FS20/4: Temporary financial relief for consumers impacted by coronavirus: feedback on draft guidance and rules (motor finance and high cost credit)

24 April 2020

Contents

1 Summary

1.1 We announced a range of measures to provide consumers in the motor finance and high cost credit sectors with temporary support in the light of the current exceptional circumstances arising out of coronavirus (COVID-19). The measures complemented those already finalised for overdrafts, credit cards and personal loans. This document summarises the feedback we received on our proposed measures and our response.

1.2 We wanted to act quickly to protect consumers in these difficult times and, therefore, did not formally consult on the proposals or produce a cost benefit analysis. We consider that the delay in doing so would be prejudicial to the interests of consumers. However, we invited comments on our proposals and received 59 responses from firms, trade bodies, consumer groups and individuals.

1.3 The majority of respondents expressed strong support for the proposals. Many acknowledged that some firms in these sectors already offer consumers various options to defer or reduce payments in the light of the coronavirus situation, or have adopted other processes consistent with the guidance. Many respondents recognised the challenges associated with providing support to consumers in the high cost credit sector and the broader tension between providing appropriate support to consumers while mitigating the financial impact on firms. We have taken the responses into account in finalising the rules and guidance, as set out below.

1.4 These rules and guidance support our consumer protection objective and are designed to protect consumers by providing them with temporary support in the light of the current exceptional circumstances arising out of coronavirus. We do not consider that they will adversely affect consumers with protected characteristics under the Equality Act 2010.

1.5 We are now publishing our finalised rules and guidance, subject to a small number of changes. These changes clarify the scope of application of the guidance in various areas and address a number of technical issues raised by stakeholders.

1.6 The rules and guidance affect a range of firms including providers of:

- Motor finance (including personal contract purchase, personal contract hire and conditional sale agreements)
- Rent-to-own, buy-now-pay-later and pawnbroking
- High-cost short-term credit

1.7 We recognise that there may be other types of regulated credit agreement which are not specifically covered by this guidance or that previously issued. Firms offering such agreements should treat customers fairly by considering providing payment deferrals in line with this guidance as a part of their forbearance approach.

1.8 The guidance and rules come into effect on Monday 27 April.

Next steps

1.9 This guidance, along with the related guidance on mortgages, overdrafts, credit cards and personal loans, will ensure customers receive temporary support. It is vital that, at the end of this period, customers have the advice and support they need, and are clear on the options available to them.

1.10 Over the coming weeks we will review this guidance and work with firms, consumer and debt advice groups, and government, to consider what other forms of support may be needed.

2 General issues

Summary

2.1 Respondents raised a variety of cross-cutting issues relevant to these sectors. These included the potential impact on the financial position of firms and the implications for credit reference agency (CRA) reporting, including what should happen at the end of payment deferral periods. Some firms and trade bodies also questioned the consistency of the guidance in terms of the extent of customer engagement expected and raised concerns around Consumer Credit Act (CCA) requirements.

2.2 Some firms also highlighted the importance of ensuring appropriate consumer communications to ensure that consumers understand the potential drawbacks of payment deferrals and highlighted potential implementation challenges. Consumer groups raised concerns about the appropriateness of allowing interest to accrue during payment deferral periods. Further details on these issues and our response is set out below.

Financial impact on firms

2.3 Trade bodies representing these sectors raised concerns around the potential financial impact of widespread payment deferrals and other forbearance measures, including the accounting treatment of these and how they could affect firms' funding arrangements. They indicated that the nature and extent of forbearance required will extend significantly beyond what would ordinarily be expected, and that liquidity support should be made available to non-bank lenders to preserve the future viability of certain sectors. Some respondents questioned how the measures would impact firms in insolvency procedures.

Our response

2.4 We recognise that the current circumstances present significant financial challenges for some firms, and that widespread forbearance activity including payment deferrals may exacerbate these challenges. We also acknowledge that firms in these sectors may be unable to access certain Government funding schemes and may need to seek renegotiation of existing funding arrangements. We are engaging with firms to understand their financial position.

2.5 However, this does not affect our expectation that consumers should be offered appropriate forbearance in accordance with our rules and guidance where necessary, particularly given the current exceptional circumstances. Where firms, including those subject to insolvency procedures, are concerned about the impact of providing payment deferrals or other forbearance in accordance with this guidance, they should contact us at the earliest opportunity.

