

Consultation Response: Family Violence and Elder Abuse Approach Document Drafts, April 2025

Westjustice (WJ) and Mortgage Stress Victoria (MSV) appreciate the opportunity to respond to the approach document drafts.

WJ and MSV have elected to consider these approach documents together as we consider that elder abuse is, more often than not in our casework experience, a form of family violence. Statistics supplied by the Australian Institute of Health and Welfare indicate that the incidence of elder abuse being perpetrated by a family member is greater than one in two, with children of the older person as the most common perpetrator.¹

While the Elder Abuse document should rightly encompass financial abuse by non-family members, we recognise that economic elder abuse is a form of family violence and encourage consistency where possible across both approach documents.

We have formally structured the submission with a list of recommendations in the first part (noting that many recommendations may have general application to both family violence and elder abuse) and additional recommendations in the second part which are elder abuse-specific.

Part One: Response to Family Violence Approach Document

Financial Abuse Summary

We would add to the present financial abuse summary that, beyond direct control of funds, assets and liabilities, a direct consequence of family violence and financial abuse is a significant financial outlay in separation. 2017 research by the Australian Council of Trade Unions (ACTU) placed the average cost at that time at \$18,000.²

This cost may be compounded by the extent of previous financial coercion and control, but the end result can include a range of debts which may not have been instigated directly by the adult using family violence (AUFV) but flow from that AUFV's behaviour. Even where there is not joint liability or a warning sign involving control and coercion at the time of purchasing a financial product or service, it is imperative financial firms be aware of this from a design and hardship perspective.

¹ AIHW, *Family, Domestic, and Sexual Violence: Older People*, 28 February 2025. Accessed at: <https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/older-people>

² SBS News, 'Cost of fleeing violent relationship is \$18,000 and 141 hours: ACTU', 4 November 2017. Accessed at: <https://www.sbs.com.au/news/article/cost-of-fleeing-violent-relationship-is-18-000-and-141-hours-actu/s46y8lg0c>

Recommendation 1: The Approach Document should specify that financial abuse and family violence will necessarily cause financial hardship involved in escaping and subsequent to the relationship which a victim-survivor may incur for their own safety and that of dependents.

Warning Signs in Family Violence

We note that both approach documents include lists of warning signs which firms should be cognisant of, but that the elder abuse document is more expansive and includes a number of items which the family violence document does not. For example:

- The presentation of withdrawal slips or documents completed in another person's handwriting;
- Adding another person to an account prior to withdrawals from that account;
- Large withdrawals or transfers without prior direct contact;
- Unusual withdrawals or transfers;
- Unusual or uncharacteristic investments;
- Registration for a new method of banking where they had previously made transactions in person, especially without prior notice to the financial firm;
- (Attempted) lump sum withdrawal from a superannuation account;
- Having a family member take over the management of an insurance claim and request a cash settlement payment rather than repairs.

Recommendation 2: The warning signs for family violence and elder abuse should be reviewed and duplicated where appropriate and relevant across both approach documents.

We note the additional important family violence warning signs:

- A family member or another person is acting or attempting to act as an interpreter for another person, particularly where the person requiring interpreter assistance is a would-be borrower or joint borrower.
- Despite being co-borrowers, there is no personal contact information available for one borrower (ie., only one email address or mobile will receive information or updates or be used for verification purposes).
- Review of information sought to assess the suitability of the lending indicates regular and substantial transfers or withdrawals to another individual.

Recommendation 3: The additional 'red flags' or warning signs listed by Westjustice and Mortgage Stress Victoria are incorporated into the list(s).

While the Family Violence Approach Document summarises warning signs, it does not set expectations about the systems that firms should use to ensure these signs are captured. It is common for WJ and MSV to see situations in which:

- Firms allow for online applications for lending or other processes, and may emphasise a ‘low doc’ approach, including not speaking directly to a prospective borrower;
- When these firms are notified of financial abuse, to advise that they were not aware or on notice at any time of red flags of such abuse.
- Where the form of credit has previously been unregulated (BNPL), for the absence of verification steps to allow an AUFV to open or access accounts in the victim-survivor's name.

