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Consultation Response:

Ofcom 'Treating vulnerable consumers fairly' proposed guide

Response by the Money Advice Trust

Date: November 2019

Contents

- **Page 2** Contents
- **Page 3** Introduction / about the Money Advice Trust
- **Page 4** Introductory comment
- **Page 6** Responses to individual questions

Introduction

About the Money Advice Trust

The Money Advice Trust is a charity founded in 1991 to help people across the UK tackle their debts and manage their money with confidence.

The Trust's main activities are giving advice, supporting advisers and improving the UK's money and debt environment.

In 2018, our National Debtline and Business Debtline advisers provided help to more than 204,000 people by phone and webchat, with 1.7 million visits to our advice websites.

In addition to these frontline services, our Wiseradviser service provides training to free-to-client advice organisations across the UK and in 2018 we delivered this free training to over 820 organisations. Furthermore, Money Advice Trust Training and Consultancy services have worked with over 224 commercial organisations to identify and support their customers in vulnerable circumstances.

We use the intelligence and insight gained from these activities to improve the UK's money and debt environment by contributing to policy developments and public debate around these issues. Find out more at www.moneyadvicetrust.org

Public disclosure

Please note that we consent to public disclosure of this response.

Introductory comment

We welcome Ofcom's proposal to publish guidance to assist providers in meeting their obligations under Ofcom's' General Conditions of Entitlement to protect consumers and consider the needs of people in vulnerable circumstances.

However, we believe that Ofcom did not go far enough when they amended the General Conditions of Entitlement.¹ We would like to see the introduction of a proactive duty on providers to identify vulnerability. In contrast, Ofgem has embedded vulnerability in the standard licence condition through a high-level vulnerability principle and Ofwat has used the recent price review (PR19) as an opportunity to make vulnerability and affordability a priority area for water companies.

We would like to see Ofcom take a similar approach.

- ✓ We note that regulators have not adopted a common definition of vulnerability which could be used by all firms and providers. We appreciate that there are differences between the way in which financial services firms and telecoms providers need to approach vulnerability. However, we would like to see as much alignment as practicable.
- ✓ Overall, the guidance should help to provide greater clarity on what is practically expected from firms in terms of behaviours and outcomes.
- ✓ We are concerned that the guidance does not establish minimum standards that providers should meet.
- ✓ We would also welcome measures to encourage providers to work to identify, understand and respond to what detriment consumers are 'vulnerable to', through a consideration of the 'common harms' that consumers can experience.
- ✓ It is concerning that the paper identifies a lack of progress by providers in identifying potentially vulnerable consumers and that Ofcom may need to take further action to ensure this happens.
- ✓ We support providers adopting measures that can be applied to all consumers, as anyone may be potentially vulnerable, and adopting measures such as providing a wide variety of communications channels will help everyone.

¹ <https://www.ofcom.org.uk/consultations-and-statements/category-1/review-general-conditions> C5.3
Such policies and procedures must include, as a minimum:
(a) practices for ensuring the fair and appropriate treatment of 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;

- ✓ We are very pleased to see the recognition that people in debt are likely to be vulnerable. However, we would like to see a stronger set of guidance on how providers should approach debt and financial difficulty.
- ✓ The section on data protection and GDPR does not give any detailed guidance on how providers should ensure they comply with the rules. It is vital that there is sufficient guidance on how to obtain explicit consent and in what circumstances this is required under GDPR guidance. It is equally vital that GDPR is not used as an excuse not to engage or help.
- ✓ It is extremely important that providers carry out extensive monitoring to evaluate the impact of their policies on customers in vulnerable circumstances.
- ✓ Ofcom is right to highlight training as fundamental in ensuring that staff have the skills and capabilities necessary to enable firms to comply with the proposed guidance.
- ✓ We are very pleased that Ofcom welcomes the way in which providers and charities such as Money Advice Trust² work together to develop training programmes for staff on aspects of vulnerability, and to design and implement appropriate policies and procedures across organisations.

² <http://www.moneyadvicetrust.org/creditors/creditsector/Pages/default.aspx>

Responses to individual questions

Question 1 – Do you have any comments on Ofcom’s proposal to publish a guide to help providers treat vulnerable customers fairly?