Credit reference agency (CRA) reporting

2.6 Some respondents requested further clarity around the approach to credit reporting at the end of a payment deferral period, particularly in relation to high-cost short-term credit (HCSTC) where one-month payment deferrals are anticipated. They also questioned how other further forbearance measures, such as the waiving of interest or charges and rescheduling of payment terms, should be recorded on credit files at the end of a payment deferral period. Some consumer groups also questioned whether it is fair that consumers who have experienced non-coronavirus related income shocks and missed payments should be treated differently in terms of credit reporting.

2.7 Some firms highlighted the potential difficulties with undertaking accurate affordability assessments for new lending where credit files are showing no worsening arrears status for accounts subject to a payment deferral.

Our response

2.8 We consider that the guidance is sufficiently clear that at the end of a payment deferral period we would expect usual credit reporting to resume. This reflects our policy intention of providing temporary support to those consumers entering a payment deferral as a result of the current exceptional circumstances, while also recognising the need to preserve the integrity of credit reporting processes. In practice, this means that those consumers who can resume repayments in accordance with contractual terms would have their accounts protected from any worsening arrears status solely as a result of entering into a payment deferral. Credit reporting would continue as normal thereafter with any subsequent arrears being reported in the usual manner.

2.9 For those consumers that require additional forbearance at the end of a payment deferral period, for example in the form of waived interest and charges, we would expect this to be reflected on credit files in accordance with the usual processes. We will continue to engage with CRAs and firms to consider the impacts of the current circumstances and what if any further work is needed to agree common approaches to reporting during the current extraordinary circumstances.

2.10 For those consumers who do require further forbearance at the end of a payment deferral period and who may be concerned about the potential impact on their credit file, it is open to them to place a 'notice of correction' on their credit file in accordance with the process set out in the CCA. This notice may explain the circumstances surrounding any missed payment or forbearance arrangement and should be reviewed by lenders when undertaking a subsequent creditworthiness assessment using information obtained from a Credit Reference Agency.

Extent of expected consumer engagement

2.11 Some respondents questioned whether the guidance is sufficiently clear around the extent to which an individual or 'blanket' approach should be taken to assessing eligibility for payment deferrals and other forbearance. In particular, they highlighted that in some high cost credit sectors, such as HCSTC, it is more difficult to adopt a blanket approach given the wide variety of customer circumstances and potentially greater need for forbearance other than a payment deferral. Consumer groups also questioned whether it was sufficiently clear what 'good' forbearance looks like, and how the FCA would supervise firms' forbearance approaches.

Our response

2.12 We recognise that there is a tension between ensuring firms take sufficient account of a customer's circumstances while being able to operationalise approaches in an efficient and effective manner, particularly given the current pressures resulting from increased consumer demands for forbearance. While we acknowledge this tension may be particularly acute in the high cost credit sector, where firms often have fewer financial and operational resources to call upon, it is likely that their customer base may be more likely to require bespoke forbearance solutions.

2.13 We consider that the guidance strikes an appropriate balance and will allow firms to operationalise their approach effectively, for example by taking a cohort/book level approach (including taking account of product characteristics) to assessing whether a payment deferral is obviously not in a customer's interests. Our existing rules provide considerable flexibility for firms in determining an appropriate forbearance strategy, which we consider is likely to provide the most effective outcome for most consumers given the disparate nature of many credit products and wide variety of customer circumstances.

2.14 However, we recognise that the HCSTC sector presents particular challenges, including that the shorter payment deferral period may bring into earlier focus the need for greater clarity on the type of forbearance options which we would typically expect to be offered in the event that consumers continue to experience payment difficulties. We have therefore set out more details on the variety of forbearance options which we would expect firms to consider in the HCSTC guidance.

2.15 Strong supervision is critical to ensure customers affected by coronavirus receive the support from lenders they need. We will be closely monitoring the implementation of the guidance and testing outcomes for consumers affected by coronavirus who need a payment deferral or further forbearance after the expiry of a deferral period. We will be proactively engaging with firms on an ongoing basis, and will take action where intelligence highlights potential or actual non-compliance.

Consumer Credit Act 1974 (CCA) requirements

2.16 Some firms and trade bodies raised concerns about CCA requirements and how these may apply in the context of payment deferrals. These concerns reflect previous concerns raised by industry relating to the issue of modifying agreement (including the associated repapering) where payment terms are rescheduled. Firms also cited the requirement to issue a notice-of-sums-in-arrears (NOSIAs) as a potential impediment to effective implementation.

