies and state organisations must take action to give people an equal chance of protection, including providing active support with decision-making for those who need it.

In the next chapter, we look at the characteristics of consumers at risk of experiencing limited mental capacity, and identify the additional needs they may have, which will need to be addressed to give them equal protection from the harms associated with being a victim of fraud.

02.

Supporting people with limited or variable mental capacity

...there is no single dividing line between those people who lack capacity and those who have it.

The primary goal of this research is to examine the potential for new protections from fraud for a group of consumers who are at high risk of fraud, and face particular challenges when it comes to protecting themselves. This is those people who have what is known as a "mental capacity limitation":[41] in other words, as a result of a physical or mental health condition, they struggle with understanding and making some or all kinds of decisions.

In this chapter we outline the definition of mental capacity, and identify the primary conditions associated with impaired capacity, which have been the focus of our research. We put forward an analysis of how many people, in any given year, will experience these conditions. And, in line with the conclusions of the previous chapter, - the priority of focusing on additional needs, we will identify such particular needs that people with these health conditions may have. We will identify ways to meet these needs, and reduce the risk of harm from fraud and abuse for these customers in Chapter 5.

This chapter also includes a new analysis of the data from the FCA's Financial Lives Survey.[42] We use the data to compare the financial behaviours and outcomes of people likely to experience capacity limitations, against those who do not. This gives an indication of the risk of harm these groups are experiencing. It is not possible to estimate how likely they are to be victims of fraud from the Financial Lives Survey; however we also analyse the available data and evidence on fraud prevalence among these demographic groups below.

Defining mental capacity

Mental capacity is the ability to make decisions for yourself. In the Mental Capacity Act 2005, people who cannot do this are legally said to "lack capacity" due to "impairment of, or a disturbance in the functioning of, the mind or brain."[43]

Someone is deemed to have lost capacity when they cannot:

- understand the information relevant to a decision
- retain that information
- use or weigh up that information, and/or
- communicate an informed decision

The Act emphasises that capacity is fluid, and decision-specific. A person may be well able to make decisions about managing their money on a day-to-day basis, but lack the capacity to make an informed decision about managing investments or a pension fund. Others may be able to make larger, structured decisions, but lack the working memory needed to keep on top of things day-to-day. Intoxication with alcohol or drugs can also rob someone of their capacity to make decisions on a very temporary basis.

Therefore there is no single dividing line between those people who lack capacity and those who have it.

Sometimes a carer, or a court-appointed deputy, will have authority to act on someone else's behalf. A detailed consideration of the role these third parties can play in fraud prevention is set out in Chapter 4. However, it is important to note at this point that:

- Power of Attorney has to be granted when an individual (known as the donor) still has the capacity to make the decision.
- The document may grant the Attorney authority immediately, or may look to the future and grant the Attorney power only if/when the donor has lost capacity.
- Where a person loses capacity before agreeing to a Power of Attorney, the Court of Protection can appoint a deputy to manage the person's affairs. This may be a family member, solicitor, or a professional deputy working for a local authority.

Cifas currently offers a programme called "Protecting the Vulnerable" which allows court-appointed deputies, and people holding power of attorney for a loved one, to join a protective register.[44] Any application for a new financial product made in the name of the vulnerable person will usually be automatically rejected.

Even when someone else has been appointed to manage an individual's affairs, that does not mean the individual is never allowed to make any decisions for themselves. Capacity is always decision-specific. The Mental Capacity Act has at its heart the goal of maximum autonomy for people whose capacity is limited or absent, and these are reflected in its five principles:[45]

1. A presumption of capacity, unless there are reasonable grounds to suspect it may be limited
2. If capacity is limited, individuals should be supported to make their own decisions, wherever possible
3. Taking unwise decisions is not an indication of lack of capacity
4. Anything done on behalf of someone lacking capacity must be in their best interests;
5. If there is a less restrictive option, that should be used

In other words, help and support should be given to assist a person to make their own decisions and communicate those decisions, before it can be assumed that they have lost capacity. The Act also highlights the need for a formal capacity assessment to be taken out before any decisions are taken about how to support an individual.

Conditions associated with impaired capacity

For the purposes of this research, we have identified four health conditions, or groups of conditions, that are closely associated with impaired or diminished capacity:

- Acquired Brain Injury
- Mental Health crisis
- Dementia
- Learning disabilities

Not everyone who has one of these conditions necessarily lacks capacity, and not all individuals within these groups are inherently vulnerable. However, someone with one of these conditions may be more likely to be vulnerable or require additional help with managing their money.

It is important to note that many people who have issues around mental capacity suffer from anosognosia, commonly referred to a 'lack of insight'.[46] This is where people who have certain conditions are not able to comprehend that they suffer issues with their capacity. Approximately 50% of individuals with schizophrenia and 40% with bipolar disorder have symptoms of anosognosia.[47] Long recognized in stroke, Alzheimer's disease and other neurological conditions, studies of anosognosia in psychiatric disorders is producing a growing body of evidence of anatomical damage in the part of the brain involved with self-reflection.[48] This is a common reason why they may refuse to seek treatment for their condition, because they believe they have capacity. This can cause confusion and distress. It also makes them less likely to self-identify as vulnerable.

Acquired Brain Injuries (ABI)[49]

Definition: ABI is an injury to the brain which has occurred since birth. Causes include: tumour, stroke, haemorrhage, encephalitis, carbon monoxide poisoning, hypoxic injury, and trauma. Principal causes of trauma are falls, road traffic collisions, workplace injuries, violent assault and sporting injuries.

Prevalence: In the UK, around 350,000 people are admitted to hospital annually with an ABI-related diagnosis, as a result of trauma, stroke, tumour, or illness. The majority will require some form of support or rehabilitation; many will recover all or some of their brain function but for a substantial number the effects are permanent.

Characteristics: ABI survivors experience difficulties due to the effects of brain injury contributing to issues around communication, social interaction, personal organisation and sensory overload. Stress and anxiety frequently exacerbate the effects of ABI.[50]

Survivors of more severe brain injuries are likely to have long-term problems affecting their personality, relationships, and ability to live independently. Even with rehabilitation and support, survivors and their families are likely to face uncertain and challenging futures. On a cognitive level, there seems to be a particular need for aid with memory problems and problem-solving skills.[51]

> *"It's really bad because when I lose a short term memory, I've properly lost it. You can go over it over and over again, and I'll not remember. Reminding me won't work."*
>
> Interview participant, has a brain injury

> *"He used to do all his finances; all applications, direct debits and everything like that, but we do it together now. It's not because I don't trust him to do it, it's just because of his disability, sometimes I just need to check things."*
>
> Interview participant, husband has a brain injury

ABI can result in a range of physical, emotional and behavioural, psychological and cognitive changes. However, sometimes an ABI survivor may be unaware that these changes have taken place, and they may deny them even if they are pointed out.[52] ABI, especially involving frontal lobe injuries, often affects insight significantly.[53] It is very common for people to have insight for some things but not for others. For example, a person may be aware of their physical injuries but unaware that they have a memory problem.

Having difficulty with making decisions is another common problem after acquired brain injury. It is one element of 'executive functions' – the skills needed to enable us to deal with problems that arise in everyday life and to cope with new situations.

People are affected in different ways – some find it hard or almost impossible to make even simple decisions. Some people become impulsive, making hasty decisions and acting without thinking things through. Poor judgement in relationships, with money or in business can have devastating consequences for the individual and their family. This can mean people living with ABI are particularly vulnerable to financial crimes and scamming.

Following a brain injury some people may receive substantial sums of money from personal injury claims, personal accident insurance, charitable gifts, or other sources.[54] The money may be awarded for specific purposes, such as to compensate for lost future income and to cover the costs of rehabilitation and home adaptations. It is not necessarily intended to be spent as the person wishes. However, if the money is accessible and the survivor is deemed to have mental capacity, it can be difficult to prevent the survivor from disposing of their money if they wish to spend lavishly or give money away.[55]

Summary of risks:

- Difficulties with decision making and insight
- Risk of impulsivity
- May be vulnerable to carer, friend or family abuse
- May have a large lump sum

Mental Health crisis[56]

Definition: A mental health crisis is a period where a mental health condition requires urgent care and treatment either in a hospital setting or from a community crisis team. It may include periods intense suicidal thoughts, or begin with an attempted suicide; a hospital stay may be voluntary or under 'section', where a person is compulsorily detained to protect themselves or others.

Prevalence: In 2017, about 500,000 referrals to crisis care teams were made in England alone.57 From these referrals, tens of thousands of people received care in the community, while nearly 100,000 adults were admitted to hospital.[58]

Characteristics: During a mental health crisis a person often feels overwhelmed by their mental or emotional state, has exhausted their own coping strategies, and needs immediate help. This can manifest in many ways, from extreme distress or anxiety and being highly agitated, to having thoughts of self-harm or suicide, experiencing hallucinations or hearing voices. A person in crisis may have reduced understanding, be prone to impulsive behaviours, have difficulties in retaining information and lack motivation.

