FINANCIAL CONDUCT AUTHORITY

Credit card market study:

Persistent debt and earlier intervention remedies - feedback on CP17/10 and further consultation

Consultation Paper

CP17/43**

December 2017

How to respond

We are asking for comments on this Consultation Paper (CP) by 25 January 2018.

You can send them to us using the form on our website at: www.fca.org.uk/cp17-43-response-form

Or in writing to:
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Financial Conduct Authority
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Telephone:
0207 066 9352

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How to navigate this document onscreen

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takes you to helpful abbreviations

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1 Summary

Introduction

1.1 In this Consultation Paper (CP), we set out our responses to the feedback we received to CP17/10: 'Credit card market study: consultation on persistent debt and earlier intervention remedies' (April 2017)[1].

1.2 We also:

- describe the changes we are making to our draft rules and guidance on persistent debt as a result of the responses received
- set out revisions to our original cost benefit analysis (CBA)
- seek further views.

1.3 In particular, consultation has caused us to revisit our estimates of the costs associated with implementing this policy, and - as appropriate and in line with our statutory and public law consultation duties - we seek further views on this. This is a short, focussed consultation and we anticipate finalising rules as early as possible in the New Year.

Who does this affect?

1.4 This paper affects:

- firms that offer credit cards to consumers
- consumers who hold credit cards. Specifically, those who carry a balance over a long period of time without making significant repayments and customers at risk of financial difficulties
- firms that provide debt advice

1.5 It will also be of interest to trade bodies representing credit card firms, consumers and consumer representative organisations.

1 www.fca.org.uk/publication/consultation/cp17-10.pdf

The wider context of this consultation

1.6 In July 2016, we published the final findings report from our credit card market study (CCMS)[2]. We found that competition was working fairly well for most of the 30 million consumers who hold a credit card (60% of the adult population). However, we had significant concerns about the scale, extent and nature of problem credit card debt and firms' limited incentives to reduce this.

1.7 In particular, our analysis of the CCMS dataset found that in 2014 around 5.6 million people were potentially in problematic debt. This includes 2 million people who were either in arrears or had defaulted, a further 2 million who had held a balance above 90% of their credit limit for at least one year, and a further 1.6 million people who were making systematic minimum repayments.

1.8 We recognised that some bad debt is a feature of all credit activity. Borrowing is never risk free as the ability to repay is affected by major life events which cannot be known in advance when deciding to borrow or lend.

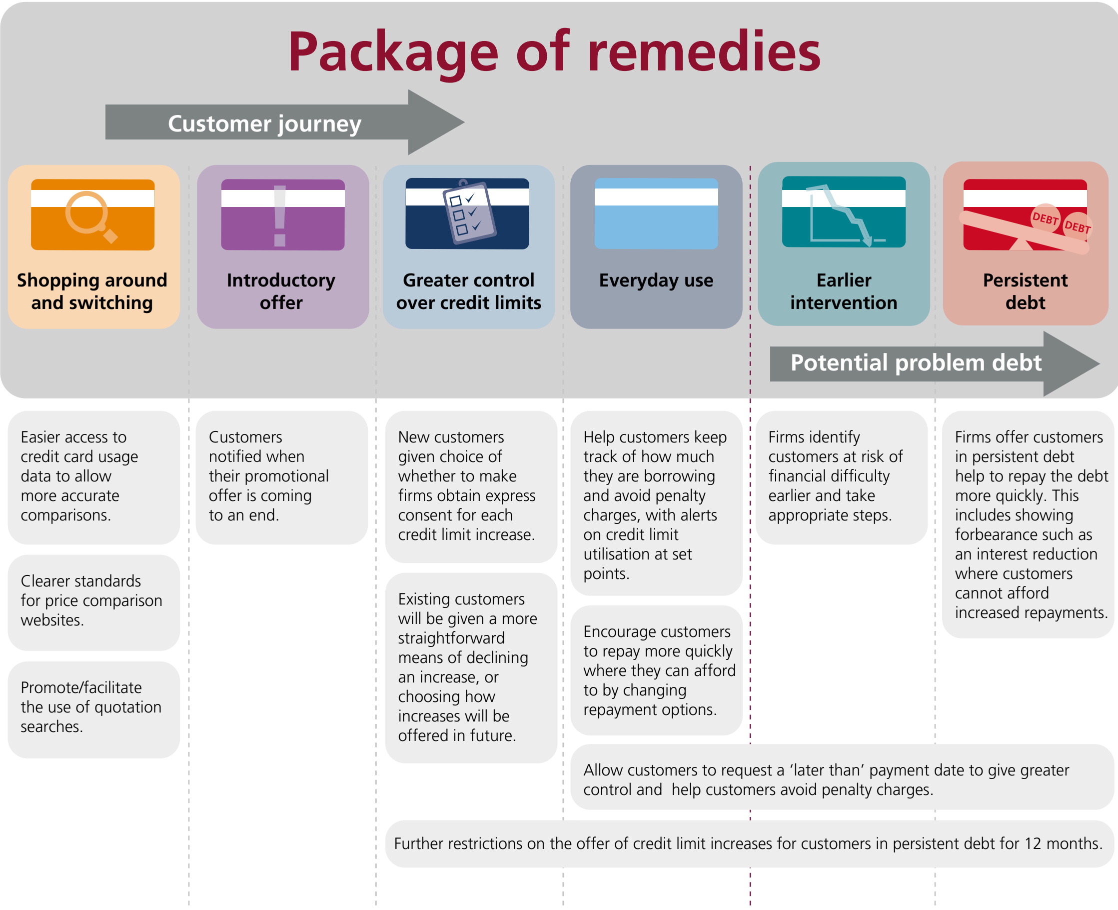
1.9 We explained that the flexible nature of credit cards is one of their most positive features which millions of consumers value. They can benefit consumers by bringing consumption forward and spreading its costs over a number of months. They are also an effective way to smooth consumption in response to temporary shocks to income or unexpected expenses and avoid transaction costs associated with multiple transactions.