We welcome Ofcom’s proposal to publish guidance to assist providers in meeting their obligations under Ofcom’s’ General Conditions of Entitlement to protect consumers and consider the needs of people in vulnerable circumstances.

We understand that providers will have to “*establish, publish and comply with clear and effective policies and procedures for the fair and appropriate treatment of consumers whose circumstances may make them vulnerable*”. The draft guidance comprises a set of suggested measures to assist providers to comply with these rules. However, we understand that providers could take other action to comply with their obligations. The intention is that this guidance may be taken into account by the regulator in assessing whether a provider is meeting its obligations but is not an exhaustive list.

This is a helpful paper that complements the approach taken by other regulators such as the FCA and Ofgem. However, we note that regulators have not adopted a common definition of vulnerability which could be used by all firms and providers.

Overall, the guidance should help to provide greater clarity on what is practically expected from firms in terms of behaviours and outcomes. However, there will be concerns that the guidance does not establish minimum standards that providers should meet.

We would also welcome measures to encourage providers to work to identify, understand and respond to what detriment consumers are ‘vulnerable to’, through a consideration of the ‘common harms’ that consumers can experience.

It is impossible to understand an individual consumer’s needs (or work to meet these) unless a firm is able to establish what detriment they may be experiencing/likely to experience. Equally, when thinking about the actions that a firm can take to anticipate and prevent harm from occurring in the first place (which would constitute an important element of the design cycle, as well as other activities), firms need to move beyond thinking about the common causes of detriment, and begin to consider what the ‘common harms’ are that consumers can experience.

Question 2 – Do you have any comments on the suggested measures set out in sections 3-7?

Please set out your comments on each section separately.

We have set out our comments on the measures suggested in each section below as requested.

Section 3 – Establishing and publishing policies

We welcome the recognition that fair treatment of people in vulnerable circumstances needs to be embedded within the provider's culture. It is vital that this is a role for senior leadership within the organisation and accountable to board level.

We are pleased to see the guidance recognise that there is not an exhaustive list of vulnerable circumstances and that vulnerability may change over time. We agree that it is vital that providers take an inclusive approach to who may be considered vulnerable. Policies and procedures should be designed to be inclusive and to ensure that the different effects of policies, procedures and product design on people in vulnerable circumstances are considered.

The set of expectations on how providers should publish information on their policies and procedures is useful. However, there is a series of points about how to publish information on websites and little on how to ensure that people who are digitally excluded access the information they need.

Section 3.12 needs to be expanded to ensure that providers take positive action to engage with people who are not accessing information through their websites. It is silent on what the guidance would say to individual providers who make charges to customers for paper bills for example.

Section 4 – Treating vulnerable consumers fairly

It is concerning that the paper identifies a lack of progress by providers in identifying potentially vulnerable consumers.

“4.3 Our evidence suggests there is much more progress providers can make in this area. While some providers have some records of vulnerable consumers in certain groups, the overall number of customers identified by providers as potentially vulnerable is significantly smaller than we might expect.”

The suggestions in the paper as to how providers could take steps to combat this lack of progress are useful. We are pleased to see a stated intention by Ofcom to take further action if there are not substantial improvements in the numbers of vulnerable consumers identified by providers.

We support providers adopting measures that can be applied to all consumers, as anyone may be potentially vulnerable, and adopting measures such as providing a wide variety of communications channels will help everyone.

The emphasis on making customer interactions positive for consumers is to be welcomed. We support the identification that staff training is key in ensuring teams can communicate with empathy.

It is always vital to provide clear written communications in plain English. This should be the default position for all communications, as everyone benefits from clear simple language. Offering follow up information in writing is also useful for all customers, and should be routinely offered.

We support comprehensive signposting and referrals policies. It is vital that providers work with charities and other forms of support to ensure that the methods of referral and signposting work for all parties. There is little point for a national provider in trying to book appointments with a small local charity with limited resources for example.

As it stands, the draft guidance could be clearer on the fact that while much support to vulnerable consumers can be provided as a ‘one-off’ (to overcome a specific problem or issue at that point in time), a significant amount of support to vulnerable consumers is on-going and longer-term in nature. This requires staff to be trained in the support options that are available for any customer which would work (‘business as usual’), the support options that require reasonable adjustments or going the extra mile (‘business as usual plus’), and the support that can only be offered by an external organisation (‘business in partnership’) via referral.