> *"At your lowest point you can be very vulnerable to making poor decisions. I could have been making bad decisions about money at that time, probably across the board during that time."*
>
> Interview Participant, experience of mental health crisis

For people who have severe and enduring mental health problems, such as schizophrenia, bipolar or a personality disorder, episodic crises may be a recurring feature of their illness. During a crisis, a person's mental capabilities can be reduced, which can make managing finances extremely difficult, and at times impossible. People with lived experience of crisis reported to the Money and Mental Health Policy Institute that they had experienced difficulties with:

- understanding and retaining information
- concentrating and maintaining clarity of thought
- altered perceptions
- acting on impulse
- exercising reasoning and judgement

Even outside periods of crisis, people with severe and enduring mental health problems may experience symptoms that make managing money, and taking informed decisions, more difficult. This could include paranoia and delusions, making it hard to know who to trust, or differentiate between a fraudster and a legitimate actor on behalf of the state. It can include impulsivity and inflated self-belief, making people more likely to be caught by investment scams.

Summary of risks:

- Difficulties with decision making and insight
- Risk of impulsivity
- Paranoia or delusions may make it harder to identify fraudsters
- Despair may make people careless about protecting themselves

Learning disabilities

Definition: A learning disability happens when a person's brain development is affected, either before they're born, during their birth or in early childhood. Sometimes there's no known cause for a person's learning disability, but they can be caused by things such as:[59]

- the mother becoming ill in pregnancy
- problems during the birth that prevent enough oxygen getting to the brain
- the unborn baby inheriting certain genes from its parents that make having a learning disability more likely – known as inherited learning disability
- illness, such as meningitis, or injury in early childhood

Prevalence: It is estimated that in England in 2011 1,191,000 people have a learning disability. This includes 905,000 adults aged 18+ (530,000 men and 375,000 women).[60]

Characteristics: A learning disability affects the way a person understands information and how they communicate. This means they may have difficulty:[61]

- Understanding new or complex information
- Learning new skills
- Coping independently
- Paying attention
- Following directions

People with learning disabilities are more likely to live in poverty A survey of over 2,000 families with children with a disability found that 17% go without food sometimes, 21% go without heating and 26% go without specialist equipment.[62]

Research by Dosh (2014) shows that people with a learning disability may face a number of difficulties in accessing banks and building societies.[63] These include bank staff not being sure whether some people with a learning disability have the mental capacity to open a bank account, not giving people the right support, and banks not providing accessible information. This may put them at risk because they are more reliant on cash, not able to keep their money safely, or track their spending.

> *"The only reason I would tell the bank would be if I knew the bank was knowledgeable about it. I think ADHD has a big PR problem. A lot of people don't think it's an actual thing. The first solution would be education to the public about ADHD, and if organisations are willing to adapt their services for people with ADHD. I wouldn't feel comfortable going into the bank and saying "I've got ADHD." Because they don't know anything about ADHD. The main problems people have are usually budgeting and spending money very impulsively."*
>
> Interview Participant with ADHD.

Summary of risks:

- Decision making may be difficult
- Reliance on carers or family members may put them at risk of abuse
- High poverty rates mean harm from losses may be high
- Reliance on cash may make it harder to identify, stop or reverse fraudulent transactions

Dementia

Definition: Dementia is not a specific disease. It is an overall term that describes a group of symptoms associated with a decline in memory or other thinking skills severe enough to reduce a person's ability to perform everyday activities. Alzheimer's disease accounts for 60 to 80 percent of cases.[64] Vascular dementia, which occurs after a stroke, is the second most common dementia type.[65] But there are many other conditions that can cause symptoms of dementia, including some that are reversible, such as thyroid problems and vitamin deficiencies.

Prevalence: There are about 816,000 people with dementia in the UK, of whom 775,000 were aged 65 years or over.[66] This represents about 1.3% of the entire UK population, and 7% of the population aged 65 years and over.[67] If the prevalence of dementia remains the same, the number of people with dementia in the UK is forecast to increase to 1,140,000 by 2025 and 2,100,000 by 2051. Older people are most at risk for dementia.[68]

Characteristics: People with dementia can become apathetic or uninterested in their usual activities, or may have problems controlling their emotions.[69] They may also find social situations challenging and lose interest in socialising. Aspects of their personality may change. A person with dementia may lose empathy (understanding and compassion), they may see or hear things that other people do not (hallucinations).[70]

Because people with dementia may lose the ability to remember events or fully understand their environment or situations, it can seem as if they're not telling the truth, or are willfully ignoring problems. As dementia affects a person's mental abilities, they may find planning and organising difficult. Maintaining their independence may also become a problem. A person with dementia will therefore usually need help from friends or relatives, including help with decision making.

> *"We often go into the bank because he's quite often convinced he's got no money, and we always find out he does have money in two different accounts."*
>
> Interview participant whose husband has Dementia.

The vast majority of people with dementia are over 60. They may have access to their life savings, including their pension, and with pension freedoms this is less likely than ever to be in the form of an annuity. FCA research found that over 65s with savings of more than £10,000 are three and a half times more likely to fall victim to investment fraud.[71]

As their physical health deteriorates - both as a direct cause of the dementia, and through other age-related illnesses - they may become increasingly reliant on family, friends and carers, and may be alone at home for most of the day, or even week.[72] Some may only have contact with carers provided by the local authority. Each of these groups is vulnerable to financial abuse by those close to them as well as by strangers.[73]

> *"Essentially there have been three attempts to defraud my father… the third one ended up with him being driven to a local cashpoint to take some money out and give it to these people, who were basically just crooks. He reported that to the police but they didn't follow it up. That was terrible, that made me feel so angry and sick. In the end no physical harm was involved, but it made me realise that if I became worried more about my father's physical and mental agility, then I am reassured that we've got that power of attorney as necessary."*
>
> Interview Participant, has power of attorney for his father

Summary of risks:

- Deteriorating capacity directly affects financial decision making
- Memory loss may make people especially vulnerable to repeat victimisation
- Many older people with dementia are isolated, with no-one to discuss decisions with
- Bereavement may mean people are dealing with finances alone for the first time

Shared characteristics and needs

While people in these four groups vary differently in their types of conditions, what unites them is their susceptibility to fluctuating or deteriorating mental capacity. Here we group the distinct characteristics these groups share. In line with the approach outlined in the previous chapter, we do not stop at identifying the problems: the final column suggests ways to meet their needs, and reduce their susceptibility to fraud and abuse. These ideas

Characteristic	Associated with	Need met by
	Associated with	Need met by
May struggle to understand and make decisions	ABI, mental health crisis, learning disability, dementia	Guidance and support during decision-making process
Memory loss	ABI, dementia	Direct support documenting decisions
Impulsivity	ABI, mental health crisis	Revocability of decisions
Isolation	All, but especially dementia	Access to professional support
Access to substantial resources	Some people with ABI and dementia	Ability to restrict own spending
Delusions/ hallucinations	Mental health crisis, dementia	Provide support; don't time-limit decisions; ensure decisions are revocable

Victimisation and risk factors

Having assessed the characteristics and potential needs of consumers with limited or impaired capacity, we will now look at the available evidence about their financial lives, and risks of experiencing fraud and abuse.

We start with an analysis of the FCA's 2017 Financial Lives Survey, which collected information about the financial choices and experiences of more than 13,000 UK citizens.[74] The survey did not ask questions about specific health diagnoses, so we are not able to match findings exactly to the demographic groups analysed above. Instead we have used a set of proxies from the available questions, to identify those who have a health condition which they recognise affects their cognitive abilities.

Financial Lives: Methodology

We focused on question D34 in the survey, which was asked only to respondents who disclosed a health condition lasting 12 or more months. We build a sample group of those who said this health condition affects one or more of learning, understanding or concentrating, memory, mental health behaviours and other.

We sought to analyse the financial and demographic characteristics of this group, when compared with the population as a whole. In particular we analysed other characteristics associated with vulnerability to harm from fraud:

- Low financial capability
- Life events
- Low financial resilience

We also explored the correlations between common markers of vulnerability (e.g. adverse life event, mental health problems, learning difficulties, old age) and various adverse financial outcomes such as falling victim to scams, lack of savings, and a lack of confidence in managing money.

Financial Lives: Findings

8% of survey participants have a health condition that affects their cognitive abilities: this is equivalent to 4.8m adults in a population of about 60m adults. The question is a useful proxy for people at risk of impaired capacity, especially for complex decision making. However, it is a lower test to say that a health condition affects cognition, than to say that it limits capacity. These findings do not demonstrate that 4.8m adults are experiencing incapacity at any one time; they represent the population at high risk.