An online environment is clearly not an impediment to appropriate enquiries. WJ has seen examples of good practice where applications are made online and a borrower is subsequently contacted directly about unusual payments to a partner in their account or other signs of financial control.

We note that the statutory expectation to enquire into the suitability of consumer credit lending under the *NCCPA* includes an upfront obligation to identify whether the lending in question will meet a consumer’s requirements and objectives. This is supplemented by:

- Parts B4 of the Banking Code of Practice;
- Parts 3.2, 4.12 and 4.13 of the Industry Guideline on Family and Domestic Violence;
- ASIC Regulatory Guide 209, particularly RG 209.84-89;
- The AFCA Responsible Lending Approach Document, particularly section 3.2;
- Where developed, banks and lenders own policies.

We believe that **both proposed** Approach Document should synthesise the above legislation, regulatory guidance and guidelines in order to emphasise that:

- Most credit products will require information about a borrower’s requirements and objectives and personal circumstances. This is **not displaced** by a more convenient mechanism to apply for loans and require additional interactions with a would-be borrower, through which warning signs of family violence may become apparent.
- Warning signs in client interactions and how these were addressed should be documented, as a matter of customer safety and appropriate assessment of any credit.

Recommendation 4: The Approach Documents should emphasise that financial firms who provide credit products are expected to have processes in place that enquire about a borrower’s requirements and circumstances and which may divulge family violence indicators in doing so.

Recommendation 5: The Approach Documents should set an expectation that warning signs from client interactions generally are appropriately documented and record how these were addressed.

More generally we should note that BNPL applications and contracts are not specifically addressed in the Approach Documents. From 10 June 2025, providers of BNPL contracts will need to hold a credit licence that authorises their activities, including AFCA membership.

Until now there has been limited requirement or oversight for how BNPL providers lend responsibly or address family violence. AFIA's [BNPL Code of Practice](#) states that before lending a signatory must be reasonably satisfied that a person is not a 'vulnerable customer' within the meaning of the Code, but that it may only become aware of vulnerability circumstances if these are communicated by a borrower.

BNPL is overwhelmingly an online application sector, and relevantly a large number of the indicators listed as potential warning signs in the Approach Documents are physical or verbal in nature.

While we appreciate that further guidance on AFCA's BNPL approach is likely to be forthcoming, we believe that it is important that the Approach Documents emphasise that BNPL providers will be expected as credit providers to meet the requirements and objectives limb (including identification information) and that this in turn will provide an opportunity to identify and document warning signs.

Recommendation 6: Emphasise the application of the Approach Documents to BNPL providers.

Engaging Effectively With Victim-Survivors

We would encourage the following additions to the list at page 7:

- Proactively providing the customer experiencing violence with information about financial hardship policy and/or supports that are available to them if the FV has resulted in financial hardship.
- Internal systems which ensure privacy is retained for the victim-survivor. An example as an alert pop-up saying (for example) "Do not share victim-survivor information/interactions with co-borrower/co-account holder/co policy-holder" when opening the file in the firm's system.
- Dedicated staff members with specialised family violence knowledge or training.
- Appropriate working knowledge for firm staff members about family violence risk indicators (for e.g., [the MARAM framework](#)), appropriate use of interpreters, and cultural sensitivity.

Recommendation 7: Expand the list of ways to engage effectively with victim-survivors.

Preventing financial abuse: acting on warning signs

We recommend that this section emphasise that red flags or warning signs should also mean that a financial firm should refrain from questioning a co-borrower or joint policy holder who may be behaving in a financially abusive manner about their motivations or intentions at the time of lending.

Relevantly, the Approach Document should direct firms to consider:

- if financial abuse is disclosed or apparent, what follow-up support or referral is available;
- how a secondary conversation with a co-borrower who may be experiencing family violence should happen;

This will be important at all stages of potential engagement with a financial firm. Generally, contact with a co-borrower/account holder/policy holder should only be done with consultation and informed consent of the customer experiencing family violence.