1.10 But this flexibility makes it possible for consumers to accumulate and sustain debt over a long period without making significant contributions to repaying the outstanding balance. Such customers are profitable, meaning firms have an incentive to allow this situation to continue. However, this can be harmful to customers because it is an expensive way to carry longer-term borrowing. Also, it may mask deeper financial difficulties.

1.11 The July report set out a proposed package of remedies (see figure 1 below which has been updated to reflect the voluntary industry remedies) to address the issues we had identified and put consumers in greater control of their borrowing while keeping the flexibility of credit cards.

2 www.fca.org.uk/publication/market-studies/ms14-6-3-credit-card-market-study-final-findings-report.pdf

Figure 1: Package of remedies



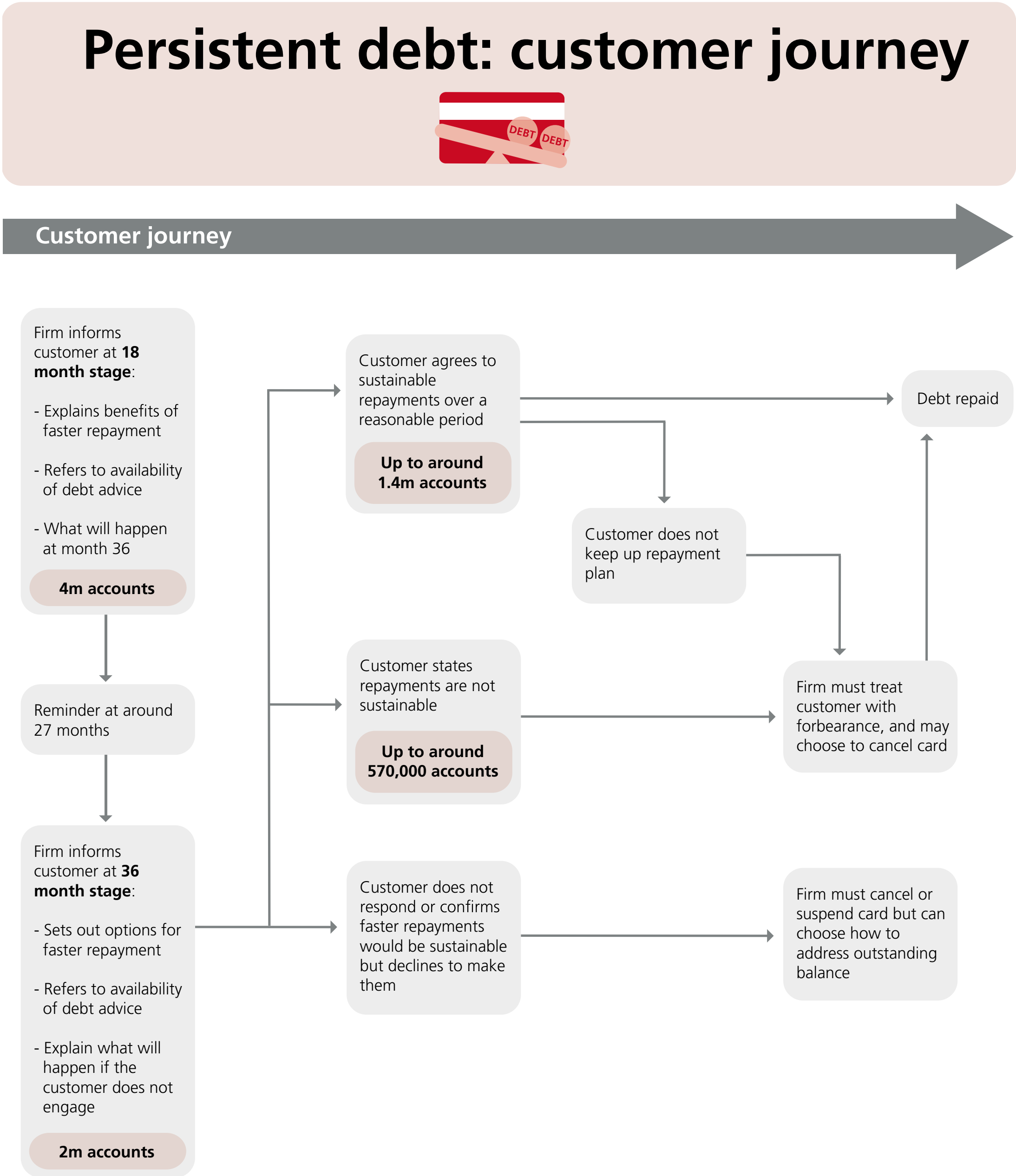
Persistent debt

1.12 As part of this package, in April 2017 we published CP17/10, setting out proposed new rules and guidance about the treatment of customers whose credit card debt persists over 18 to 36 months. Our analysis of the CCMS dataset shows there are around 4 million accounts (3.3 million customers) in this position at any given time.