Our response

2.17 These issues were covered in some detail in FS20/3 where we set out our view on the scope and nature of CCA requirements and our regulatory approach. We consider that this should provide some comfort to firms that appropriate processes could be put in place which would either not engage certain CCA requirements or could operate alongside them (for example by issuing accompanying information alongside a NOSIA).

Consumer communications

2.18 Firms and trade bodies highlighted the importance of ensuring that our communications are pitched appropriately to consumers to mitigate against payment deferrals being seen as a 'right' with no possible downsides. They also raised concerns that social media and consumer groups would seek to encourage consumers to apply for payment deferrals irrespective of their particular circumstances, and questioned whether using the language of a 'payment freeze' as opposed to 'payment deferral' in our consumer communications sent the right message.

Our response

2.19 We have made clear in our communications that consumers should consider carefully whether a payment deferral is in their best interests, particularly given that additional interest will typically accrue during this period. We recognise that payment deferrals should not be seen as an automatic right, and will reiterate in our communications that these measures are intended to provide temporary and exceptional support only for those consumers who are already experiencing, or reasonably expect to experience, payment difficulties as a result of the coronavirus situation.

2.20 We have also made clear that there are other solutions which may be more appropriate for customers depending on their particular circumstances, so firms should offer other forms of forbearance if a payment deferral is obviously not in the customer's interests.

Implementation challenges

2.21 Some firms and trade bodies highlighted the difficult operational challenges presented by the guidance, including the need to implement manual workarounds to existing processes in a very short timescale. In particular, firms in the BNPL sector highlighted concerns around how payment deferrals in promotional periods could be reflected in their systems and on possible complexities in the event that they had to comply with separate BNPL and retail revolving credit guidance.

Our response

2.22 We recognise that timely implementation of these measures will present implementation challenges for some firms. However, given the current exceptional circumstances and overarching need to provide consumers with appropriate support as soon as possible, we consider that firms should take the necessary steps to overcome these implementation challenges.

2.23 Wherever possible, we have sought to ensure that the guidance facilitates processes that can align with firms' existing systems. If a firm does not think it can implement appropriate processes in time, it should contact us at the earliest opportunity.

2.24 In relation to BNPL, from a customer perspective we do not consider that the industry's preferred approach of deferring initial payments due in the repayment period of a BNPL is the same as extending the promotional period. We have also clarified a number of other issues surrounding the application of the guidance to the BNPL sector as set out in the relevant section below. We consider this will make it easier for firms in this sector to implement these measures where BNPL agreements are provided on a running-account basis. However, we would be likely to accept an alternative approach from firms provided customers receive the same outcome.

Effect of accrued interest on products other than HCSTC

2.25 A number of respondents argued that a three-month payment deferral would result in customers accruing significant additional debt, as the interest rates on products such as pawnbroking and RTO can be high and, on BNPL, they are also backdated on outstanding balances.

Our response

2.26 We are conscious that a payment deferral will not be appropriate for all customers of these products. Our guidance states that firms can, without unreasonable delay, offer other ways to provide temporary relief to the customer in accordance with Principle 6 if a payment deferral is obviously not in the customer's interests. We have also made clearer that on these products the interest rate and remaining term are likely to be the key factors, as well as highlighting that alternatives would be better if the effect of additional accrued interest would be to create a higher overall debt burden that is unsustainable for the customer.

2.27 Where any interest that would not have accrued but for the deferral of the payment is nevertheless accrued, the guidance states that this should be waived if the customer requires forbearance at the end of a payment deferral period.

3 Motor finance

3.1 Respondents were broadly supportive of our intention to provide exceptional and immediate relief for motor finance customers facing payment difficulties arising from coronavirus.

3.2 In this chapter, we set out the main points raised on our draft motor finance guidance and our response.

Scope

3.3 One respondent was concerned that certain restricted use credit agreements used by consumers to purchase vehicles, where the creditor and supplier are different, would be captured.

3.4 Two respondents queried the exclusion of business lending and whether this extended to regulated agreements for business purposes (ie where the credit or amount of leasing payments is £25,000 or less).

3.5 Another questioned why bills of sale (eg logbook loans) were not included in the motor finance guidance. One respondent felt that the guidance should also apply to agreements that are secondary to the motor finance agreement (eg personal loans for add-on products).