Recommendation 8: The Approach Document should discourage a financial firm from questioning or contacting an individual who may be using family violence at the point of lending where this may constitute a safety risk to a victim-survivor and further specify how a firm should consider conducting a separate conversation with a potential victim-survivor safely, including any follow-up or referrals.

We consider that it is not appropriate in the context of a Family Violence Approach Document to raise the option of a co-borrower instead being treated as a guarantor. This is not a safe or acceptable alternative in the case where there are warning signs of financial abuse. The most appropriate step where there are continued warning signs or red flags is to not place the victim-survivor under any contractual relationship with the lender.

Recommendation 9: Remove reference in the Approach Document to treating a co-borrower as a guarantor as an alternative.

Preventing financial abuse where a borrower did not benefit from a credit facility

The Approach Document notes that there will be situations where a borrower will not benefit from lending or only partially benefitted from lending. The former should stop an application from being approved or alternatively release the customer from liability if irresponsible lending is established, while the latter may require a proportionate release from liability.

Some situations may involve clear benefit or shared benefit (like the purchase of a home). Others may be less easily separated out, such as:

- a credit card instigated by an AUFV in the victim-survivor's name but that the victim-survivor could make some personal purchases on;
- travel instigated or sought by an AUFV and purchased on credit which the victim-survivor then felt obliged or coerced to participate in.
- vehicles for which a victim-survivor had sole liability on the credit contract but which were predominantly used and in the control of the AUFV.

WJ and MSV have seen instances where:

- Travel expenses incurred with a credit product during severe family violence were judged to be for a victim-survivor's whole benefit by a firm as it was a 'holiday';
- Groceries purchased by an adult son for the home using an older person's credit were argued to be partial financial gain by a firm, notwithstanding a lack of consent by the older person in ongoing abuse.

Conversely, WJ and MSV have seen instances where:

- On proceeding to AFCA, a victim-survivor who was forced to enter a loan for a vehicle in circumstances of family violence where there were highly apparent red flags at the time of lending had the full balance of payments waived.

We recommend that the AFCA approach documents reflect and refer to the Responsible Lending approach document and its guidance on assessing benefit of credit as a matter of consistency.

Recommendation 10: The Approach Documents should direct readers to the Responsible Lending Approach Document for information on how AFCA may adjudge benefit of the lending.

Notwithstanding the principles of sole versus shared benefit of lending, an appropriate and trauma-informed approach should avoid a 'line by line' assessment of credit use or benefit (how many purchases by the victim-survivor, how many times was the car driven by the victim-survivor) and should consider the context of the circumstances of the lending and family violence overall.

We suggest that the Approach Document recommend that where lending was by way of a credit card or for a particular good or service in circumstances of family violence, financial firms be expected to waive where the benefit was predominantly for a co-borrower or third party.

Recommendation 11: The Approach Documents should encourage firms to waive liability against a victim-survivor where lending was predominantly for the benefit of the AUFV.

Disputed Transactions

WJ and MSV note that a number of financial firms will also be subscribers to ASIC's ePayments Code. Relevantly, Part 10 of the ePayments Code sets guidelines for subscribers for when a transaction is unauthorised and a customer is therefore not liable.

It would be prudent for the Approach Document to note that generally and in line with the Code, if the transaction is unauthorised, the loss from the transaction will need to be reimbursed.

However, we would encourage both Approach Documents to recognise that in circumstances of family violence and elder abuse there may be delays in reporting an unauthorised transaction (due to safety concerns, capacity issues, or other barriers) and that these may be reasonable delays for which a firm's liability should not be reduced (cf: cl 11.5 of the ePayments Code).

We strongly credit the FV Approach Document for recognising that firms must remain alert for warning signs (including undue influence) even if a transaction may be 'authorised' in the strictly technical sense of the word.

Recommendation 12: The Approach Documents should make reference to the potential application of the ePayments Code, while recognising the potential for reasonable delays in the reporting of disputed transactions in family violence circumstances.