Referral procedures (internal and external) also need improvement, based on the work we have undertaken with many firms to improve their processes, and training should also address this. Often internal staff can be unsure which part of the organisation they can refer vulnerable consumers to (and what the range of ‘vulnerability teams’ can actually do), while staff can be equally unsure about the best way to refer a customer to an external organisation (particularly where staff either do not know what many external support organisations do, or how best to continue working with a customer who is seeking support from such an external organisation while continuing to receive other types of support from the firm itself).

The use of specialist teams who have been trained to an advanced level is vital for dealing with people in vulnerable circumstances, or in debt collection where consumers are likely to be vulnerable and stressed. We welcome the recognition of the Money Advice Trust’s work with training and support for firms as a useful resource in the paper.

We are pleased to see the recognition that people in debt are likely to be vulnerable.

“We expect providers to recognise that customers who are in arrears are likely to be vulnerable, and encourage providers to take extra measures to ensure that customers in debt are treated fairly.”

We would like to see a stronger set of guidance on what providers should do when someone is in debt. The paper rightly identifies that providers should give a customer “some time to get help, support and debt advice” but only refers to the HMT breathing space scheme in a footnote. We would like to see the guidance set out the breathing space time frame and suggest that providers adopt this as a first step on holding action in order for consumers to seek debt advice.

The paper also suggests that providers “*discuss and agree a reasonable payment*” but does not suggest a framework for how a provider will establish that a payment is affordable for their customer. We would expect reference to be made to the Standard Financial Statement³ as a benchmark here. In the energy sector, Ofgem has set out six key principles for Ability to Pay which provide additional guidance to energy suppliers on their approach to customers in payment difficulty.⁴

- ✓ Having appropriate credit management policies and guidelines
- ✓ Making proactive contact with customers
- ✓ Understanding individual customer’s ability to pay
- ✓ Setting repayment rates based on ability to pay
- ✓ Ensuring the customer understands the arrangement
- ✓ Monitoring of arrangements after they have been set up

We recommend Ofcom introduce a similar level of guidance for communications providers, reflecting these principles.

³ <https://sfs.moneyadvice.service.org.uk/en/>

⁴ <https://www.ofgem.gov.uk/ofgem-publications/57399/open-letter-pdf>

We would also expect to see a paragraph that puts a greater responsibility on the provider than just being “*clear on any additional costs involved and how services will be affected*”. The provider should have a requirement set out in the guidance to be flexible on freezing additional fees and charges in certain circumstances and to provide access to alternative packages that might meet their customer’s needs.

Communications providers need to be sensitive to short-term income shocks and financial insecurity as well as to chronic financial difficulty. The ability to deal with customers on a case-by-case basis and agree temporary arrangements where appropriate is crucial. In addition to debt management processes, providers should build a certain level of flexibility into their products and services, so that they can respond with the appropriate discretion to customers whose circumstances change.

We are very pleased to see a requirement to “*Refer customers to debt organisations or charities who can provide free debt advice and support (directly where possible)*”. However, the footnote list of suggested debt advice bodies needs further thought as it omits both Money & Pensions Service and the Money Advice Trust services National Debtline and Business Debtline. We would suggest the guidance sets out a pro-forma that providers could adopt and use, perhaps as an appendix. We would refer you to the FCA information sheets for an example of how this might work.⁵

We note that as worded at present, the guidance implies that direct support from an advice agency (which we understand to mean a situation where the advice agency represents the customer in dealings with the company) is preferable to other forms of advice and support. This is unhelpful. There is a well-established ‘self-help’ model for debt advice, in which National Debtline and Business Debtline specialise. This model is a response to the needs of consumers (many of whom actively prefer to manage their debts themselves, with advice and support) and to resource pressures on the debt advice sector.

As a debt advice provider, we would warmly welcome the opportunity to work more closely with Ofcom and communications providers to develop signposting and referrals to the free advice sector. This needs to include consideration of the benefits to communications providers (such as reduced debt management costs and more sustainable debt recovery) and an appropriate basis for communications providers to contribute towards the costs of providing advice, as financial services, utilities and others currently do.