Our response

3.6 To cover relevant restricted use agreements, we have clarified the scope of our motor finance guidance to include debtor-creditor-supplier agreements and restricted use debtor-creditor agreements (apart from credit cards) used for motor finance.

3.7 As with our personal loans guidance, the motor finance guidance is not intended to capture lending for business purposes. However, firms should remember that the Principles, including the obligation to treat customers fairly, extend to all business customers. Firms may still find the guidance helpful when considering how to comply with the Principles in relation to businesses.

3.8 Logbook loans are covered by our temporary guidance on personal loans. In our view, there is no need for a specific approach to logbook lending because of the use of a bill of sale. Certain issues specific to motor finance agreements, such as hire purchase, do not apply. Bills of sale can also be used to secure credit against property other than cars so including them with motor finance would not have been appropriate.

3.9 Secondary loans that might be associated with a motor finance agreement will remain out of scope of the motor finance guidance. Depending on the nature of these secondary agreements, they may also be covered by our temporary guidance on personal loans.

Payment deferral

3.10 We received a variety of specific comments on our proposed payment deferral.

3.11 Two consumer bodies raised concerns about customers accruing interest during the payment deferral period. Two industry respondents asked whether firms would be *required* to waive interest if the customer was entitled to forbearance at the end of the payment deferral.

3.12 Several respondents were concerned that our guidance is contradictory in that a payment deferral does not need to be granted where it obviously would not be in a customer's interest, while not compelling firms to investigate individual customer circumstances. One respondent argued that there may be some situations where an assessment of a customer's circumstances is necessary, including their expenditure.

3.13 Some industry respondents asked for clarity on whether customers experiencing payment difficulty prior to the coronavirus situation, but exacerbated by it, would be entitled to a payment deferral.

3.14 One firm wanted clarity on how it would be expected to treat a customer requesting a payment deferral on a PCH agreement approaching end of term.

3.15 We are aware that some firms are already offering affected customers payment deferrals. One asked whether they would be required to offer a further payment deferral once our guidance comes into force.

3.16 One respondent asked that we clarify whether a consumer on an introductory rate would be eligible for a payment deferral and whether that introductory rate period would be extended as a result.

3.17 A firm asked whether, on a Personal Contract Hire (PCH) agreement, they would still be allowed to charge a minimum payment for tax and other outlays which normally comprise part of the customer's monthly payment.

Our response

3.18 We recognise that payment deferrals may not be in the interests of all consumers, and that there may be an increased risk of over-indebtedness where additional interest continues to accrue during a payment deferral period. However, our primary goal is to provide consumers experiencing temporary payment difficulties resulting from coronavirus with immediate relief from payments to help manage their wider financial situation during these difficult circumstances.

3.19 Although this may result in increased costs for customers over the longer term, on balance, this may be a useful option for many who are encountering temporary difficulties with finances as a result of the current crisis. Where customers cannot afford to resume payments at the end of the payment deferral period, the firm should work with them to resolve these difficulties in advance of payments being missed. This should mitigate against the likelihood of consumers becoming over-indebted. Where the customer is entitled to forbearance this should include the waiver of additional interest resulting from any payment deferral.

3.20 Our guidance explains that firms should not grant a three-month payment deferral where it is obviously not in the customer's interests to do so. But, to ensure customers are offered quick support, firms can consider whether the offering of a payment deferral period is in customers' best interests at a book/cohort level, rather than having individual conversations with customers about their circumstances. Our guidance does not however prevent firms from considering individual customer circumstances if they so choose. This could include looking at both income and expenditure.

3.21 Where a three-month payment deferral is obviously not in customers' interests, firms should without unreasonable delay offer other ways to help those customers, for example by offering shorter payment deferral periods, reduced payments or a rescheduled term.

3.22 Where a customer was already experiencing payment difficulties unrelated to coronavirus, our existing forbearance rules and guidance in CONC would continue to apply. This could a payment deferral if appropriate in the circumstances.

3.23 We are not specifying how firms deal with payment deferrals on agreements approaching term end. This could include extending the agreement or rescheduling the amount over the remaining term. However, the firm will need to consider whether a payment deferral is obviously not in customers' interests.

3.24 Where a firm has granted a payment deferral before our guidance came into force, it will be for firms to determine whether a further payment deferral is appropriate for the customer once our guidance is in force. Firms should consider whether a payment deferral, which is intended to provide temporary relief, would be appropriate for a customer who may be facing longer term payment difficulties. Our guidance on what firms should consider once a payment deferral comes to an end is relevant here.