The Role of Brokers

The Approach Document does not mention brokers or confirm whether they are within its scope.

Even if brokers are beyond the scope, we strongly recommend that in line with the wording of the Responsible Lending Approach Document, it be emphasised that a broker's involvement will not change or diminish a financial firm's own obligations, including where red flags were apparent which went to the heart of appropriateness of lending or sale of/entry into a financial product.

The following case study of Westjustice's is relevant to broker conduct:

Tahlia and her then-partner John attended a car yard together as John had been pressuring her to take out a loan for a vehicle that he would use. Tahlia was crying at the car yard and yelling between John and Tahlia could be heard by representatives at the*

dealership, including the on-site finance broker company staff. John test drove a vehicle, however, Tahlia told the broker that she was the one who wanted to take out the loan in her name only. Tahlia seemed anxious and upset. Tahlia told the broker that she had a big lump sum of money coming in, however, it wasn't in her account yet. Noting this, the broker introduced Tahlia to a loan company that he knew had quite relaxed financial checks. Tahlia paid half the purchase cost up front and took out a large loan.

Immediately, Tahia defaulted on the loan. Tahlia came to Westjustice wanting help surrendering the vehicle (which was in John's possession) and untangling herself from this loan. Tahlia disclosed that John forced her to take out this loan and that the loan was only for his benefit. Having this loan under her name was causing Tahlia a great deal of stress and was exacerbating her anxiety and PTSD as it was a constant trigger for the violence she had endured.

Ultimately, at an AFCA conciliation it was agreed that the broker and loan company would jointly compensate Tahlia for irresponsible lending. Under this arrangement, the loan company was to waive the remaining debt, pay back all repayments made and the purchase cost, amounting in almost \$43,000 of compensation being paid out to Tahlia and almost \$50,000 waived. This outcome went a long way in ensuring Tahlia's ongoing financial safety amounting to nearly \$100,000 of financial disentanglement.

**Name Changed*

The Approach Document should also reiterate that brokers may be joined to complaints of this nature involving lending, and liability may be allocated to reflect a broker's contribution to conduct.

Recommendation 13: The Approach Documents should note that the involvement of a broker in a matter involving financial abuse will not displace appropriate obligations on the financial firm providing the product or service, while noting that brokers may be joined and liable in certain complaints.

Insurance and Policy Cancellation

We commend the guidance on not cancelling a joint policy on the direction of one policy holder where there are red flags, and the expectation that insurers have processes and systems in place to identify and safely respond to family violence. It would be useful to clarify examples of what reasonable enquiries upon cancellation look like.

We note that the wording in this aspect of the document discusses policy holders (ie., joint policies) but does not consider the situation of non-policy holders who are, by name or otherwise, a person to whom an entitlement or benefit of the policy extends.

We have seen clients in motor vehicle matters experience risk in this situation where:

- They are driving under an insurance policy of an AUFV (which may be for the vehicle they own and have registered in their name) and need to be able to safely access information about the policy and make notification without contacting the AUFV directly.
- They understand themselves to be appropriately covered for insurance while driving only for the AUFV to have recently cancelled the policy without notice to them.

We believe the Approach Document should consider meaningful directions for insurance firms about handling enquiries by non-policy holders who are experiencing, family violence, including enabling processes for them to safely confirm coverage and if need be make claims, and for insurers to consider extending coverage in situations where cover has been withdrawn and cancelled in circumstances of family violence.

Overall, where it appears family violence indicators were not picked up upon and reasonable enquiries not made of another policy holder, the Approach Document should note an expectation that an insurer will otherwise extend coverage or honour claims by a victim-survivor.

Recommendation 14: The Approach Document should contain additional examples of what reasonable enquiries should look like in the insurance space where cancellation occurs in family violence circumstances, and generally in the handling of claims.

Recommendation 15: The Approach Document should address the situation of non-policy holders experiencing family violence.