However it is also likely that this is an underestimate of the total prevalence of these health conditions for three reasons:

A. Only respondents whose health condition is expected to last more than 12 months were asked this question; some conditions may be more transient, especially mental health crisis.
B. The survey methodology was not able to reach people who had lost capacity altogether.
C. The potential for agnosonia, as described above, means some people whose condition affects their cognitive capacity will not recognise or acknowledge this fact.

Limiting health conditions are more common among older people. In the FCA survey, 19% of people with a limiting health condition are aged between 55-64 years old. 53% of people with a limiting health condition are female, 46% are male, while 1% prefers not to say.

People with cognitive impairment reported substantially lower annual income than the rest of the group. 43% of people with a limiting health condition have less than £19,999 annual income, whereas only 23% of people without a limiting health condition earn less than £19,999 a year. 17% of people with a limiting health condition have less than £5,000 annual income, putting them at extreme risk from harm in the event of even very small losses to fraud.

People with these health conditions are relying on friends and family members to help with their finances. 27% of people with a health condition said they shared their personal details such as PIN or online account log-in details with someone they trust in the last 12 months. 12% of participants said they shared it with their spouse/ partner, 13% of people shared it with their friend or a family member, and 2% of people shared it with a carer or helper.

This rate is much lower for people without these health conditions. 19% of people without these health conditions. 14% of people without these health conditions said they shared their personal details such as PIN or online account log-in details with their spouse/ partner and 5% said they shared these with a friend or other family member.

Sharing these security credentials with close friends or family members is dangerous for two reasons. First, it exposes an individual to direct abuse by that friend or family member, and indirect abuse by someone else if the information is passed on.75 Second, it is a breach of the terms and conditions of an account. This means that a bank may refuse to refund any losses if they occur. This puts serious pressure on people with capacity limitations: if they ask for help from someone they trust, even if that help is designed to reduce their risks of making mistakes, they may disqualify themselves from being protected by their bank.

> *"[When I lost money to fraud] the bank asked me if I had done anything foolish with my card details, and I hadn't."*
>
> Interview participant, learning disability

People with a limiting health condition appear more likely to be victims of fraud. People with a limiting health condition were almost twice as likely to have their account or debit card used without their permission. In the past 12 months alone, this happened to 5% of people with these conditions, compared to 3% for the rest of the population.

5% of people with a health condition said that they have had money taken from their account in a way which involved their personal details being used without permission. Only 2% of the rest of the respondents said yes to this question.

This higher prevalence was seen in people being asked to give out their personal details, or transfer money through their account. 6% of people with a health condition said they received a request to confirm personal details and 3% of people said they received a request to transfer money through their account. Only 3% of people without these health conditions said they received a request to confirm their personal details and only 1% said they received a request to transfer money through their account.

Other evidence

These findings are consistent with a range of other academic and grey literature. A report in the Journal of Elder Abuse and Neglect in 2014 found that susceptibility to scams was positively associated with age and negatively associated with income, cognition, psychological well being, social support, and literacy.[76] Fully adjusted models indicated that older age and lower levels of cognitive function, decreased psychological well-being, and lower literacy in particular may be markers of susceptibility to financial victimisation in old age.[77]

A study of the US Health and Retirement Survey found that the most psychologically vulnerable population were also more susceptible to fraud. The combination of high depression and low social-status fulfilment was associated with a 226% increase in fraud prevalence.[78]

Conclusions

This chapter has shown there are about 4.8m adults in the UK with a health condition that affects their cognitive abilities in a way that may make financial decision-making harder. This puts them at high risk of experiencing a capacity limitation that may make them more vulnerable to fraud, and less able to take preventative measures to protect themselves.

There is some evidence, including from the FCA's own Financial Lives survey, that this group, in particular, are more likely to be targeted or victimised by fraudsters. This does not mean that their losses are the highest; there is no evidence by which we can assess the scale of losses experienced by this group. However, we can show that those with these conditions - with the exception of dementia - are more likely to be poor, with low financial resilience, than the rest of the population. This means the harm from financial losses is likely to be greater.

In the next chapter we examine the kinds of fraud currently prevalent in the UK, and some evidence of the impact it has both economically and socially in society. Capacity limitations can also make it harder to manage the emotional impact of being victimised. For all these reasons, we believe additional protections for this group can be clearly justified as proportionate, and just.

03.

The shape and consequences of fraud and financial abuse

Fraud is complex and hard to fight. No single organisation can successfully combat fraud; partnership working between law enforcement, financial services, and the care system are essential to all efforts to reduce both fraud and it’s impact.

Fraud happens at enormous volumes. Not only is it the most common crime, it is also rapidly changing and evolving, sometimes at an alarming rate.[79]

In 2017, one in 17 individual adults were a victim of fraud.[80] As society has become increasingly digitised, as has fraud, with a huge percentage of fraud involving digital technology in some form. There is no doubt that a banking system built around mitigating friction for the sake of economic efficiency has contributed in some part towards the volume at which fraud is carried out.

In the UK the word fraud is used to cover a wide range of activities including deception, bribery, forgery, theft and misappropriation.[81] This chapter looks at the different kinds of fraud that are most prevalent, the known risk factors for being targeted for, or losing money to, fraud, and the impacts on individuals and society from these crimes. We also look at cases which might also be termed financial abuse; where a position of trust is exploited for the sake of financial benefit to the abuser.

Fraud can find its way into almost every facet of our lives, from 'romance fraud' to 'work from home scams', there is a seemingly infinite number of ways in which an individual can be parted from their money.

Fraud against individuals is a multifaceted phenomenon. Action Fraud lists more than 160 different kinds of fraud and scam in its 'A to Z of fraud'.[82] However, there are three essential categories:

1. Unauthorised access or applications (Identity Theft)
    a. New products or services
    b. Access
2. Authorised (voluntarily by deception)
3. Abuse of a position of trust

This chapter elaborates on these categorisations with examples and statistics, and explores the current measures that already exist that aim to counter them.

Typology

<u>1. Unauthorised access or applications (identity theft)</u>

Identity theft happens when fraudsters access information about someone's identity (such as their name, date of birth, current or previous addresses) in order to either gain access to existing financial services, or apply for new services in the victim's name.[83]

The vast amount of information that is already in the public domain about us, or that we choose to share has made the practice of identity theft a lot more prevalent. Fraudsters can combine publicly available information with information obtained via social engineering techniques. Phishing, for example is one such technique whereby the victim is deceived into providing sensitive information such as an account password through a communication purporting to be from a legitimate entity such as a bank.[84]

Once a fraudster has obtained enough information about somebody's identity, they can use it to either gain access to existing accounts or apply for new accounts in the name of the victim. These are both explained in more detail below

1. a. New products or services

Type: This fraud type is where a fraudulent application is made to open a new financial product, usually credit related, leaving the victim liable for any repayments made. This is done without the knowledge and consent of the victim. This kind of fraud has high rates of reporting. It is usually detected and discovered by the victim, who gets chased for payments on accounts they did not open and will usually report this.

Scale: Cifas estimate that about 175,000 people's identities were used to open accounts fraudulently last year.[85]

> *"Mainly credit products and mobile phones, but online retail is the biggest increase. The value of loss is likely to be half of all fraud, perhaps £600-700m."*
>
> Cifas, Roundtable participant

Protective measures: Banks and retailers all have a range of measures in place to check someone's identity before approving a new account, starting with credit reference checks, and putting in place more stringent checks where an application is assessed as higher risk. However, where a fraudster has obtained extensive information about a victim, these can be relatively easily circumnavigated.

Stronger protection is available through Cifas, which offers a paid for protective registration for those who have been a victim of Identity Theft, which mandates additional checks for those registered. A tighter protection is available for those people who have lost capacity and have a court-appointed Deputy, or a Lasting Power of Attorney in place; these people can be registered to have new applications in their name automatically declined.

1. b. Access

Type: Unauthorised access to bank accounts can be anything from credit card fraud to using a password to access online banking. An unauthorised third party can gain access to existing financial products, e.g. through theft of card information, gaining access to online banking, or impersonating the victim in branch.

This type of fraud can go undetected for long periods of time, especially if the losses are small and spread out over time. Not all access is remote or carried out by a stranger. Abuse by carers or family and friends can be conducted in this way: borrowing a payment card without authorisation, for example.

Scale: UK Finance estimates the following scale of losses in the UK in 2018:[86]

- Card fraud (£566.0m)
- Cheque fraud (£9.8m)
- Online banking fraud (£121.4m)

- Phone banking fraud (£28.4m)

Protective measures: The financial services industry has a wide range of tools deployed to counter this kind of fraud, from PIN security on cards, to identity requirements for large withdrawals, to two-factor authentication for making payments via online banking. Most payment systems also use algorithmic monitoring to spot unusual transaction patterns, which can lead to payments being blocked or flagged to the user for verification; cards can then be frozen temporarily if unusual payments are identified to prevent increased fraud. None of these measures are perfect, as the continuing scale of successful frauds demonstrates, but they block a large volume of attempted frauds each year.[87]

The advent of Open Banking, under which people are able to grant a range of third party apps and services access to their bank account, could make it easier for fraudulent actors to take over accounts.[88] Open Banking offers real potential for improved banking – including better protections from fraud – as outlined in Chapter 5. But it also comes with risks, as people may mistakenly authorise services that are a front for a fraudster. These risks need to be taken seriously and monitored over time by the regulator.