3.25 Our motor finance guidance applies where a customer is on an introductory rate. We are not proposing that firms extend introductory rate periods as a result of a payment deferral. This would take us beyond our original policy intent of providing customers with temporary relief from cashflow difficulties.

3.26 Where a customer has been granted a payment deferral, we do not expect consumers to make any payment during that period (unless it is a token payment of £1 or less). Charges can, however, continue to accrue during the period of deferral, provided those charges don't arise from the firm permitting the deferral.

Other contractual issues

3.27 Our draft guidance sets out some high-level principles that firms should adhere to when granting payment deferrals on Personal Contract Purchase (PCP) and PCH agreements. This includes an expectation that firms should not alter other aspects of the contract – including Guaranteed Minimum Future Values (GMFVs) and Residual Values (RVs) – in a way that does not lead to unfair outcomes.

3.28 Industry respondents asked whether our guidance would allow firms to alter GMFVs and RVs at all – for example, to account for depreciation of the vehicle in 'normal' market conditions.

Our response

3.29 Our guidance does not prevent firms from adjusting GMFVs or RVs, provided firms treat customers fairly. This could include adjusting those values to reflect the expected depreciation of a vehicle prior to car values being affected by the coronavirus situation.

3.30 In response to a specific comment, we have amended our guidance to make clear that the section on adjusting GMFV and RV applies regardless of how a payment deferral is given effect, not just where a new agreement is entered into.

Agreements reaching term end

3.31 Several industry respondents asked for more clarity on what options firms could consider where refinancing a balloon payment would be inappropriate at the end of an agreement. This could include where the customer wishes to retain the vehicle, is unable to make the balloon payment and the balloon payment does not reflect the true value of the vehicle. One respondent felt that giving the customer as much information to make an informed decision was particularly important, and that the guidance should not constrain customers' choices.

3.32 We received several comments on situations where the customer's agreement is reaching term end, the customer wishes to return the vehicle but it is impractical to do so. These comments included concerns about the technicalities of completing Statutory Off Road Notices (SORNs) in cases where a customer is unable to park on private property, as well as tax and insurance obligations.

Our response

3.33 Our guidance is intended to be high-level to enable firms to account for a range of different scenarios, while providing customers affected by coronavirus with the support they need.

3.34 We are not proposing to use the guidance to specify how firms should deal with balloon payments at the end of the agreement. Doing so would risk missing nuances of individual customer circumstances. However, firms should wherever possible consider solutions that enable a customer to keep the vehicle (if that is their wish), ensuring they can afford any monthly payments and retaining contractual rights such as voluntary termination.

3.35 In line with our intention to keep the guidance high-level, we have removed references to SORNs to avoid unnecessary complications for firms and potential distress for consumers. Consumers should engage with their firm to inform them of their wish to return a vehicle and agree on any necessary next steps depending on the circumstances.

3.36 In all matters relating to agreements reaching term end, firms need to pay regard to Principle 6.

Repossessions

3.37 Several industry respondents were concerned that our proposed moratorium on repossessions could exacerbate financial difficulties for some customers. One asked for how long the moratorium would last. Some respondents wanted clarity on whether the moratorium would prevent firms from repossessing a vehicle where the customer has not suffered payment difficulties as a result of coronavirus.

3.38 Several consumer bodies wanted firms to work with customers at the as soon as payment difficulties arise to enable them to retain use of the vehicle.

3.39 Another respondent questioned the subjectivity surrounding the customer's 'need' for the vehicle.

Our response

3.40 Our moratorium on repossessions is limited to those consumers who are experiencing temporary payment difficulties as a result of circumstances relating to coronavirus and need use of the vehicle. It will last for as long as the guidance is in force (anticipated to be three months from 27 April).

3.41 The moratorium does not apply where a customer is in non-coronavirus related payment difficulty. However, our CONC 7 rules on forbearance would apply and these customers should be treated in accordance with those rules. Where a repossession is deemed necessary, firms would need to observe any government guidelines on social distancing.

3.42 Our guidance does not prevent firms from terminating agreements in exceptional circumstances where they do not contravene Principle 6, for example where the customer requests it.

3.43 In determining whether a customer needs the vehicle, a firm should consider the specific circumstances and follow Principle 6. While the customer's payment difficulties must be coronavirus related for our guidance on repossessions to apply, their need of the vehicle does not have to be directly related to the coronavirus situation.