1.13 To address the problem of credit cards being inappropriately used to service expensive, longer-term borrowing, and firms' limited incentives to address this problem, we proposed requiring firms to intervene and help customers repay more quickly. Where customers cannot afford to do so, firms must exercise forbearance to help the customer to repay the debt more quickly.

1.14 Figure 2 shows how the persistent debt intervention works at a high level along with our estimates of the number of customers that could be affected at each stage.

Figure 2: Persistent debt: customer journey



1.15 Specifically, we proposed in CP17/10:

- **To define persistent debt** as the circumstance where, over a period of 18 months, a customer pays more in interest, fees and charges than they have repaid of the principal.

- **At 18 months**, firms would need to prompt customers in persistent debt to change their repayment behaviour if they can afford to. Customers would be made aware that, if they do not change their repayment behaviour, their card may be suspended in a further 18 months, which may be reported to credit reference agencies (CRAs). The customer would also get the contact details of sources of debt advice.

- **At 27-28 months** firms would send a further reminder if payments indicate a customer is still likely to be in persistent debt at the 36 month point.

- **At 36 months** firms would need to intervene further if a customer remained in persistent debt. We estimated that around 2 million accounts are in this position. Firms would need to help the customer by proposing ways of repaying more quickly over a reasonable period, usually between 3 and 4 years. Where the customer is unable to repay more quickly, the firm must show forbearance (for example, by reducing, waiving or cancelling any interest or charges). We would expect firms to suspend the cards of customers that have been shown forbearance, and those who do not respond.

1.16 We estimated our proposals would lead to savings for consumers from lower interest payments, which would be reflected in lower revenues for firms. We estimated that this will peak at between £310 million and £1.3 billion per year. Consumer stress and harm would reduce, and consumer flexibility to deal with income or expenditure shocks would increase, by resolving debt problems sooner. The total cost savings were expected to have reached between £3 billion and £13 billion by 2030[3].

Earlier intervention

1.17 We also proposed in CP17/10 requiring credit card firms to use the considerable data they hold to assess whether customers are at risk of potential financial difficulties. Firms would then need to take appropriate action and establish an adequate policy to help customers who show signs of actual or possible financial difficulties - even though they may not have missed a payment. Signs, include, for example, adverse accurate entries on a credit file which have not been disputed or agreement to a debt management plan or other debt solution.

1.18 We proposed firms would have to comply with our rules on persistent debt and earlier intervention 3 months after they came into force.

1.19 Our proposals were primarily intended to advance the FCA's objective of achieving appropriate protection for consumers.

Feedback to CP17/10 and proposed changes

1.20 Consultation closed on 3 July 2017 and we received 56 responses. Respondents included firms, trade bodies, debt advice firms, consumer organisations, think tanks and research bodies, CRAs and the Information Commissioner's Office (ICO). We are very grateful for the responses provided. Annex 4 provides a list of the non-confidential respondents to CP17/10.

1.21 There was widespread support for our proposals in principle and our aim to reduce the use of credit cards to service expensive longer-term borrowing. Some respondents felt increasing minimum payments or applying a price cap to credit cards would have been a better or simpler approach.

1.22 The main concerns voiced by respondents related to:

3 The breadth of these ranges reflects uncertainty about how customers will behave. For example, the more customers react by increasing their level of repayment but offset this with increased borrowing on their cards, the lower the savings through reduced interest payments will be. Further detail of this analysis can be found in Annex 2 of CP17/10.

- the definition of persistent debt and the timings of our proposed interventions
- the flexibility of our proposals
- CRA reporting
- legal concerns around the proposed 36-month interventions and card suspension
- the need for further prescription on forbearance
- the time period for implementation.

1.23 In the light of the responses received, we have made the following changes to our draft rules and guidance on persistent debt to reflect the policy intention in CP17/10 more clearly:

- **Content of communications to customers at 18, 27 and 36 months;** we have clarified in our guidance that our rules do not specify the form of words firms must use in their persistent debt communications at 18, 27 and 36 months. Firms can tailor the language and tone of these communications to the circumstances of the customer (see CONC 6.7.28G(3) and CONC 6.7.32G(3) in the draft instrument which can be found in Appendix 1).
- **Warning to customers that card suspension may be reported to CRAs;** we have replaced the requirement for firms to warn customers in their communications that card suspension may be reported to CRAs with a provision that firms make customers aware of the potential implications of continuing with low repayments. This includes the possibility that the account may be suspended, as well as any other steps that the firm might take, and the possible impact on the customer's credit file. We do not propose to prescribe the specific circumstances that would lead to reporting to the CRAs or the content of that reporting as these are matters for the industry and CRAs to determine (see CONC 6.7.27R(4)(d) and CONC 6.7.28G(2)).
- **Referrals to not-for-profit debt advice;** we have clarified that firms, in their communications may, in addition to referring the customer to not-for-profit debt advice, also provide a customer with the name and contact details of one or more authorised persons with permission for debt counselling. This is provided that doing so is consistent with the firm's wider regulatory obligations (see CONC 6.7.28G(4) and CONC 6.7.32G(4)).
- **3-4 year repayment period;** we have added guidance that, while we expect 3-4 years to be a reasonable timeframe to repay for customers reaching the 36 month intervention point, a slightly longer period than 3-4 years may be reasonable. But this is only in exceptional circumstances and where this results in no additional cost to the customer (see CONC 6.7.33G(2)).
- **Implementation period;** we propose to give firms a total of 6 months for implementation. This is so they can do what is required to amend their contracts to reflect the new persistent debt interventions and provide any necessary advance notices to customers. An additional 3 months over what we had proposed in CP17/10 may also give firms an opportunity to phase implementation. We do not consider that we should extend the proposed implementation period to 12

or 18 months, as some firms suggested, as this would significantly delay help to customers already in persistent debt.