2. Voluntarily by deception

This fraud includes a vast range of scams, where a person is persuaded to make a payment as a result of false representation by the fraudster. This can include:

- Romance scams, where an apparently loving relationship develops either online or in person, which is then used as cover to ask for money, for a range of fictitious purposes such as to pay off debts, or cover travel costs to meet the victim.
- Business opportunity scams, where a non-existent investment opportunity is presented to victims as a one-off chance to get rich.
- Impersonation of an official, where scammers pose as the police or a financial institution in order to extract information or payments from a victim.
- Retail scams, where victims are persuaded to part with money for goods or services that never materialise.

Many victims do not realise they have been scammed for a long time, if at all, and it may only be a third party such as a family member who sees through the deception.[89] These kinds of crime are not always reported as many people will feel shame at having fallen for a scam, and believe that - because they authorised the payment - there is little chance of getting any of their money back.

Scale: Consumers lost £228m to authorised push payment schemes in 2018, according to UK Finance.[90]

Protective measures: In February 2019, the Authorised Push Payments Steering Group - set up by the Payments Systems Regulator - agreed a new voluntary code on refunding some of the losses incurred by consumers to scams falling into this category.[91] This Contingent Reimbursement Model Code for Authorised Push Payment Scams became operational in May 2019. Under the code consumers may get their money back if they:

- Paid attention to warnings and advice given by the bank
- Had a reasonable basis that the person receiving the money was legitimate
- Took care in making judgements about what to do

The code also offers an additional protection for vulnerable people who could not reasonably be expected to act in the way outlined above, though there is no checklist for what counts as vulnerable.[92] Our view is that it is not reasonable to expect people with fluctuating capacity to make the judgements set out above, and for this group we hope banks will accept these conditions as an indication of vulnerability, and entitlement to refunds.

By shifting more of the burden of meeting the costs of APP fraud onto the industry, it is hoped that the financial services companies will have a sharper incentive to take preventative action against this fraud. Banks have agreed to step up efforts to identify and block APP scams including:

- Educating customers
- Identifying higher risk customers and payments
- Providing effective warnings about new APP scams
- Talking to customers and delaying or stopping payments in some circumstances
- Acting quickly when a scam is reported
- Taking steps to stop scammers from opening accounts

The code is voluntary, however, and the costs of the contingent reimbursement model may be high until steps to reduce the incidence of APP fraud are taken. The code should be reviewed after a year to see what lessons have been learned, and examine if and when an extension to the rest of the industry is feasible.

It is also important to note that scams are constantly evolving, putting a huge burden on law enforcement and financial services companies to detect, and warn against new techniques.

> *"We hear about some new scam or technique every week,"*
>
> Police officer, roundtable participant

3. Abuse of a position of trust

Type: The fastest growing kinds of fraud are digital, many of them perpetrated by cyber criminals operating in global networks.[93] But not all fraudsters are distant. Many vulnerable people lose money to people close to them, including friends, family members, carers, and neighbours.

A study in the academic Journal of Adult Protection published last year identified three types of abuse: [94]

1. Situations where the abusers (often family members) are legally in direct charge

of the victim's money;
2. Manipulative exploitation by an abuser who can "persuade" or force the vulnerable person to "lend" money or be otherwise persuaded to spend money to the abuser's benefit;
3. Deception – abuse of trust usually by a stranger or by someone who has infiltrated their way into the victim's friendship circle and is in a position to persuade the victim to give them money, or pay over the odds for goods or services, or simply not produce the gift or service.

Scale: Financial and material abuse are the third most common referrals to the Office of the Public Guardian, which supervises the Power of Attorney system, with 16-17% of reported problems involving this kind of abuse in 2015-16.[95]

Protective measures: A range of statutory authorities have duties of care to adults at risk, including the police, local authorities, and the Office of the Public Guardian. Where problems arise, each of these authorities can investigate. A Power of Attorney can be overturned by the Court of Protection where an individual is shown to be abusing the donor, or not acting in the donor's interests.[96]

In line with the General Data Protection Regulation, and the Data Protection Act 2018 , financial services companies take a strict view about allowing third parties to access information about their customers, unless that third party has a legal authority - such as a Power of Attorney.[97] We will see in the next chapter the extent to which third parties could be of support in protecting vulnerable people; however it is also clear that strict privacy protections do offer some protection from exploitation.

Algorithmic detection of unusual spending patterns may also, sometimes, spot some of this kind of abuse - where a person's credit card has been used without their consent by a family member or carer.

We look in more depth at the risks and opportunities associated with third party involvement in personal financial decisions in Chapter 4.

Risk factors

In Chapter 2, we looked at the particular risks of fraud faced by people with fluctuating capacity. Here we outline the evidence for a range of other risk factors that may intersect with fluctuating capacity and increase particular individuals' risk profile.

Age

Scams - including APP scams - seem to be more targeted at older people. While the average age of a reported fraud is 45-50, National Trading Standards report that the average age of a scam victim is 75.98 An evidence review by Age UK suggested as many as 53% of those over 65 believe they have been targeted by fraudsters.[99]

Life events

When someone's life changes dramatically - when they lose their job, divorce, or live through a bereavement - the tasks they have to undertake often change dramatically, too. Financial management can become much more difficult after an income shock. A health diagnosis may lead to new costs and new things to buy. In many couples, one partner does the majority of the financial management; if that partner dies, or the couple divorce, one partner may find themselves with extensive new responsibilities. This may make it easier to make mistakes.

Our analysis of the FCA Financial Lives survey suggests that people who go through these life events are more at risk. We identified that 19% of survey participants had experienced one or more adverse life events. People who experienced adverse life events are more likely to share their personal details such as their PIN or online account-details with someone they trust. 26% of people who experienced an adverse life event said that they shared their personal details with either their spouse, partner, a friend, family member or a carer. This rate decreased to 19% for the rest of the people.

10% of people who experienced adverse life events said that they lost money as a result of a request to transfer money through their account, whereas this rate was much lower for the rest of the group. Only 3% of the rest of the group said they lost money to a scam.

Prior victimisation

Fraudsters buy and sell a wealth of information on the 'surface' and the 'dark webs'[100.] Much of this information in the form of what is colloquially referred to as a 'suckers lists' which is a list of those who are seen as soft targets by fraudsters and who have often been victims of multiple cases of fraud.

Many people on these lists are those less able to protect themselves from fraud either because they are vulnerable through mental health related issues or are transitionally vulnerable due to trauma in their lives, such as a bereavement, which temporarily affects their judgement and leaves them less well able to spot, and respond appropriately to, attempts to defraud them.

Impacts

Fraud is often seen as the archetypal 'victimless crime', but this is far from the case. While the majority of fraud incidents result in small financial losses under £250 (62%), the emotional toll taken on victims can be profound.[101] Victims can experience financial hardship, broken relationships, psychological effects, mental and physical health problems.[102] These can be particularly exacerbated if the victim already has some characteristics of vulnerability. National Trading Standards report that individuals defrauded in their own homes are 2.5 times more likely to either die or go into residential care within a year of the offence; this is probably an indication of the particular vulnerability of those victims most successfully targeted as well as an indication of the emotional reverberations from the crime.[103]

The diagram below is adapted from a Home Office evidence review of the potential impacts of fraud and financial abuse on victims.