Other issues raised

3.44 One firm asked whether NOSIAs would need to be sent to guarantors, despite our guidance stating that guarantors should not be pursued.

Our response

3.45 The relevant CCA requirements have been in place for many years and we do not consider that the measures set out in the guidance should result in firms being unable to comply with the statutory requirements.

3.46 Where a NOSIA is required to be sent, although the legislation requires the inclusion of certain prescribed wording, it is open to firms to provide suitable explanations or context with these notices if they consider that they might otherwise lead to confusion. One trade body suggested that if firms had operational difficulties in including the additional wording within the NOSIA itself that they could include it in a separate communication. We do not have any issues in firms doing this provided it is sent in a timely manner and is likely to be clearly understood.

4 Rent-to-own, buy-now pay-later and pawnbroking

Rent-to-own

Collections

4.1 A number of consumer group respondents said that we should prevent all repossessions or provide some additional protection for customers where a firm tries to use their ability to repossess collateral in seeking repayments.

Our response

4.2 Our rules on debt collecting make clear that firms must take proportionate steps before attempting or indicating that they will attempt repossession.

4.3 This guidance makes clear that where a customer is experiencing temporary difficulties relating to coronavirus and has need of the goods, they should not be repossessed absent exceptional circumstances (such as a customer requesting that repossession continues). Where a firm wishes to repossess goods from a customer who is not affected by coronavirus and doing so would not conflict with the Government's guidelines on social distancing, it would be subject to our usual rules in CONC 7 about taking proportionate steps before repossessing.

Buy-now pay-later

Eligibility for a payment deferral

4.4 A number of industry respondents asked for clarity on whether we intended that a customer should be eligible for a payment deferral via an extended promotional period regardless of when the promotional period was due to end.

4.5 Firms argued that this was overly generous to customers given that a customer who recently entered a BNPL agreement could have a promotional period that ends in twelve months. If they experience coronavirus related payment difficulties and ask for a payment deferral, payments due under the agreement would not begin to fall due for fifteen months.

4.6 Firms also argued that this was inconsistent with our stated policy objective of providing short-term financial support for customers affected by temporary coronavirus related payment difficulties.

Our response

4.7 Our policy objective is to provide temporary assistance to customers affected by coronavirus related payment difficulties.

4.8 Where a customer is in the promotional period of a BNPL agreement the effect of such difficulties is likely to manifest itself in fewer voluntary payments being made to reduce the balance left at the end of the promotional period.

4.9 Given that interest on any outstanding balance is backdated to the beginning of the agreement we are concerned that customers who, due to coronavirus related payment difficulties are less able to make the voluntary payments they may otherwise have made, may face significant additional costs as a result of having a higher balance when the promotional period ends, regardless of when it ends.

4.10 Our intention is to reduce the risk of this harm for people in coronavirus related payment difficulties by extending the BNPL promotional period of affected customers, thus providing them an opportunity to make payments they would have otherwise have made during the period of coronavirus related payment difficulties before the promotional period ends. Some customers will be able to catch up and repay the balance in full by the end of the extended promotional period, thus avoiding the potentially significant backdated interest they would have incurred if the promotional period had ended when scheduled.

4.11 If customers do nevertheless have a remaining balance at the end of the promotional period firms will be able to backdate interest over the extended period. However, if such a customer uses the extended promotional period to make payments that they would otherwise have made during the period of payment difficulties they are still likely to benefit as a result of avoiding backdated interest.

4.12 We have amended the guidance to clarify that a coronavirus affected customer is eligible irrespective of when their promotional period is due to end.

Implementation of a payment deferral by extending the promotional period

4.13 Some respondents said that it would be operationally more straightforward if we change the way that a payment deferral would work on a BNPL agreement. Some firms cited systems limitations that would prevent them extending the promotional period and others also referred to – in their view – difficulties extending the promotional period without issuing a modifying agreement.

4.14 The alternative proposed by respondents was that a deferral on a BNPL agreement instead be operationalised by deferring the initial payments of the repayment period.

Our response

4.15 Given that interest on any outstanding balance is backdated to the beginning of the agreement we are concerned that customers in this position may face significant additional costs as a result of having a higher balance when the promotional period ends. If the promotional period is extended, any voluntary payments that are made during the extended period would reduce the outstanding balance and avoid incurring backdated interest. If the promotional period is allowed to end as scheduled the customer may incur significantly higher backdated interest than would otherwise have been the case had they not been affected by coronavirus.