Section 5 – Recording information

We are pleased to see that the guidance stresses the importance of accurate recording of the needs of customers in vulnerable circumstances. However, the section on data protection and GDPR does not give any detailed guidance on how providers should ensure they comply with the rules. It is vital that there is sufficient guidance on how to obtain explicit consent and in what circumstances this is required under GDPR guidance. It is equally vital that GDPR is not used as an excuse not to engage or help.

⁵ <https://www.fca.org.uk/publication/information-sheets/information-sheet-arrears.pdf>

We understand there are various interpretations of GDPR regulations in relation to vulnerability that have recently become evident across creditor sectors. The Money Advice Trust and Money Advice Liaison Group are currently producing guidance on GDPR and vulnerability for publication in 2020, but we recommend that this section should be strengthened to address these challenges.

Guidance should be explicit that providers need to record sufficient detail about the situation that vulnerable consumers find themselves in. The consequences of this is that providers then have a record of what support needs that consumer has at that particular point in time, but little understanding or insight into what is driving those support needs, how they might change or fluctuate over time, or how different factors in a consumer's life are linked to specific support needs.

Furthermore, this trend towards only recording support needs may also (inadvertently) mean that a consumer has to repeatedly disclose their vulnerable situation to a firm, which goes against guidance on minimising the need for repeated disclosures.

We believe that providers and staff need more explicit guidance and training on striking the right balance between treating customers fairly and their knowledge of the customer, and wider GDPR requirements on the recording of data related to vulnerability.

Section 6 – Monitoring performance

It is of course extremely important that providers carry out extensive monitoring to evaluate the impact of their policies on customers in vulnerable circumstances. Again, the recognition that senior staff must play an active role in the monitoring of their organisation's performance is very welcome.

We would support the measures suggested in the guidance on evaluating staff performance and collecting and using customer feedback. We would also suggest adding an additional point that providers can learn from other bodies such as the experience of firms and other regulators and make use of external resources⁶ provided by independent experts in the area.

Section 7 – Staff training

We strongly support the statement in the guidance relating to the importance of staff training.

“Staff training is crucial to giving employees the skills and confidence to provide a high level of service to customers, especially vulnerable people.”

⁶ See the Money Advice Trust 'Vulnerability Resources Hub' at www.moneyadvicetrust.org/vulnerability-resources

Ofcom is right to highlight training as fundamental in ensuring that staff have the skills and capabilities necessary to enable firms to comply with the proposed guidance. We agree that different staff will have different levels of training need and that specialist staff require additional training.

We would welcome additional guidance to emphasise that generic ‘awareness’ training on specific vulnerable circumstances is not sufficient. Providers should implement training that is practical, operationally-focused, and aware of the challenges and demands that staff face when attempting to identify, engage, understand, and support vulnerable consumers.

In particular, we believe that firms and staff need more explicit guidance and training on striking the right balance between treating customers fairly/knowing the customer and wider GDPR requirements on the recording of data related to vulnerability.

It is very important that staff have access to the appropriate reference materials and resources and the examples of using team vulnerability champions and an intranet or centralised hub for resources are well made.

We are pleased that Ofcom welcomes the way in which providers and charities such as Money Advice Trust⁷ work together to develop training programmes for staff on aspects of vulnerability, and to design and implement appropriate policies and procedures across organisations.

For example:

- The Money Advice Trust’s Training & Consultancy team has worked with a telecoms provider to deliver training to their newly formed vulnerable customer team, and the complaints team other members of staff from across the business.
- We worked with the provider to understand their requirements and tailored the workshop to focus on enabling staff to deal with potentially challenging conversations, identify triggers, implement early interventions, enhance soft skills, utilise effective signposting, incorporate best practice, as well as meeting regulatory obligations.
- We are working with a phone provider to provide a series of workshops to staff on topics such as a practical course on staff resilience and both the theory and practice of suicide intervention skills. There will also be workshop that gives staff the knowledge, skills, and confidence to identify and support customers who are living with a gambling, alcohol or drug addiction.