Recommendation 16: The Approach Document should outline expectations where a victim-survivor is uninsured due to a failure to act on financial abuse indicators.

Intentional Damage or Destruction of Property and ‘Conduct of Others’ Approach

We consider that the wording could be stronger here: the Approach Document says on the one hand AFCA and the AFCA Rules could require an insurer to provide relief to a victim-survivor on the basis of the fairness jurisdiction. However, it also says an insurer ‘may’ offer ex gratia relief to victim-survivor and offers some examples of where that has happened.

Recommendation 17: The wording could be stronger around ex gratia payments in circumstances involving intentional damage or destruction of property (‘should consider’ not ‘may’), and it may also be appropriate to include examples of any AFCA decisions relating to the conduct of others which have shown the fairness jurisdiction in operation.

Insurance - Benefits Payable under Jointly Held Policy

This part refers to situations in which an insurer is 'aware' that a joint policy holder is experiencing family violence. The remainder of the Approach Document generally reflects an expectation that firms have systems and processes to respond to warning signs of family violence and that it would not be sufficient where such systems or processes were absent to claim a lack of awareness of family violence. We suggest it be clarified to refer to restrictions on paying certain benefits to one policyholder where there are warning signs or indicators of family violence.

Recommendation 18: Amend the Approach Document to require an insurer to not pay certain benefits to one policy holder where there are warning signs or indicators of family violence.

The Approach Document does not address about certain benefits which are extremely important in home building and contents insurance (especially after a disaster) including temporary accommodation or interim/urgent payments. Unlike a larger lump sum or cash settlement, these are unlikely to be resolved in a timely or safe way by consent or court order and are in any event more flexible than larger or 'finalised' benefits. We suggest insurers be encouraged by the Approach Document to pay these to each policy holder separately if needed where there are family violence circumstances.

Recommendation 19: The Approach Document should account for interim, urgent or safety and shelter-related benefits which may need to be arranged separately for individual policyholders where there is family violence.

Superannuation

The expectations on superannuation financial firms are reasonable, in this section, but we would encourage the addition of:

- a restatement or reference elsewhere in the Approach Document to what the red flags in the context of superannuation will be.
- a focus on how a firm documents its data appropriately around potential warning signs of family violence. This should include a best practice positive obligation to ask and record whether other people are present in any communication with the firm.
- what AFCA will expect a superannuation firm to do where expectations are not followed. Trustees who disregard red flags or do not have processes should have these treated essentially as unauthorised transactions and should be expected to recredit the funds into an affected account.

Recommendation 20: The Superannuation section of the Approach Document be drafted to include clear indications as to warning signs, documentation expectations, and expectations where these are not followed.

Protecting a Customer's Confidentiality and Safety

We suggest the following additional steps to protect confidentiality or safety:

- Internal systems that clearly direct the firm's user not to share victim survivor interactions or information with an AUFV (ie., alert pop-ups).
- Confirming safe times and safe contact methods.
- Where there are warning signs or red flags around account compromise, exploring, discussing or organising a security sweep of the victim-survivor's devices in case there is ongoing risk of fraud or identity theft initiated by AUFV.

Recommendation 21: The additional steps to protect confidentiality and safety be incorporated into the document.

Dealing With Financial Hardship – Options for Assistance and Subsequent Settlement and Recovery

We would add the following suggestions with respect to options for assistance and subsequent steps:

- An overarching statement about the importance of safety when considering options for assistance, noting that a firm should consider what documents must be sent to both parties as opposed to those which do not have to, considering what should be included and omitted from these, and obtaining a victim-survivor's informed consent where any assistance option may necessarily involve contact with an AUFV. In particular, firms should be aware in the event of liability being apportioned to another borrower of any safety risks involved with collection activity where this could escalate or exacerbate family violence.
- The Approach Document notes that AFCA will not expect a financial firm to wait 'indefinitely' for repayments, noting that reduction or waiver of interest could be appropriate while waiting for property settlement or a Family Court outcome. It should be emphasised in the Approach Document that Family Court outcomes can and will be protracted (and can be weaponised with delays by AUFVs) and that a financial firm offering assistance should be realistic from the outset about the timeframes for this, rather than a victim-survivor being required to renegotiate assistance month-to-month. Noting this, AFCA should either define a reasonable timeframe for hold, moratoria or payment reduction assistance of six months and provide an example of documents it would deem appropriate to support requests of hardship beyond six months.