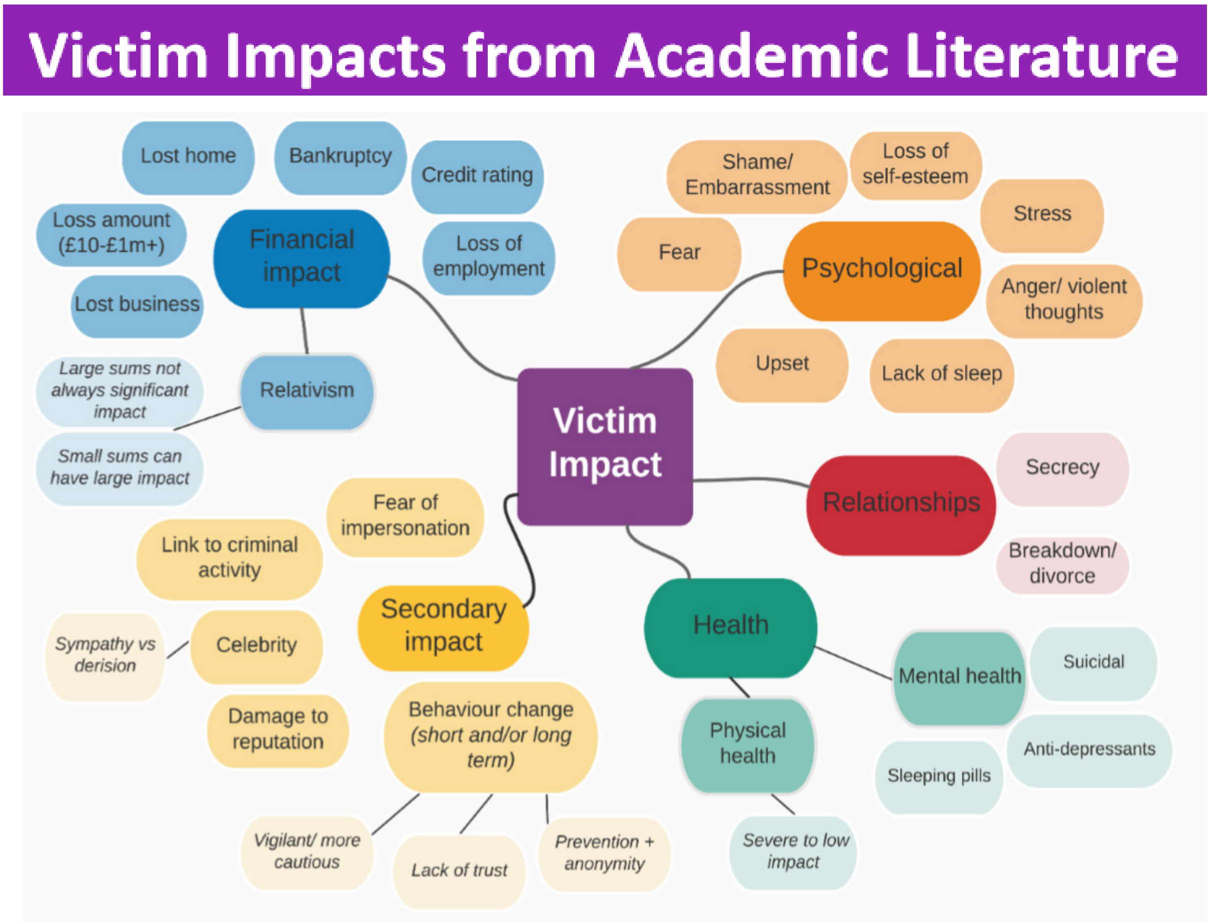

Figure 3: Victim Impact from The Scale and Nature of Fraud (Home Office)[104]

Conclusions

Fraud is complex and hard to fight. No single organisation can successfully combat fraud; partnership working between law enforcement, financial services, and the care system are essential to all efforts to reduce both fraud and its impact.

This chapter has shown that efforts to reduce fraud are widespread and ongoing, but it is a constant arms race with the fraudsters, who are developing new tools and techniques just as quickly - if not more quickly - than fraud prevention teams.

Efforts to combat fraud need to take into account the complexity of the landscape, the available bandwidth of the organisations involved, and the different kinds of fraud that exist. Our understanding of the people most likely to be targeted needs to continue to evolve to enable even better targeting of protective measures.

We now go on to look at the particular issues associated with third party involvement in people's personal finances, before recommending a range of potential policy and product changes that could help protect people even more successfully.

04.

The role of family, friends and carers

We need a new approach that allows more people to provide third party support, but increases the scrutiny of all carer involvement, whether formal or informal.

Life with a serious health condition that affects your mental capacity can be challenging. It is no surprise that millions of people with these health conditions rely on the support of friends, family and neighbours, as well as professional caregivers.[105] From help with cooking, washing, and housekeeping to help with finances, bills and paperwork: loved ones are often the first place to which vulnerable people turn when things are just too difficult to manage alone.[106]

The support that informal carers give in our society is worth billions. In 2015, this figure was estimated to be £132 billion per year.[107] Every day there are millions of people whose days go by happily thanks to someone who cares about them. Those carers have often reported how difficult it is to protect their loved ones from fraud or financial mistakes, because there is no simple, affordable way to help. All financial service providers, utilities and service providers have strict data protection and security policies to prevent unauthorised access to accounts. These policies - while essential - often do not have sufficient flexibility to meet the needs of carers. Previous Demos research 'The Carers' Covenant' Highlighted in detail some of the challenges that carers face.[108]

But carers can also be the source of enormous harm. People with limited capacity and additional needs can easily be exploited or abused by those close to them, and may have no-one else to turn to, when they are worried about someone's behaviour. When money is involved, sadly, some people take advantage of their parent, partner, or friend's limited capacity to try to get away with ongoing fraud and financial abuse.

This makes it difficult for financial and care organisations to improve the support they give to friends and family carers, however much those carers and their loved ones ask; they have legitimate concerns about enabling abusers to get easier access to the money and assets of people with serious health conditions.

This chapter looks at the evidence about how friends, family and other informal carers are involved in supporting vulnerable people's financial management. It presents the evidence about the scale and scope of abuse carried out by these trusted carers, including those with legal rights under Power of Attorney legislation. And it presents the case for a new approach that allows more people to provide third party support, but increases the scrutiny of all carer involvement, whether formal or informal.

The extent of carer support

Across the UK as a whole there are almost seven million unpaid carers - friends or family members who provide help and assistance with essential daily activities.[109] Nearly a million people (880,000) provide help or support to someone with a mental health condition, and still more care for those with neurodegenerative conditions such as dementia which can affect capacity - as discussed in Chapter 2 - in similar ways.

This support is often crucial to preventing or detecting frauds: a potential victim may check in with a loved one before authorising a transaction, and be warned off; a carer may spot a large transaction in a bank statement they are checking, and query it; a carer may have alerts set up for their loved one's bank account, telling them about an unpaid bill or unauthorised overdraft, which alerts them to higher than usual spending. Some carers also told us they routinely checked the post, or email, removing malicious or dangerous content before it could be acted on.

The primary legal mechanism for carers to take a supervisory role over their loved ones' finances is a Lasting Power of Attorney.[110] This document is drawn up in anticipation of a loss of capacity and registered with the Office of the Public Guardian. Normally the document stipulates that the Attorney will have full decision-making power if/when the individual (known as the donor) loses capacity. However, the document can be more detailed and set out a range of financial management options: for example, an Attorney might take responsibility for managing investments, while the donor continues to manage their finances day to day.[111]

Where someone loses capacity without having appointed an Attorney, the Court of Protection can appoint a Deputy, which may be a loved one, but may also be a local authority employee or solicitor. Carers can also be appointed by the Department for Work and Pensions as an appointee, whose sole role is to administer someone else's benefits. This is often used for people with limited capacity or a history of addiction.

One of the most comprehensive studies of carer involvement in financial management was conducted by Money and Mental Health Policy Institute in 2016. It suggests that while many people are involved in these formal structures for helping, millions more provide informal support outside of any legal framework.

The Institute identified that nearly half of people who care for someone with a long term health condition help out with paperwork and financial matters: 48% of those caring for someone with a physical health problem and 45% of those caring for someone with a mental health problem.[112] This suggests that well over 3 million carers are involved in financial support; only 2m Powers of Attorney are registered and there is no way of assessing the overlap.

In a survey of carers conducted by Money and Mental Health, carers reported difficulties getting information and access to bank and other accounts. They reported a range of 'workarounds' enabling them to provide support in other ways, often in contravention of the terms and conditions of their accounts. These included:

- Keeping an eye on finances by logging into online bank accounts
- Taking full financial control without a legal framework
- Taking over financial control and giving pocket money
- Opening joint accounts or taking control of cards and PINs on a main account
- Holding cards during periods of crisis
- Helping with calls - including sometimes impersonating the loved one
- Helping with paperwork, including opening post
- Opening a joint account or card to enable access to information

Sharing access to personal financial matters appears to be widespread. Polling conducted for Money and Mental Health reported that:[113]

- 16.4 million people (32%) know someone else's PIN number
- 7.7 million people (15%) know someone's online banking password
- 6.7 million people (13%) have used someone else's contactless card

Our analysis of the FCA's Financial Lives survey shows that people with low financial capability are particularly likely to share their personal details with someone they trust.[114] 25% of people with low financial capability said they shared their personal details such as their PIN or online account log in details either with their spouse/ partner, friend or other family member or a carer. By contrast 19% of people with average or high financial capability said they shared their personal financial details with someone they trust.

These figures show that third party involvement in personal finance is endemic and essential to the lives of millions of people with additional needs and serious health conditions. Our discussions with people with limited capacity showed that they want to be able to involve their carer more deeply in their finances, as they believe it would help to protect them from fraud. However, third party access does come with risks, as we outline next.