We are pleased to see that Ofcom would like to see providers take up this way of working with the charitable sector:

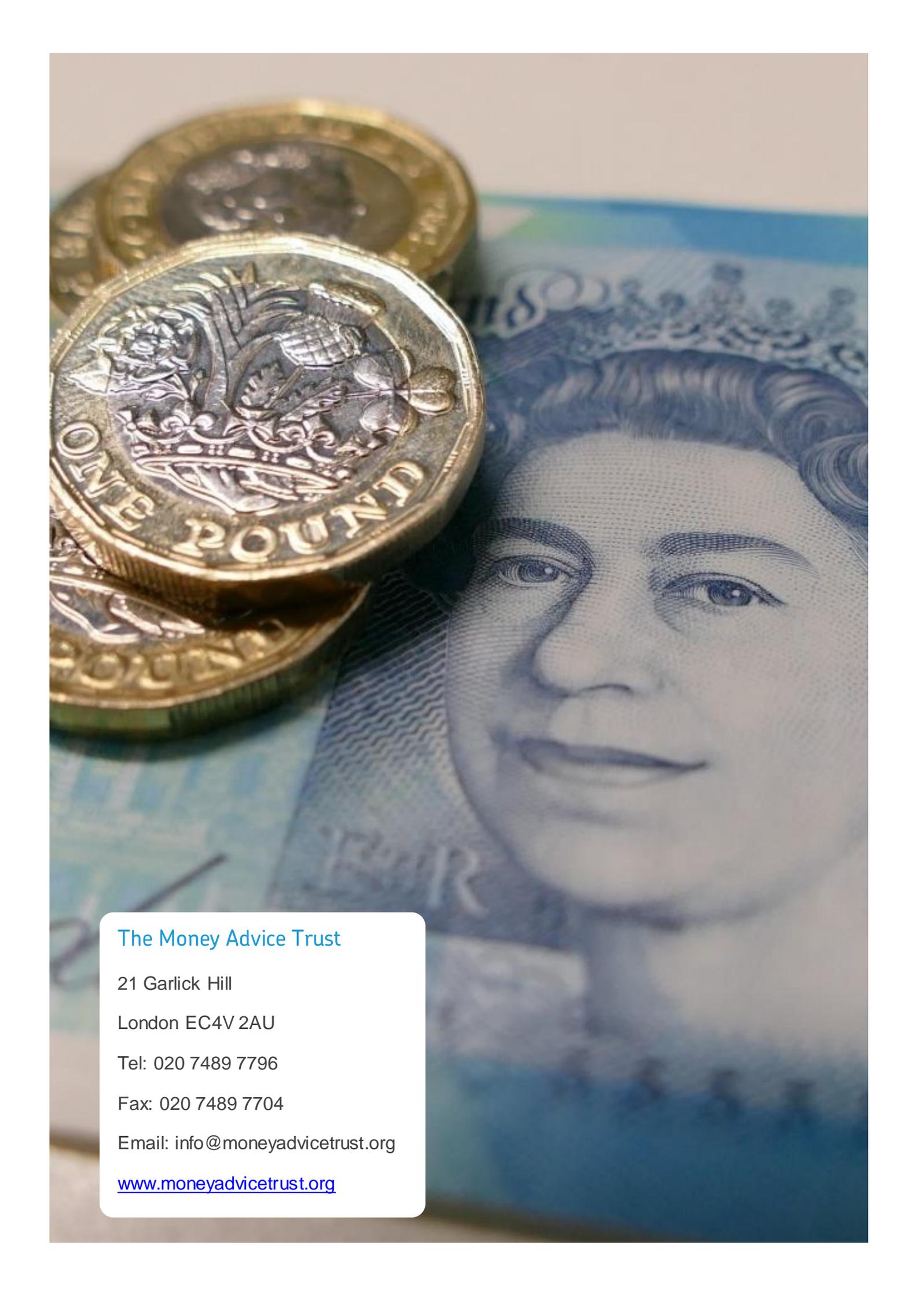
“We strongly welcome this approach and encourage other providers to make use of such expertise when developing their training.”

⁷ <http://www.moneyadvicetrust.org/creditors/creditsector/Pages/default.aspx>

We hope to work with both the regulator and providers in the future to develop this collaborative work for the benefit of consumers in vulnerable circumstances.

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