Recommendation 22: The Approach Document should re-emphasise that financial hardship assistance should also be informed by safety considerations.

Recommendation 23: The Approach Document should indicate an appropriate minimum timeframe of six months for ongoing hardship assistance in the case of

family violence, with scope for extension, noting that AUFV conduct may be prolonging resolution in many instances.

The Approach Document's language around waiver in hardship focuses on situations where it has seen financial firms offer waivers. It is unclear whether there are circumstances where AFCA would expect a waiver be given due to exceptional circumstances or may find this is the appropriate remedy under the Fairness Jurisdiction.

Recommendation 24: If there are situations of family violence hardship where AFCA would expect a waiver be given due to exceptional circumstances or would be likely to find this were appropriate under its Fairness Jurisdiction, this should be clearly stated in the Approach Document.

The Approach Document acknowledges there may be times when hardship can't be overcome and a secured asset must be sold. The Document says firms should be 'encouraged' to allow their customer a reasonable time to sell themselves.

Noting the observations about the extent to which property settlements are prolonged and complicated by the actions of an AUFV, we would ask if possible that the Approach Document specify a reasonable time to sell the secured asset themselves in family violence situations of up to two years.

Recommendation 25: A period of up to two years should be suggested as a reasonable time where sale of the secured asset is the preferred option of the victim-survivor, or only suitable option.

Credit Reporting

We commend the credit reporting portion of the Approach Document. Our only addition would be to note that the Credit Reporting Code envisages situations (cl 19(12)) where a credit reporting agency, rather than a lending financial firm will receive a correction request and the lending firm will be made aware of this request for their consideration – the Approach Documents should emphasise that such requests should be dealt with promptly and sensitively in the case of family violence.

Recommendation 26: The Approach Document should make provision for the possibility that correction requests in circumstances of FV may come via a credit reporting agency and set an expectation that these be dealt with promptly by a lending firm.

Case Studies and Examples – FV Approach

We note that while the case studies and examples are useful and illustrative, all are for joint home loans and a range of hardship issues and solutions which arose under these.

We note the absence of case studies and examples for:

- secured vehicle loans;
- unsecured debts (ie., personal loans, credit cards, BNPL);
- insurance;
- superannuation.

We believe it is important to show a breadth of financial services and scenarios to make the Approach Document as workable as possible to both firms and complainants captured. With this in mind, we would ask if AFCA can expand its case studies and examples (informed by AFCA decisions where possible) to cover other financial products.

Recommendation 27: The Approach Document should consider including additional case studies and examples for other financial services and products it intends to capture.

Part Two: Response to Financial Elder Abuse Approach Document

While the draft approach to financial elder abuse provides a useful list of common warning signs, as well as limited examples of financial service-specific outcomes (page 13), the document would benefit from organisation by financial service, and a higher volume of case studies, examples, and expected resolutions across a range of financial services and products beyond banking and lending (as in the case of the family violence approach document).

Scams

The 'digital divide' simultaneously increases the vulnerability of older persons to both financial elder abuse from a family member or other acquaintance, and to scamming by unknown persons, particularly where the scam is facilitated online. The situation is particularly fraught where funds of a victim-survivor of elder abuse are lost due to the AUFV being scammed (for example, through an investment or cryptocurrency scam).

Such situations may occur where a family member makes payments using an older person's credit card, coerces an older person make a bank transfer, or asserts authority to make transactions on an older person's account, and this results in loss of funds to a scammer. In these circumstances, while unlikely that the family member intended to cause financial loss (and in fact, likely anticipated financial gain), the transactions have occurred either without the authorisation of the older person, or with only a coerced authorisation.