1.24 We have not made any changes to our earlier intervention proposals.

1.25 In relation to our persistent debt proposals, we received responses to CP17/10 from the industry indicating that the need to make changes to credit card agreements would have more significant implications. We sought further information on this point from the industry, and received additional information indicating that the estimated one-off implementation costs would be significantly higher than we set out in CP17/10.

1.26 In the light of this additional information, we revisited the data we had gathered in preparing our CBA and identified some data which we had omitted from our calculations. These additional data affect some of the figures in the CBA we published in CP17/10, and we explain this further in Annex 2. We do not consider the inclusion of these data in our CBA would have resulted in any change to the draft rules on which we consulted in CP17/10. However, we consider that it is appropriate and in line with our statutory and public law consultation duties to seek further views before finalising our proposals.

1.27 We continue to consider that our package is a fair, proportionate and appropriate one which is needed to improve outcomes for consumers in persistent debt or at risk of falling into persistent debt. To minimise any further delay to implementation and, given that we have already consulted in CP17/10 for 3 months and have received and analysed the wide range of detailed responses we received, we feel 6 weeks is an appropriate further consultation period. We are therefore seeking views on our proposals by 25 January 2018. **Respondents are asked to focus their comments only on any new points and do not need to repeat points already made to us in their response to CP17/10**.

1.28 The questions we are seeking views on are in Annex 1. Chapters 2 and 3 provide further details on the responses we received to CP17/10, our feedback and the changes we have made to our draft rules and guidance in light of those responses. Annex 2 sets out revisions to our CBA regarding the costs to firms of implementing and complying with our proposals.

Equality and diversity considerations

1.29 We have considered the equality and diversity issues that may arise from the proposals in this paper.

1.30 Overall, we do not consider our proposed rules adversely impact any of the groups with protected characteristics i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.

1.31 As our proposals primarily focus on delivering appropriate assistance to customers who are likely to be in financial difficulties or at risk of developing them, vulnerable consumers in general will benefit from them. We received no comments from respondents to CP17/10 on this issue.

Measuring success

1.32 Once our proposals have been finalised, we intend to:

- **Assess** the effectiveness of the voluntary industry remedies over time. If any of these measures prove to be ineffective, we will consider further action.
- **Monitor** the implementation and outcomes resulting from our persistent debt and earlier intervention remedies. This is likely to include looking at the number of customers contacted at the 18 month intervention stage, the proportion of those who reach the 36 month stage and the actions firms take at 36 months.
- **Review** the effectiveness of our remedies after they have been fully implemented by firms and in operation for long enough to assess consumer outcomes.

1.33 Chapter 4 provides an update on a number of other strands of our work on credit cards:

- the voluntary industry remedies on credit limit increases, designed to give customers greater control over their credit limits and ensure that those in persistent debt are not offered credit limit increases.
- our work on minimum repayments, including field trials of alternative ways to present repayment options to customers
- our work looking at firms' practices in respect of offering 0% credit card deals
- industry work to further examine quotation search tools

1.34 We also provide an update on our wider credit policy work, relevant to credit cards but also to other forms of credit:

- our consultation on creditworthiness assessments, including affordability
- our high-cost credit review
- the review of the Consumer Credit Act 1974 (CCA) retained provisions

Next steps

1.35 The rules and guidance on which we are consulting are in the draft Instrument in Appendix 1. The questions we are seeking views on are in Annex 1. Please send us your comments by 25 January 2018. Details of how to respond are on page 2.

1.36 We will consider the comments received and then publish our feedback and final rules and guidance.

2 Feedback to CP17/10: persistent debt and proposed changes

2.1 In this chapter, we summarise the responses we received to each of the questions we asked in CP17/10 on our persistent debt proposals. We also set out our feedback to the comments received and the changes we have made to our proposed rules and guidance as a result.

Q1 in CP17/10: Do you agree with our definition of persistent debt?

2.2 We proposed to define persistent debt as the circumstance where, over a period of 18 months, a customer pays more in interest and charges than they have repaid of the principal.[4]

2.3 The majority of respondents agreed with our proposal. Many recognised the difficulties inherent in developing a definition which sufficiently captures those cardholders we are concerned about and can be applied in practice with certainty. Some agreed that basing the definition on average credit limit utilisation or systematic minimum repayment behaviour, as suggested in the CCMS final report, would not target those suffering financial hardship. Some acknowledged that any definition will involve a cut-off point.

2.4 Some, however, felt a better or simpler approach would be to increase minimum payments instead. The Financial Services Consumer Panel (FSCP) also expressed concern about new spending on balance transfer cards which they felt can have a material effect on consumers' debt levels and costs. Others suggested we should introduce a price cap for credit cards instead.

Our response:

We did not propose increasing minimum repayments as we are undertaking further research to address under-repayment including testing the impact of removing the minimum repayment option by asking consumers how much they would like to repay rather than suggesting an amount, as explained in Chapter 5 of CP17/10. Once this work is complete, we will consider the results alongside other evidence to decide the best way forward. The options we will consider may include increases to minimum repayments.