The extent of abuse and harm

Abuse by a trusted person is one of the four categories of fraud we outlined in the previous chapter, and it is widespread. According to NHS data of the 154,700 instances recorded about the type of risk to adults in 2017-18, 14.6% were financial or material abuse.[115] 66% of these cases involved people known to the victim (family, friends etc). 31.1% of all investigations involved people who lacked mental capacity.

The Office of the Public Guardian - which oversees Power of Attorney - received 5,245 in 2017-18 safeguarding referrals and 1,886 were accepted for further investigation.[116] Research has identified a range of abusive behaviours including:

- Gifting to self and others
- Incompetence
- Neglect
- Hoarding
- Spending money to reduce someone's assets, so they do not have to pay for care home fees

> *"One of the people he was working with had actually been taking him to the ATM to withdraw money from his account; he had been paying for his train tickets, buying him hot chocolate. Because my son has Asperger's he had been keeping account of everything it amounted to, it came to £2000 overall. I now track his bank account, to see if there has been any unusual payments, we have agreed that occasionally I have access so that I can keep an eye, in case it happens again."*
>
> Interview participant, adult son has Asperger's Syndrome.

The UK Study of Abuse and Neglect of Older People reported that 2.6% of people aged 66 and over living in private households reported being mistreated by a family member, friend or care worker, rising to 4% when neighbours or acquaintances were included.[117]

The US National Elder Mistreatment Study in 2009 indicated rates of financial abuse experienced, but not reported, by older people of around 5.2%, mainly by family members.[118] Researchers in Ireland in 2012 reported a lower but still significant prevalence of 1.3% for financial abuse, with adult children identified as the main abusers.[119]

> *"It's often the case in later life that the family is trying to stop you spending because they want to inherit the money. We shouldn't enable that."*
>
> Consumer representative, roundtable participant

> *"More involvement for third parties could be disastrous in coercive control relationships."*
>
> Victim representative, roundtable participant

In 2004, a major investigation into the prevalence of abuse in England and Wales concluded that around 0.7% of older adults in private households had experienced financial abuse by close family, friends or care-workers during the previous year.[120] Action on Elder Abuse, in 2007, suggested the 0.7% figure could be an underestimate, as the survey excluded two key vulnerable groups from its sampling – individuals living in residential care settings and those lacking mental capacity. [121]

Financial and material abuse were third most frequent in the list of categories for abuse related referrals across the country at around 20% of referrals, after neglect and physical abuse.

One national voluntary organisation, the Alzheimer's Society, found that in cases reported to its helpline, financial and material abuse constituted 26% of the total received, and ranked a close second to "neglect" (29%) out of seven categories of abuse.

Limitations of the system

Where an individual has a Power of Attorney, they can usually get formal access to the donor's financial affairs relatively easily. By contrast, without a Power of Attorney, even checking that bills have been paid can prove impossible.

> *"Outside of the Power of Attorney framework there are risks for the trusted third parties as well as the bank - the person may struggle to trust or forget what they've asked."*
>
> Consumer representative, roundtable participant

> *"The whole financial sector has very serious concerns about taking [third party involvement] outside of the legal framework."*
>
> Financial services representative, roundtable participant

It is right for the financial services industry to be risk averse when it comes to granting additional access to third parties outside of a legal framework, given the risks of abuse.

However, the evidence suggests that the legal framework is not, in itself, any real protection against abuse. We fear that using the dividing line of full, largely unsupervised access for Attorneys, and no access for others, is a false comfort. It puts too much of the burden on a regulatory system - the Office of the Public Guardian (OPG) and the Court of Protection (CoP) that have very limited capability to supervise Attorneys and Deputies, or investigate and deal with abuse when it occurs.

The CoP and the OPG have powers of investigation, but their legal duty relates to whether those given power to act for those without capacity are failing to act in the best interests of the donor, or protectee.[122] Where money has been stolen, a civil court claim could be used to recover the money. However, this is rare, and rarer still is any involvement of the police or Crown Prosecution Service. The penalties for misusing powers under the Mental Capacity Act are therefore extremely limited, and the likelihood of having to pay the money back, or face punishment, is low.

Once an Attorney is appointed, and - if stated in the terms of the Power - the donor has lost capacity, there is no supervision or investigation unless an allegation of abuse is made, such as through a safeguarding channel.

Where a Deputy is appointed, because that Deputy was not chosen by the donor themselves, they are required to submit an annual report to the Court of Protection.[123] They must also provide a security bond to the court. This higher level of scrutiny has been commended by Age UK, in its submission to the APPG on Financial Scams and Abuse, as a better model for fraud prevention than the Attorney model. However, only professional deputies need to undergo any kind of criminal record check before being appointed; family deputies and Attorneys do not.

There are several other problems with the current system, as identified by the experts we engaged during the process of drawing up the report.

Power of Attorney is seen as a blanket operation, where the Attorney takes over someone's affairs once they lose capacity. This is not in keeping with the reality of capacity, which is decision-specific, and often fluctuating. People with limited capacity need better ways to create a formal record of how they would like support for managing their affairs. In principle this is possible under the current framework: a bespoke Power of Attorney could set out the transfer of responsibility of investment decisions, and control of a savings account, while leaving day to day spending in the hands of the donor. However, consumer services companies tell us they would struggle to operationalise these kind of requirements, especially if they included the kind of restrictions people have told us they want: like securing third party sign-off for large transactions.

Power of Attorney is also expensive: the cost of registering for Power of Attorney with the Office of the Public Guardian is £82, and while there are certain reductions and exemptions for people with low incomes or who are on benefits, these costs can be prohibitive, especially when solicitors fees are considered.[124]

Finally, concerns have been raised about the system of the DWP 'appointees' who manage pensions and/or benefits on behalf of people with limited capacity. Someone wishing to become an appointee can apply to the DWP; an official then visits the applicant and the benefit recipient to decide whether to grant the application.[125] This system, it has been argued, is open to abuse and should be subject to more supervision and reporting.[126]

Conclusion: a balanced approach

Whatever the framework, the risk of abuse when someone manages someone else's money is high, and the legal framework of Power of Attorney does little to minimise this risk. In the next chapter we set out a range of possible policy changes that could increase protection from fraud for people with limited mental capacity. Many of these include the option of adding a nominated third party to an individual's account, because consumers with these health conditions told us that is what they want.

We are not blind to the risks of abuse: in fact, we want a balanced approach which increases the supervision of all third party involvement in personal finances, but does so by bringing it out of the shadows, where it happens outside of the view of the financial services industry.

There is simply no way to stop people asking loved ones to help them with their money. When over 16 million people know someone else's PIN, the genie cannot be put back into the bottle. The financial services industry needs to recognise that consumers are adopting informal workarounds to share access and control because current banking systems are not adequately catering to their needs. Instead of telling people not to involve third parties, they must find ways to bring that involvement into the light, where abuse can more easily be detected.

05.

New Approaches

There is no single solution to fraud. Different kinds of fraud, and different kinds of customer, need different approaches.

Our research has shown there are millions of people in the UK who need additional help to protect themselves from fraud, because of health conditions that can seriously affect their mental capacity. Many of those people turn to friends and family for the help they need, but this puts them at risk of a different kind of financial abuse.

The current system is deeply flawed. It often assumes a simple dividing line between those who have full capacity and those who have none, despite clear medical evidence, and legal requirements to recognise that capacity judgements should be specific to every decision. Carers trying to offer support informally can find it almost impossible to do so, while the system offers full unsupervised access to carers with a Power of Attorney in place, leaving donors open to fraud.

There is no single solution to fraud. Different kinds of fraud, and different kinds of customer, need different approaches. In this chapter we outline a range of ways to help improve protection against fraud for customers with these additional needs, that allow them to build a more restrictive financial environment for themselves, call on support when they need it, and get more effective protection from state-funded services, too.

No decision about vulnerable people should be taken without involving them, wherever possible. So we have developed these ideas in partnership with more than 20 people with lived experience of capacity limitations either directly or as carers. We conducted interviews in pairs, enabling us to engage with people with capacity limitations including severe learning disabilities, brain injuries, dementia and mental health crisis.

1. Defining vulnerability

We have shown there is widespread inconsistency in the approaches taken by a range of statutory authorities and financial institutions in defining what vulnerability is. We are not convinced it will ever be possible to agree a single unified definition, given the varying priorities of different organisations across the financial services, criminal justice, and care sectors. However, efforts should be made to establish a more coherent approach, focusing on three principles:

Vulnerability should not be considered a simple assessment of the risk of victimisation, but focused on:

- an individual's ability to take steps to protect themselves; and
- the potential harm arising from losses resulting from fraud or abuse.
- Priority should go to identifying the additional needs people have to enable them to be safe from fraud and abuse, rather than labelling them as vulnerable.
- These needs should be met by providers as 'reasonable adjustments' under the terms of the Equality Act.

Recommendation 1: Efforts should be made to establish a more coherent approach to vulnerability focusing on an individual's ability to take steps to protect themselves, and the potential harm arising from losses resulting from fraud or abuse. Priority should go to identifying the additional needs people have, rather than labelling them as vulnerable.