4.16 As such, allowing the promotional period to end and instead deferring the initial payments due in the repayment period would undermine our policy intention on BNPL. Therefore, we do not intend to make changes to the guidance on this point but note that if firms are prevented from extending the promotional period by systems or operational limitations we would accept an alternative approach that delivers the same economic outcome for the customer.

Running-account BNPL agreements

4.17 Some firms offer BNPL credit on retail running-account products, which are covered by the existing 'Credit cards (including retail revolving credit) and coronavirus: temporary rules and guidance for firms' published on 9th April.

4.18 Respondents asked for clarification on how these two pieces of guidance would interact and the circumstances in which each would apply, including in relation to the different implementation dates.

Our response

4.19 Payments due under the retail running-account agreements on which some firms offer BNPL credit are covered by the existing 'Credit cards (including retail revolving credit) and coronavirus: temporary rules and guidance for firms' published on 9th April. We have amended our guidance on BNPL agreements to make clear when and how each guidance applies.

4.20 A customer in a BNPL promotional period will be able to request an extension of the promotional period during the three-month period following the implementation of the guidance covering BNPL. A customer will be able to request a payment deferral on payments currently due on a retail running-account agreement during the three-month period following the implementation of the guidance titled 'Credit cards (including retail revolving credit) and coronavirus: temporary rules and guidance for firms'.

Pawnbroking

Eligibility

4.21 Two respondents stated that it was not clear from the draft guidance whether a pawnbroking customer would only be eligible for a payment deferral if they were approaching the end of the redemption period, and argued that this should be our policy position.

Our response

4.22 Our position is that a customer should be eligible for a payment deferral irrespective of when the redemption period is due to end. Where a pawnbroking customer has a period of payment difficulties during the redemption period it is likely to undermine their ability to repay the loan at the end of the redemption period, even if that is not due for a number of months. This heightens the likelihood that they will lose the item taken in pawn.

4.23 We have amended the guidance to make clear that a customer affected by coronavirus related payment difficulties is eligible for a payment deferral irrespective of when their redemption period is due to end.

Documentary evidence

4.24 One respondent stated that pawnbrokers would wish to see documentary evidence proving a customer had experienced coronavirus related payment difficulties before granting a payment deferral.

Our response

4.25 The guidance makes clear that firms are not required to make enquiries of customers but equally firms are not prevented from making enquiries of customers in relation to their eligibility. We do, however, expect firms not to act unreasonably, for example by putting unreasonable evidential burdens on customers. Firms should bear in mind that the guidance also applies where the customer reasonably expects to experience coronavirus related difficulties, not just to those who are already experiencing it, which may influence the inquiries that are reasonable to make.

Duration of deferral

4.26 A respondent argued that a customer receiving a three-month deferral would have to be confident that their situation would improve sufficiently in order to redeem the pawn by the end of the three-month extension. If they did not, the effect of the deferral could be to have increased the interest due and thus reduced (or wiped out) the surplus from the sale of the goods the customer would otherwise have received.

Our response

4.27 The guidance makes clear that firms should explain to customers the potential implications of a deferral. Where it is obvious to a firm that a deferral is not in the customer's interests, they should without delay put in place an appropriate alternative that meets the objectives of providing short-term support and avoids the build-up of unsustainable debt. It is also open to firms to provide a shorter deferral period than three months where that is appropriate.

4.28 Where a customer does receive a payment deferral and subsequently requires forbearance, the additional interest accrued as a result of the deferral should be waived.

4.29 If a customer, having obtained a three-month payment deferral decides they no longer want it, then firms should be willing to follow the customer's preferences regarding repayment or disposal.

Notice of intent to sell

4.30 Respondents suggested that an appropriate way to make customers aware they could obtain a payment deferral (if they are eligible) would be to highlight it in the notice of intent to sell. All firms are required to send such a notice if a pawn has not been redeemed at the end of the redemption period.

Our response

4.31 We agree that this is an effective way of helping raise awareness among eligible customers but our guidance is clear that eligible customers can request a payment deferral at any time while the guidance is in force. As such, if customers request one before the firm has sent a notice of intent to sell then this should be granted, subject to the eligibility discussed above. We have amended the guidance to reflect that where firms are communicating with customers as part of their normal operations that they should take these opportunities to help make customers aware that they may be eligible for a payment deferral, as well as explaining the potential risks and costs.