We did not propose a price cap on credit cards as we consider that our package of remedies are more likely to address the concerns identified about the scale, extent and nature of problem credit card debt and firms' limited incentives to reduce this. We also consider our persistent debt measures will help customers deal with problem debt more quickly and avoid paying out so much in interest and charges.

4 Accounts where the balance falls below £200 at any point during the 18 month period would be excluded. This is to ensure we do not capture customers who have paid off all or almost all of their balance at some point in the 18 month period. Also, the benefits of intervening are likely to be more than offset by the administrative costs of doing so.

Additionally, credit cards are a form of revolving credit. Therefore it is not practical to implement a total cap in the way that it was, by comparison, more easily achieved for fixed sum high-cost short-term credit (HCSTC) loans.

In CP17/10, we explained that 'accounts in persistent debt under our proposed definition are typically repaying approximately £2.50 in interest and charges for every pound of their balance they repay'. Some responses suggested a misunderstanding between the repayment of principal and the initial value of lending.[5]

The HCSTC cap is a cap on the total cost of credit. So for example if a customer borrows £100, the interest and charges they would have to pay must be no more than £100.

The HCSTC cap looked at the ratio of principal to total cost. Our persistent debt proposals focus on the ratio of total costs (sum of fees and interest) incurred, to the amount of principal repaid (repayments minus total costs) over the 18-month assessment period.

2.5 Some debt advice firms, consumer groups and the FSCP expressed concern about defining persistent debt over an 18 month period rather than a 12 month period. It was felt that 18 months was too long and intervention (including encouraging consumers to seek debt advice) should occur earlier. A few suggested an initial intervention at 6 months. A debt advice charity added that our proposals would not capture those consumers who fall outside the definition of persistent debt but would take more than ten years to pay off their balances.

2.6 Some felt our proposed definition did not explicitly address affordability, focusing instead on the levels of interest and charges paid for an individual product rather than on the overall debt that a customer has to all their creditors. Others pointed out that a wide range of customers and circumstances would be captured by our proposed definition (a few acknowledged that this would still happen under an alternative definition). So some suggested that we allow firms flexibility to discuss realistic affordable repayment options with customers based on their circumstances (even if this results in the repayment of persistent debt balances for longer than four years).

2.7 Others thought that firms should be allowed to amend their persistent debt communications to reflect customers' individual circumstances. For example, UK Finance (formerly the UK Cards Association) called for flexibility at the intervention points to recognise circumstances where a customer has changed their repayment behaviour following an intervention but still falls within the persistent debt definition.

2.8 UK Finance and some firms felt our proposed definition would have a disproportionately adverse effect on certain customers such as those with impaired credit histories borrowing at a higher Annual Percentage Rate of Charge (APR), who may also have lower disposable incomes. Such customers are likely to have difficulty in

5 An account holder is defined as being in persistent debt if their cost of borrowing (measured as the ratio of the fees and interest paid, over the 18 month period, to the repayment of principal (i.e. total repayments less fees and charges)) is greater than 1. This method has the advantage over other approaches in that it gives us a figure in pounds for the cost in interest and charges per £1 of principal repaid over the period. See page 72 of CP17/10.

increasing repayments, and repaying over a shorter period, and so could be more likely to have their card suspended or be subject to negative CRA reporting.

2.9 As a result, they proposed an alternative definition which they felt would be fairer to higher APR customers: that we define persistent debt as the circumstance where a customer pays less than a pre-defined proportion of the balance - proposed at 1.45% of balance plus interest and fees - every month for each of the 18 months in the assessment period.

2.10 Some respondents also suggested that service fees (such as balance, money transfer and foreign exchange fees) be excluded from the definition to avoid the situation where a customer, because of the imposition of such a fee, is briefly caught by the definition. But a few thought this may have the unintended consequence of firms shifting costs by increasing these fees while lowering interest rates or other fees in order to exclude more customers from our interventions.

2.11 UK Finance suggested we amend the scope of our proposals as there appeared to be a conflict between the wording of the CP, which referred to 'consumers' throughout (and which they read as not including business customers), and our draft Instrument, which uses the broader term 'customers' covering both non-business and business customers.

2.12 We received some suggestions to review the effectiveness of the definition at a future date, to look at the reasons why persistent debt is accrued and whether this is linked to the affordability checks firms undertake at the outset.

Our response:

We have not made any changes to the persistent debt definition we consulted on in CP17/10.

We do not consider that we should reduce the assessment period from 18 months to 12 months as our CCMS dataset indicates that a period shorter than 18 months is likely to catch too many consumers who we expect will pay down their debt and so would move out of the definition in the following months.

Additionally, as we said in CP17/10, a period of less than 18 months may trigger persistent debt warnings that are a result of seasonal spending such as Christmas or summer expenditure, rather than being an indicator of immediate financial difficulty.

An analysis of the CCMS dataset shows that approximately half the accounts in persistent debt after the initial 18 month period remained in that state 18 months later. The number of accounts exiting persistent debt each month between the intervention points levels off around 18 months. This suggests that borrowing and repayment behaviour is 'persistent' if it has been sustained for at least 18 months.

We consider it is important to have a gap before the more intrusive intervention at 36 months so that consumers are given an adequate opportunity to adjust their repayments (and probably spending). We chose a further 18 months to mirror the initial intervention period. If we moved the initial intervention point to 12 months, the later intervention would move from 36 months to 24 months. However, our analysis shows that approximately half the accounts found to be in persistent debt at the initial 18 month intervention point, had exited persistent debt before the more intrusive intervention at 36 months.