These needs should be met by providers as ‘reasonable adjustments’ under the terms of the Equality Act

The new voluntary Contingent Reimbursement Model Code for Authorised Push Payment Scams takes a step in the right direction, by building in the principle that vulnerability includes situations where it would not have been reasonable to expect a customer to protect themselves. In practice, we strongly advise that this must include all cases where a customer has a mental capacity limitation.

Recommendation 2: The new voluntary Contingent Reimbursement Model Code for Authorised Push Payment Scams should include mental capacity limitations in practice.

Customers can, of course, be at risk of financial harm without experiencing a capacity limitation, in particular if they have low financial resilience or capability, or have recently had a life-changing event. Our focus on meeting the needs of those with capacity limitations should not imply that other forms of customer vulnerability should be disregarded; the principle that their needs should be met remains core to our approach.

There is often stigma associated with customers declaring themselves vulnerable. A focus on asking customers to disclose any additional needs they have helps to avoid this stigma.

> *“He could see that that would be a good idea [to declare his disabilities], but he would never be comfortable about telling the bank about his condition, because he thinks he wouldn’t be able to get a credit card. He said it was a risk”*
>
> Interview participant, adult son has Asperger’s Syndrome

2. Protective products and services

Here we recommend a range of protective products, services and features that could help build a more restrictive financial environment for those at risk of harm from fraud, especially those with limited mental capacity.

Identity fraud protective register

Customers at risk should be able to put a flag against their name in order to prevent new accounts being opened in their name. This would need to be held in a database, and would be most effective if it were a database that were already checked routinely as part of the account opening process, either Cifas’ anti-fraud systems or the credit reference agencies. It would enable customers who are happy with their financial products, and know that they will not want to open new accounts - such as online shopping or credit cards. Effectively, this would be a way of communicating to financial services providers that any new account applications were fraudulent.

Recommendation 3: Customers at risk should be able to put a flag against their name in order to prevent new accounts being opened in their name. This would need to be held in a database, and would be most effective if it were a database that were already checked routinely as part of the account opening process, either Cifas' anti-fraud systems or the credit reference agencies

> *"He really needs to have those processes because if it was quite easy for him to access money, he could be quite dangerous for him."*
>
> Interview participant whose son has Prader-Willi Syndrome

This would build on the existing protection offered to customers who have lost mental capacity by Cifas. They provide a register for deputies and attorneys to use that flags protected people's personal details for automatic refusal of applications.

If individuals were able to register themselves for this protection, it would enable them to be protected from abuse by those close to them opening accounts in their name, as well as fraud by strangers.

A request not to be offered credit could also be logged by the Credit Reference Agencies via a Notice of Correction.

High control accounts

The default in the banking system is to remove friction wherever possible, on the assumption that it represents economic inefficiency. However, reduced friction makes life easier for fraudsters. Not every customer wants to be able to make transactions of thousands of pounds in the blink of an eye. Our research suggested customers with capacity limitations would often be happier with an account that offered fewer opportunities to make mistakes. Basic bank accounts are one model of restriction that some customers are happy with, as it prevents them from facing overdraft fees. However, basic bank accounts do not offer the kind of restrictions our research suggested that some people would like to see, and they do not permit direct debits, which some customers need.

> *"If somebody is trying to take advantage of someone who is vulnerable there should be a cap on per transaction"*
>
> Interview participant, son has Prader-Willi syndrome

> *"It's a wise idea to have categories of transactions and amounts that should be questioned. In terms of individuals you know fairly well, who are unlikely to do something other than buy something in a supermarket, it would be quite easy to identify some transaction outside of that. If they start buying stuff online - that would be pretty weird."*
>
> Interview participant, has power of attorney for his parents

Our research with consumers and experts identified the following restrictions that they would like to see available as choices for customers:

- Limits on cash withdrawals
- Limits on transaction volumes

- Limits on transaction size
- Spending limits per day or week
- Delayed payment by default for all transactions
- Delayed payment by default for transactions over a threshold
- Secondary confirmation of large transactions (Asking the customer "Are you sure?" after a delay)
- Whitelisting of approved payees, with other transactions blocked

These features could be bundled together as a single, separate "High Control" bank account, with a kite mark to give certainty to consumers that this is a safer way to hold their money. However, we believe it would be preferable to make all of these tools available systemically to all account providers; the kitemark would be offered where all these control options are available on an account.

> *"It's perfectly possible to have an account where all the payments are postdated as the Banking Interventions Group showed. It ought to be an option for customers who want it."*
>
> Roundtable participant, financial services industry

Recommendation 4: 'High Control' banking options such as limits on transaction volumes and sizes should be made available to all customers.

These kind of tools are currently being developed by FinTech providers. The Open Banking infrastructure ought to enable them to be provided widely into the system. We recognise that there are also risks from fraudulent actors seeking to use Open Banking to get access to people's accounts, and some may try to masquerade as extra support or protection, in order to persuade someone to authorise it. We therefore recommend:

Recommendation 5: The FCA should continue to monitor the operation of Open Banking and ensure that its benefits and risks are regularly evaluated. Any regulatory changes identified to improve the system should be promptly introduced.

Where there are additional costs from providing restrictions, we argue they should be met by the customer base as a whole, as these should be considered 'reasonable adjustments' for people with a limiting health condition, under the terms of the Equality Act.

Information and notifications

Transactions do not need to be blocked to provide support in preventing fraud, especially ongoing fraud like account takeover. Notifications to the account holder can be useful as a first step to flagging transactions. For those using mobile banking, or who have their email and phone number registered with the bank, these notifications are now becoming normalised.

We have identified some ways to improve the system, that may help people who are digitally excluded, who have limited capacity, or are reliant on carers. Providers should work towards offering customers the ability to:

- Request notifications of all or large transactions to a trusted third party notification. This should be offered either in addition to, or in place of, direct notification
- Offer a trusted third party read-only access to their account transactions
- Link notification to delayed payment for large transactions, so that the customer themselves or a third party has time to review the transaction

Recommendation 6: Providers should work towards offering customers the ability to receive notifications about unusual account activity, and allow third parties access to such notifications.

> *"In the context of people's lives it is best for them to speak to someone that they trust. A friend who can perform a soft check to support them to make a decision on their own."*
>
> Consumer representative, roundtable participant

> *"My friends and family; I would trust they would make decisions based on my interests. If I had a third party I trusted to make the decisions, I would still want to be there, not removed."*
>
> Interview participant, experience of mental health crisis

Cifas also offers a paid service for people at high risk of identity fraud, where secondary checks are carried out to verify an applicant's identity before new accounts can be opened. We also recommend that this service enable people to register as a third party, as well as themselves, to be notified if and when a new account is applied for.

Recommendation 7: Cifas Protecting the Vulnerable Service should enable people to register as a third party, as well as themselves, to be notified if and when a new account is applied for.

There are now also a range of credit reference companies providing access to your credit footprint; this system provides notifications if your credit score has changed. We encourage these providers to enable customers to set up third party notifications, too, as a sudden change in credit score could be an indication of fraudulent activity.

Release mechanisms

Having established a high control financial environment, some people may want to move back to low friction banking or make an urgent large transaction.

> *"It starts feeling uncomfortable if you can't remove yourself at all."*
>
> Interview participant, brain injury

However, it is also possible that people will be pressured by a fraudster - for example selling an investment opportunity that is supposedly about to expire - to remove restrictions.

By default, it is an individual's right to choose the banking facilities they want, and therefore in principle any of the restrictions set out above should be removable. To limit the scope for fraud to be re-enabled in this way, however, we recommend that:

Recommendation 8: When setting up restrictions, customers should be supported to set a procedure for what happens when they are removed, such as notifying a trusted third party, or requiring a mandatory cooling off period.

Recommendation 9: Transactions made immediately after the removal of restrictions should be considered potentially suspicious and flagged for additional checks.

Recommendation 10: Companies should ensure front line staff are trained to identify potential capacity limitations, and ensure decision-making is supported where necessary.

3. Identifying people

A key challenge for all of the options above will be encouraging the people who need them to take them up, and protect themselves. This section covers two questions: how should we define eligibility for more restrictive products and services? And how can we encourage those who would benefit to take them up?

<u>Defining eligibility</u>

Above, we have argued that restrictive financial products should be considered a reasonable adjustment under the Equality Act, and therefore that people with qualifying health conditions are entitled to them free of charge. If the banking system adopts these recommendations, its default assumption will be to restrict access to those who can prove their eligibility in this way, to minimise cost. However, we argue that access should in fact be freely available to all, in order to reduce stigma and increase take-up.

Recommendation 11: Restrictive financial products should be considered a reasonable adjustment under the Equality Act, and therefore that people with qualifying health conditions should be entitled to them free of charge.