It is important for both financial firms and AFCA to clearly distinguish between the mere existence of a scam and the nature of elder abuse where the latter is apparent, and to treat these transactions as unauthorised or coerced within the meaning of the financial elder abuse approach document.

Insurance

Concerns specific to insurance include:

- Ensuring older customers are not disadvantaged by any attempt to bring misleading or fraudulent claims by family members;
- Ensuring that claims handling and payments are not compromised by elder financial abuse;
- Ensuring that any claims resolution with an older person directly not amount to unconscionable conduct.

Recommendation 28: Organise sections of the Financial Elder Abuse Approach Document by financial services and products where appropriate, and include specific guidance, case studies and examples relating to insurance and scams.

In addition to our general comments above, please see our specific recommendations below corresponding with the headings in the draft approach:

2.1 - Definition of elder abuse and financial abuse

Elder abuse

Recommendation 29: Add to the definition of elder abuse that, while not always perpetrated by a family member, this is the most common origin of such harm. In such circumstances, elder abuse is a form of family violence and the document 'The AFCA Approach to Family Violence' will also apply.

Financial abuse

We support the guidance by AFCA that financial abuse does not always involve malicious intent and does not only happen in situations where a person lacks legal or cognitive capacity.

Recommendation 30: Add the example of 'situations where an older person depends on another person for assistance with tasks due to digital divide or language barriers' to the examples given of increased vulnerability to financial abuse on page 6 of the draft approach.

2.2 - Warning signs/ red flags

The list of red flags set out on pages 7 to 9 of the draft approach provide useful guidance.

We refer to our comments above relating to the Family Violence approach document and reiterate our concern that as more financial firms move away from brick-and-mortar service delivery, and newer products are increasingly available by way of online application only, financial firms limit their prospect of exposure to many of these identified warning signs.

To avoid plausible deniability by design, it would be useful for AFCA to set out more positive steps expected of financial firms to satisfy themselves that there are no warning signs or red flags present during the provision of services to an older person.

As we recommended in respect of the family violence approach, we recommend:

Recommendation 31: The Approach Document should emphasise that financial firms who provide credit products are expected to have processes in place that enquire about a borrower's requirements and circumstances and which may divulge elder financial abuse indicators.

Recommendation 32: The Approach Document should set an expectation that warning signs from client interactions generally are appropriately documented and addressed.

We also recommend the following with respect to the red flags section of the Approach Document:

Recommendation 33: AFCA order the red flags under headings, for example ‘uncharacteristic behaviours’, ‘physical indicators’ or categorising the red flags by applicable industry (eg, banking, superannuation, insurance) where possible.

Recommendation 34: Consolidate various items on the list to a single item reading ‘the older person may register for online services without previous online interactions’.

Recommendation 35: Add additional red flag examples:

- ***A friend or family member is providing interpreting assistance to the older person or is authorised to speak on the older person’s behalf in circumstances where the older person has a language barrier***
- ***There are unexpected or unexplained overseas logins to an older person’s account***
- ***An older person’s contact details are updated online or using an app, when the older person has not previously contacted the financial service online or by an app.***

What is expected of the financial firm

Recommendation 36: In relation to the list of factors that will be taken into account by AFCA, amend per our suggestions in underlined italics:

• The financial firm talked to the older person separately and in private about the financial transaction. We consider a conversation must be a genuine attempt to understand why the older person is initiating the transaction. A third party should not be present during this conversation, unless the older person has cognitive incapacity.

- *We suggest moving this point to immediately prior to the point relating to Power of Attorney (POA)*
- *We also suggest AFCA provide an indication as what action they would expect a financial firm to take if there are red flags that a properly executed POA is perpetrating financial abuse or using family violence. This may include*

notification to, eg, the Public Guardian (NSW), the Office of the Public Advocate (Vic).