We think that moving the first intervention point to 12 months therefore would not be a proportionate approach as we would be requiring firms to intervene and incur the costs of contacting customers who would otherwise have shortly fallen out of the definition in any case. This approach would also result in 'inconvenience costs' to customers. Bringing forward the impact of the more intrusive 36 month intervention (card suspension potentially resulting in a negative impact on the customers' credit file and their access to credit) would also be disproportionate as it would impact on customers who are not necessarily in financial difficulties.

As stated in Chapter 1, we intend to review the effectiveness of our approach. As part of this, we will consider how the timings of the interventions are working in practice and can revisit our approach if appropriate.

In respect of the view that some customers in persistent debt, who increase their repayments and by doing so take themselves outside our proposed definition of persistent debt, would still be paying off their balances for more than 10 years, CP17/10 had assumed that such customers would revert back to their former minimum repayment behaviour after exiting persistent debt. If we assume instead that these customers (who could afford to sustainably repay more on their card and are not necessarily experiencing financial difficulties) continued making higher repayments or fixed their minimum repayment, we estimate they would have repaid their outstanding balance within around four years.

We do not consider that our proposals prevent firms from **discussing affordable repayment options** with customers in persistent debt or taking into account their wider financial circumstances where this information is available to them and it would be appropriate for them to do so. Also, our proposed rules and guidance do not prevent firms from tailoring their communications to customers' individual circumstances or issuing additional communications at other times. This is likely to be beneficial as it would improve the likelihood of customers engaging. We discuss flexibility at the intervention points and in persistent debt communications further under Question 2 below.

We recognise our proposals could result in higher repayments for **accounts with higher APRs**. However, they are designed to help customers who cannot afford increased repayments. So, for customers borrowing at higher APRs and having difficulties increasing repayments, we would expect firms to exercise forbearance in line with our proposals. This could include a reduction in the interest rate charged.

In relation to the **revised persistent debt definition** proposed by some firms and UK Finance, we consider that such a definition would result in significantly fewer customers being classified as being in persistent debt. This is because, in order to avoid being caught by it, a customer simply has to increase their monthly repayment above the required threshold (which is a low base) in any single month. Many customers should be able to do this.

On the issue of **excluding service fees from our definition**, we consider that in principle, balance transfers and other such fees are part of the cost of credit and so should be included in the persistent debt calculation. Additionally, if customers really are caught by our proposals solely because of a balance transfer fee or other charge, then we consider it would be highly likely they will move out of the definition shortly after, or in the next 18 month period, so will not be caught by later interventions at 36 months.

We have, however, amended our proposed rules and guidance to include reference to 'fees' alongside 'interest' and 'charges' in those places where it had been omitted, to reflect our original policy intention (the rules and guidance we consulted on in CP17/10 referred to 'interest, fees and charges' where it defined persistent debt, and elsewhere, but not consistently).

We have not amended **the scope of our proposals** explicitly to exclude business customers as the application provisions (which reflect the existing application provisions of Chapters 6 and 7 of the Consumer Credit Sourcebook (CONC)) reflect our intended policy intention. CONC 6 and 7 apply in respect of *consumer credit lending* i.e. entering into a regulated credit agreement under which the borrower is an individual or a 'relevant recipient of credit', including certain small partnerships but not companies. So, loans to small or medium sized businesses that are companies are not subject to CONC. But borrowing by, for example, a sole trader which does not exceed £25,000 is subject to CONC.

As stated in Chapter 1, we intend to review the effectiveness of our remedies and monitor their implementation and consumer outcomes. We will therefore be taking into account the suggestions received to review our proposals as part of that work.

Q2 in CP17/10: Do you agree with our proposed interventions at 18 and 27 months?

2.13 We proposed that firms help customers in persistent debt repay their balance more quickly using a stepped approach. After 18 months, firms would need to contact customers to explain:

- they have repaid more in interest and charges than principal over the past 18 months
- the benefits of repaying more quickly

- if they continue their card may be suspended in a further 18 months which may be reported to CRAs
- the contact details of sources of debt advice and
- that the customer contact the firm to discuss their circumstances

2.14 If firms believe a customer is likely to remain in persistent debt at 36 months, they must issue a reminder to the customer between 9 and 10 months after the 18 month communication, at 27 or 28 months. It would be open to firms to issue additional reminders at other times.

2.15 Most respondents agreed in principle with the timings of the proposed interventions at 18 and 27 months. Some firms and UK Finance understood why we had selected 18 months but raised questions about the interaction of our proposals with the communications they currently send to customers. For example, letters at 6 months and 12 months of consecutive minimum payments and the digital borrowing prompts for customers close to their credit limit. They felt it was important that these earlier 'nudges' are given time to work.

2.16 Some debt advice firms and the FSCP repeated that interventions should occur earlier, for example, at 12, 18 and 24 months. A debt charity added there were few incentives for firms to intervene or offer forbearance other than at 36 months so all stages should occur earlier. The FSCP felt that, if we decided to retain the 18 month intervention, firms should also be required to conduct a suitability assessment at the same time and switch consumers to lower-cost fixed term loans.

2.17 Many voiced significant concerns with our proposal for firms to warn consumers (at 18 months and again, if relevant, at 27 months) that, if they continue repaying less in principal than in fees and charges, their card may be suspended, which may be reported to CRAs. As well as being perceived as a threat which could cause undue alarm, many expressed concern about the impact and fairness of CRA reporting on customers who technically had not breached their contracts as they had so far been meeting their minimum payments.