> *"With vulnerability, you always have to ask how to get to the most resistant people, as they're the ones who need help most, but are least likely to ask for it."*
> Lawyer, roundtable participant

Requiring eligibility certification - such as a doctor's note - would make sign up difficult and expensive for people, and costly for financial services companies to administer. Open access would be simpler for everyone.

Recommendation 12: Access should be freely available to all, in order to reduce stigma and increase take-up.

> *"It has to be readily available. People should not need to see themselves as a victim to want this - it should be presented as a helpful way to manage their*

finances for those who choose it."

Consumer representative, roundtable participant

An important barrier to identification and engagement is the fear that customers may feel that the financial services company will discriminate against them, giving them, for example credit on less favourable terms. This concern is likely expressed in many areas of their lives, and may be more true in some sectors than others, but if it prevents people from coming forward to set up restrictions, it is a serious problem.

Recommendation 13: Efforts must be made to ensure that choosing restrictions cannot be used as an indicator of risk in future credit decisions.

> *"It took me a long time to convince my GP that I was depressed. I would be even less forthcoming with my bank. I would be very unlikely to go to my bank and say 'I'm feeling vulnerable' and ask for more protection... One of the biggest things is discrimination. Which is one of the reasons why it took me so long to get help, it's a big thing to admit your mind might be really unwell."*
>
> Interview participant, experience of mental health crisis

> *"I'm worried that I might not be able to get a credit card if my bank knew that I had a learning disability"*
>
> Interview participant, learning disability

At our roundtable, several participants raised the concern that if restrictive financial products, requiring delay and secondary checks to be in place, were available to everyone, it would cause real problems in the financial system. Others pointed out that if demand was overwhelmingly high for these more restrictive products, it would demonstrate consumer demand for a different way of doing things, choosing a different balance between risk and ease.

> *"The default system is not what we chose as consumers, it's what the providers designed to maximise their revenue. If we find really high demand for greater levels of checks, that isn't a problem - it's evidence the default system is the wrong one, and we should embrace it."*
>
> Consumer representative, roundtable participant

Encouraging sign-up

Nevertheless, while the default system remains low-friction, we will need to take proactive steps to encourage those who would benefit to put themselves forward, targeting those with limited or variable capacity as a key priority.

Recommendation 14: Proactive steps should be taken to encourage those who would benefit from these services to put themselves forward.

Our research identified a set of intervention moments when the recommendation to consider more restrictive financial arrangements, or involving a trusted third party, could be put forward to people. These are:

- Post victimisation:
  - Victim Support reported that their support offer includes advice on how to protect yourself in the future, but that they had 'little to suggest'. A package of options and suggestions could be produced in partnership with Victim Support, to be made available as part of their engagement.
  - National Scams Team gave an example of a PO Box that had been stopped; mail sent to this PO Box was returned to victims in person by local authority officials. Most were unaware of the fraud, still believing it was a legitimate scam. Advice on protection could be offered as part of any similar future activity.
  - Police are often able to access the "suckers lists" circulating on the internet. This could provide a useful target group for proactive advice and support.
- Post-diagnosis
  - Referral pathways within the health care system should include advice about social and financial support.
  - Charities supporting people with potential capacity limitations should make advice about financial management options available to the people they support.
- When registering a Power of Attorney or at the Court of Protection
  - Advice should be developed with the OPG and the Court of Protection about the financial options available to customers, which can be shared with them at the moment of registering a PoA, or when a case is before the court.
- During financial services interactions
  - Customers should be asked if they want to include an emergency contact on their account, when opening it.
  - When a customer discloses a health condition or declares themselves vulnerable, financial services companies should consider proactive recommendations of steps people can take to protect themselves from fraud.
  - Financial services companies should offer customers the chance to put themselves on an identity fraud protective register

It is essential that any advice given out at these points in time has been developed in collaboration with organisations that understand the needs of people with limited capacity. Easy-read format, and audio-visual guides can be vital in helping people with limited capacity to understand information.

> *"He just said it is a good idea but obviously texts is the best for him, written in simple language"*
>
> Interview participant, son has Asperger's Syndrome

Recommendation 15: Financial services companies should consider investing some of their marketing budgets in advertising more restrictive financial products and services, once they are available.

The investment in anti-fraud advertising, for example through the Take 5 campaign, is invaluable for reaching people with full capacity and enabling them to take the necessary steps to protect themselves. However, those with limited capacity cannot be expected to learn and follow a multi-step plan to tackle fraud. Investing in encouraging the take-up of products that can offer protection would be a valuable addition to their anti-fraud strategies.

4. Protecting against abuse

If implemented badly, efforts to protect people by enabling third parties to provide support could make life easier for family and friends who are abusive. It is essential that we tailor our approach with a systematic effort to crack down on these abusive relationships. Our view is that, by bringing third party involvement into the light, we will be able to supervise it more successfully.

The Power of Attorney system needs to be improved, to make it more flexible and fit for the needs of those with limited or fluctuating capacity, and enable better oversight of how Attorneys manage donors' finances.

> *"Organisations should have been challenging us more about whether they had actually lost mental capacity, rather than just accepting it. We could easily have been dodgy, and it would have been easy to get my mum sign to sign her life away to a power of attorney - she would not have questioned it. We could have been a dodgy son and daughter. No one is actually looking at how we're spending her money at all. It would be useful if there was a way for saying the power of attorney is now active, and in what way. It's a question of how do you determine the person has lost metal capacity, do you get a GP or mental health nurse to do it?"*
>
> Interview participant, has power of attorney for his parents

To improve the suitability for people with fluctuating or limited capacity:

Recommendation 16: UK Finance, the Building Society Association and the Office of the Public Guardian should work together to develop a set of template options for people with variable or limited capacity, which banks could be expected to offer to customers, such as Transaction limits for the Donor, or attorney, and joint decision-making with the Attorney on larger decisions. This should be informed by ethnographic research with customers and carers, enabling them to co-design their preferred options.

To improve oversight we recommend:

Recommendation 17: There should be more oversight of the Power of Attorney system. A register of people with active Lasting Powers of Attorney, or under Court Order of Protection with real-time updates should be established, which consumer services companies are able to check against. The Office of the Public Guardian would need to be notified when someone has lost capacity; this information could be passed to them, with consent, by financial services companies.

Recommendation 18: Banks and their representative organisations should conduct research into the spending patterns of those with an Attorney registered on their account to better inform analysis of the financial footprint of abusive relationships.

Recommendation 19: Credit and criminal records checks should be offered before a Power of Attorney can be registered. This would enable a donor to have a fuller picture of their Attorney's finances before appointing them.

Recommendation 20: Attorneys should be required to submit an annual report, in line with deputies.

5. Cross-sectoral working

A repeated theme of our research and discussions on fraud prevention was the need for the many organisations involved in protecting people to work together more collaboratively. The Banking Protocol has already improved working relationships between staff in bank branches and their local police forces. However, this isn't translated to online transactions. More joined-up working could help reduce the number of victims, and reduce the harm that occurs when people are victimised. We identified three particular ways in which cross-sectoral working and data-sharing could improve the fight against fraud:

Recommendation 21: When police or trading standards departments discover 'Suckers lists', they should share them, and work collaboratively on outreach to those consumers, potentially involving Victim Support where they have the skills or capacity needed.

Recommendation 22: Police and financial services firms should establish an intelligence sharing network allowing information to be cascaded to banks and building societies to inform their own prevention tools and techniques. It should also be shared with Cifas to help inform their data analytic capabilities for identifying fraud.

Recommendation 23: Health and care providers need to recognise the harm associated with abuse and collaborate more effectively with local law and trading standards enforcement.

Conclusion

Conclusion

The financial services industry has worked tirelessly to remove friction from our lives, and make it easier to spend and send money than it has ever been before. For millions of us, this is welcome, if it makes it quicker and less stressful to pay our bills and manage our money. But there are also millions of us for whom a financial life without friction is more difficult, more stressful, and more dangerous.

This report has looked in particular at the needs of a large, but distinct group: people with a health condition that affects their cognitive abilities and their capacity to make decisions without support. These consumers help to remind us that financial services shouldn't be built for a mythical 'average' person, with perfect economic and cognitive skills. They must be built for the real people who need them, complete with all their diversity, complexity, and individual needs.

It's important for the UK to invest in building people's financial capability, and for people working in fraud prevention to invest in public understanding of how fraudsters will target you. But education and information will never be enough. We need to change the way the system works, to give people who want it much better protection.

There should be no stigma associated with asking for extra help, or more control over your finances. Banking shouldn't be a one-size-fits-all product. As financial technology develops, we can build a better model of protective financial services that can meet the needs of people who want that extra help, and are willing to have payments slowed down a little if it protects them from fraud and abuse.

When we design for people with the most acute needs, we often find we have built tools that help everyone. This kind of universal service design is the best way to build an inclusive society, with the most effective protections against fraud we can find.

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