- Financial firm employees should listen carefully *and non-judgmentally* to what the customer says.
- Financial firm employees should check the older person's account records, account operating instructions, and who is authorised to operate the account. If there is more than one account holder or person authorised to operate the account, the financial firm should contact the other account holder or authorised person before allowing the financial transaction to occur. Firms should only do so where they do not have concerns the other account holder or authorised person is not perpetrating financial abuse *or family violence*.
 - *AFCA should also provide an indication as to what it would expect from a financial firm where there appears to have been access to or use of an older person's account by a non-authorised person, or where an older person reports that they suspect a non-authorised person has accessed or used their account.*
- A financial firm may consider declining or delaying the transaction, for example by asking the customer to come back the next day if they still want to proceed (*note that a delay of this nature alone may not resolve coercion or undue influence, and this should be an opportunity for the firm to escalate the warning signs and consider appropriate action for the customer's financial wellbeing*).

2.3 What is considered good industry practice

Information AFCA expects a financial firm to provide

In relation to the last point '[...] notes or relevant documents showing whether or not the customer received a benefit from transaction in complaint', we refer to the commentary and examples we provided above with respect to the family violence approach, and repeat our recommendation:

Recommendation 37: The Approach Documents should direct readers to the Responsible Lending Approach Document for information on how AFCA may adjudge benefit of the lending.

Possible outcome for a complaint

The examples provided in this section are helpful, however further examples or case studies relating to non-banking and lending financial products would be of assistance.

Moreover, it is not clear how this section is intended to interact with the following part of the document, which provides detailed commentary on circumstances in which a financial firm may be legally liable for a customer's losses. This creates ambiguity as to when a presumption of reimbursement will take place.

2.4 Common issues arising in complaints involving financial abuse

This section appears to be largely focused on legal liabilities. We consider that it is important for AFCA to include as a preface to this section that its fairness jurisdiction extends beyond legal liability and include examples that demonstrate the engagement of that fairness jurisdiction. Alternatively, the approach document could be restructured so that the 'common issues' section falls before the 'possible outcomes for a compliant' section and instead refer to the fairness jurisdiction at outset of the 'possible outcomes'.

More broadly, there seems to be a binary throughout the approach document between 'incapacity' (an older person cannot make decisions or give instructions) and risk factors which may affect certain older people who do have 'capacity'.

It would be appropriate for AFCA to include examples of how its fairness jurisdiction could be engaged with respect to vulnerabilities which differ from mental capacity - like a language or digital access barrier - which have been exploited to effect financial elder abuse.

Recommendation 38: Reorder the approach document so that 'common issues' portion falls before the 'possible outcomes' portion.

Recommendation 39: Include examples in 'possible outcomes' demonstrating the exercise of AFCA's fairness jurisdiction beyond the matters of legal liability currently described as common issues.

We note that banks have strict terms and conditions pertaining to account access including around logging in and passcodes with respect to transactions and liability. These generally do not take into account the extent to which elder abuse can present as an offer to 'help' with banking services and tasks and then turn into financial abuse and control. Banks have relied on terms and conditions being breached to deny liability in these situations. We recommend by AFCA commentary on this in the 'common issues' portion of the approach document.

Recommendation 40: Include commentary in the 'common issues' part of the approach document which specifically addresses the issue of account access and bank terms and conditions about transactions and liability in the context of financial elder abuse.

About Westjustice

Westjustice is a community organisation that provides free legal help to people in the Western suburbs of Melbourne.

We can help with a broad range of everyday legal problems including consumer disputes, credit and debt, family law and family violence, fines, motor vehicle accidents, tenancy, youth criminal law and more. Our consumer work has a particular focus on victim-survivors of economic abuse, as well as the needs of recently-arrived and culturally and linguistically diverse communities.

We have offices in Sunshine and Werribee, as well as a number of outreach services.

About Mortgage Stress Victoria

Mortgage Stress Victoria (**MSV**) is a free specialist service funded by the Victorian Government. We help Victorians in mortgage stress to stay in their homes sustainably. Our team consists of lawyers, financial counsellors, and social workers. Our vision is fair mortgages and secure housing for homeowners in debt.