2.18 Others added that, in relation to the content of the persistent debt communications, the wording and tone used would need careful formulation to avoid dis-incentivising or unduly alarming customers.

2.19 A few suggested we should require nudges in statements to illustrate the current projected length of repayment and the effect of small changes to repayments so that customers have a clear picture of how long it would take to pay off their debt. Some suggested we require firms to attempt contact by a different channel (for example by e-mail, text or via on-line banking) if a letter has proved ineffective. Some felt the communications should be trialled by firms and the implementation period should be extended to accommodate this.

2.20 Some firms and UK Finance suggested we provide further flexibility in our proposals so that customers who respond by making appropriate changes to their repayment behaviour following either the 18 or 27 month communications, and sustained these repayments for the preceding 6 or 9 months but not to the extent that would take them outside the definition of persistent debt at 36 months, should be exempt from any further interventions. It was felt that it would be poor customer service if the firm has no flexibility to do something different in these circumstances as it may appear to the customer that the firm has either not noticed the shift, or has chosen not to acknowledge it. Customers may also be discouraged from continuing with their modified behaviour if this has not been acknowledged by the firm. Such a customer could also be subject to card suspension and potential CRA reporting even though they had taken positive steps to increase repayments.

2.21 A few requested we amend our rules to also permit credit card firms to signpost customers to authorised debt counselling firms, not just not-for-profit debt advice. Some requested clarification on whether customers can move in and out of persistent debt and how they should be treated if they do.

2.22 Some respondents were concerned that customers receiving multiple letters because they are in persistent debt on more than one card may struggle to decide which card to prioritise for repayment. As a result, some firms indicated they were planning a phased approach, prioritising communications to the most severe cases of persistent debt. One respondent felt customers identified as being vulnerable should be prioritised and subject to earlier communications and interventions.

Our response:

As explained in our response to question 1 above, and for the reasons set out there, we have not made any changes to the proposed timings of the persistent debt interventions. We have also not amended our proposed rules to require firms to offer fixed-term or fixed-sum loans given that not all firms offer such loans.

We recognise the concerns voiced about the impact of references to CRA reporting in communications at 18 and 27 months stages. It was not our intention to require firms to word their communications using the precise language in our rules. Additionally, our proposed rules did not prescribe the specific circumstances that would lead to reporting to the CRAs and the content of that reporting. Instead, we proposed that firms make consumers aware of the risk that card suspension could potentially be reported to a CRA. The information that firms share with CRAs about card suspension and forbearance, the impact of this information on credit files and the development of any markers will be, amongst other things, for firms and CRAs to determine.

Our intention was to provide firms with flexibility to tailor their customer communications in order to deliver the key messages in the most effective way. We accept that firms are best placed to determine the language and tone that should be used.

Having considered the responses received, we have made some changes to better reflect our policy intention (see CONC 6.7.28G and CONC 6.7.32G) which:

- clarify that our rules do not specify the form of words firms must use in their persistent debt communications at 18, 27 and 36 months and that firms can tailor the language and tone of these communications to the circumstances of the customer

- replace the requirement for firms to warn customers in their communications that card suspension may be reported to CRAs with a high-level provision that firms make customers aware of the potential implications of continuing with low repayments, including the possibility that the account may be suspended, as well as any other steps that the firm might take, and the possible impact on the customer's credit file

We accept that firms might also wish to consider whether other communications they send to customers (for example, their 6 and 12 month minimum repayment letters) should be amended so that communications to customers are consistent or relevant. This would be for firms to decide.

We consider requiring changes to regular statements could potentially have the effect of either diluting the persistent debt messages or these messages being ignored if included in regular mailings. Additionally, we are currently testing the effect of different ways of presenting repayment options using behavioural trials. Once the trials are complete, we will consider the results and the most appropriate way to achieve the outcomes we are seeking.

Our proposals did not prevent firms from also contacting customers via other channels (for example, by email or by telephone) where it would be appropriate to do so and, as stated in CP17/10, it would be open to firms to issue additional reminders at other times.

Our proposed rules require firms, on a rolling basis, to look at each customer's repayment pattern over the previous 18 months and assess whether they fall into the definition of persistent debt over that period. As a result, customers may fall in and out of the definition at various points. For example, a customer in persistent debt may receive an 18 month and 27 month communication from the firm after which they increase repayments or make a lump sum payment sufficient to have taken them out of persistent debt at 36 months. The customer could then be identified by the firm as falling into persistent debt again (because, for example they have reverted back to their low repayment behaviour), in which case the persistent debt interventions at 18 months would start again. But the draft rules are structured so that, once an 18 month letter has been issued, the customer then moves through the 27 month and 36 month stages (a customer does not go back to the initial intervention stage in the 18 months immediately following an 18 month letter).

We do not agree with the suggestion that customers, who have sustained increased repayments for a short period of time but not to an extent that they fall outside the definition of persistent debt, should be exempt from the persistent debt interventions. This approach has the potential to mask the overall persistence of the customer's debt balance. And such customers would also be at risk of falling back into persistent debt, so potentially re-starting the intervention at 18 months.

Additionally:

- Our proposals do not require card suspension or forbearance to be reported to CRAs. It will be for the industry and CRAs to determine, amongst other things, the specific circumstances that would lead to reporting to the CRAs and the content of that reporting.

- If a customer agrees to a repayment option proposed by the firm, our proposals do not require their card to be cancelled or suspended.