Peer-to-peer (P2P) pawnbroking

4.32 Responses included a point about consistency between the draft guidance applying to pawnbroking and the personal loans guidance, with P2P platforms excluded from the latter. It was argued that for consistency P2P platforms should also be excluded from the scope of the pawnbroking guidance.

Our response

4.33 We agree that the arguments relating to P2P platforms' exclusion from the personal loan guidance apply equally to other kinds of P2P platforms and as such we have amended the scope to exclude them.

5 High-cost short-term credit

Issues raised

5.1 Stakeholders in general welcomed the one month payment deferral and that no additional interest would arise as a result of the deferral period.

5.2 A number of consumer groups argued that one month would be too short to help relieve financial pressure and that the deferral period should be extended to three months, in line with the measures announced for other credit products.

5.3 An industry trade body raised concerns about a 'one size fits all' approach and felt that firms should be allowed to consider tailored forbearance measures based on the customer's individual circumstances. It also questioned whether the proposed measures would always be in the customer's interest.

5.4 Both industry and consumer stakeholders wanted greater clarity as to what firms should do at the end of the deferral period and wanted us to be more explicit about what kind of circumstances would qualify for additional forbearance. One consumer group suggested applying the measures on a monthly rolling basis if the customer needed further help.

5.5 Some stakeholders wanted us to clarify whether customers could request the one month deferral multiple times in respect of a single agreement across the three months period of the temporary guidance.

5.6 Some consumer groups questioned why the guidance would only apply to existing agreements and not to future HCSTC agreements entered into during the three months after the guidance comes into force. They were concerned that consumers could sustain unforeseen adverse financial circumstances due to coronavirus that arise after the agreement is taken out.

5.7 Some firms raised concerns about Claims Management Companies (CMCs) and whether they might seek to pursue claims arising from this guidance.

5.8 Finally, some industry stakeholders were uncertain about how interest should be calculated.

Our response

5.9 We recognise that some consumers are likely to face payment difficulties for longer than one month as a result of the coronavirus. However, our measure reflects the fact that HCSTC loans are in general between three and six months in duration (but can in some cases be for a single month) and its objective is to provide temporary relief for customers and find appropriate repayment solutions tailored to individual circumstances.

5.10 We consider that the needs of customers exiting the one month deferral period are best met by firms providing forbearance measures as described in our existing rules which are tailored to customer's individual circumstances. We have amended the guidance to require firms to use the deferral period to agree appropriate longer-term solutions with customers. They should engage with their customers to understand the likelihood of them being able to resume payments at the end of the deferral period.

5.11 Where a customer reasonably expects to continue to face payment difficulties as a result of circumstances relating to coronavirus, the firm should consider what further forbearance should be provided based on the options set out in CONC 7.3.5. This might include agreeing a longer-term payment plan for both the deferred payment and other unpaid sums and/or waiving or reducing interest.

5.12 If a firm does not take reasonable steps to engage with their customers individually during the deferral period, then our guidance now provides that the customer should not be worse off as a result. In these cases the firm should continue to provide the payment deferral measure set out in the guidance until they have taken such steps.

5.13 Some firms stated that they already go beyond a one-month deferral and provide more bespoke assistance (including longer deferrals and interest waivers). We welcome this approach and would encourage others to do so.

5.14 We agree that both customers with existing agreements as well as customers who enter into agreements during the period of the temporary guidance should be afforded support under the guidance, and have made amendments to our guidance to reflect this. When assessing new loan applications, firms will have to comply with our creditworthiness rules and are required to take account of any risk of the applicant suffering a reduction in income during the term of the loan.

5.15 In respect of the firms' comments about the role of CMCs, if customers feel dissatisfied with the conduct of the firm in relation to matters arising from this guidance, they should initially raise the complaint with the firm. If the customer remains dissatisfied with the outcome of the complaint this can be escalated to the Financial Ombudsman Service (FOS). The FOS is independent but we have made them aware of the guidance, and the need for swift action by firms to support customers who are affected by coronavirus.

5.16 Under our guidance, customers should benefit from a freeze on their payments for one month and no additional interest arising as a result of the deferral should be charged to the customer. The payment deferral should have no impact on the amount of the balance that was outstanding at the time when the payment deferral was granted. This is in contrast to the guidance we have published on other credit products where interest (including interest resulting from the deferral) would continue to accrue during the payment deferral, thereby increasing the amount to be repaid.

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