We have amended our draft guidance so that firms have the flexibility to tailor their persistent debt communications. This could include amending their messaging to acknowledge improved repayment behaviour (this does not mean, however, that the customer then should be treated as not in persistent debt or that the firm does not need to comply with the 27 month or the 36 month requirements for that customer).

We have amended our proposals to clarify that the lender may refer the customer to authorised debt advice firms, even if they are not-for-profit. So we have amended CONC 6.7.28G(4) and CONC 6.7.32G(4) to clarify that a firm may, in addition to referring the customer to not-for-profit debt advice, also give them the name and contact details of one or more authorised persons with permission for debt counselling, provided that doing so is consistent with the firm's wider regulatory obligations (these include, for example, Principle 7: Communications with clients and Principle 8: Conflicts of interest).

We agree that a phased approach could be adopted to prioritise, for example, communications to those with the highest levels of persistent debt. This could also help multiple card holders, who are in persistent debt on more than 1 of their cards, to address their most expensive debts first. We discuss this further under Q10 below.

Q3 in CP17/10: ***Do you agree with our proposed intervention at 36 months for those who can afford to repay more quickly?***

2.23 We proposed that, at 36 months, firms would have to contact customers remaining in persistent debt and offer them a way, or choice of ways, to repay more quickly in a reasonable period.

2.24 Some firms and UK Finance commented that any agreement to increase the amount paid would amount to a modifying agreement under the Consumer Credit Act 1974 (CCA). They argued this can be a complex and cumbersome process, which involves having to agree to the change, presenting consumers with new pre-contractual information and terms and conditions, and then undertaking a new creditworthiness assessment. It was suggested our rules should allow for alternatives which were less dependent on a customer response, for example, the possibility of notifying the customer of a proposed increase to the minimum payment (subject to an appropriate affordability assessment), with the availability of an opt-out to preserve customer choice.

2.25 Many debt advice firms and the FSCP reiterated that the 36 month intervention should occur earlier with many suggesting intervention at 24 months instead. Their view was that consumers should not be left for 3 years before firms are required to intervene. Some suggested customers receive an additional warning 2 or 3 months before the 36 month intervention. Some debt advice firms commented there was no option in our proposals for customers to continue on the basis of making minimum payments if they so wish (they may, for example, need to prioritise other debts or payments). Such customers should be made aware of the risks and should be signposted to debt advice but should not be forced to repay their credit card debt more quickly due to potential 'waterbed' effects and the wider impact on their financial health.

2.26 A few commented that firms should also consider conducting affordability checks to test whether customers in this situation should have a reduced credit limit. More detail on the repayment options firms should provide to consumers was also requested. In addition, it was felt by some that more emphasis should be placed on requiring firms to exercise forbearance rather than leaving it to firms to suggest options. A few suggested that we consider adapting our proposals to include the concept of a 'time order'[6], similar to the provisions of the CCA. This could require firms to determine an affordable repayment option and reduce or freeze interest.

2.27 Some respondents felt complexity was added to our proposals by allowing consumers to continue to spend on their card where they had engaged with the firm and had agreed, for example, to a repayment plan. They suggested we revisit our allocation of payment requirements in CONC 6.7.4R. They saw a risk that, due to payments being allocated in line with our 'high to low' allocation rules, some customers may not be able to make sufficient additional payments to cover their new spending as well as the repayment plan. This could lead to the new spending again meeting the definition of persistent debt.

2.28 It was suggested that our remedies would not apply to customers who are already in a 'closed and pay down status' (their agreement has been terminated but they may choose to continue to pay the minimum payment) as firms will be unable to change their terms and conditions to impose our proposed remedies. A few felt it might be useful for a common set of industry standards to be developed for the treatment of customers at the 36 month stage and in respect of the content of all persistent debt communications.

Our response:

We have not made any changes to our proposals.

We consider that a firm suggesting to a customer, as an option, that they increase their repayments would not necessarily result in a modifying agreement where the customer subsequently increases their payments. The customer may simply be being asked if they wish to give permission for the firm, or to direct the firm, to withdraw a larger amount under the direct debit. Depending on the content of communications between the firm and the customer, the contractual terms of the credit card agreement between the customer and the firm may not change as

6 A time order involves the Court specifying a repayment schedule. The Court must have regard to the borrower's means, except where making an order which gives effect to an offer made under the rules of court by the borrower and accepted by the lender. The Court also has a general power under the CCA to amend agreements in consequence of a term of a court order.

a result of the customer granting such permission or giving such a direction. We acknowledge that some firms may, depending on the nature of the steps they take and the content of their communications with customers at the relevant time, consider that they are entering into modifying agreements. Furthermore, in some circumstances firms may wish to ensure the increased repayments become a contractual obligation. We discuss the contractual issues raised by respondents further under Question 8 below.

Given the potential consequences and impact on a customer of reaching the 36 month stage (potential card suspension and/or a negative impact on their credit file), this later intervention is designed to give both the borrower and lender incentives to engage in resolving the debt situation sooner, rather than let it reach that point.

We consider that it is important customers are given sufficient time after actions taken at 18 and 27 months to adjust their repayment behaviour and that further steps are taken, at 36 months only where the customer has not responded to those earlier calls to action or where the customer has taken action to increase repayments but this is not sufficient to take them out of persistent debt. Additionally, our data analysis supports our judgement that 36 months strikes a reasonable balance between giving enough time to resolve problems and intervening to protect consumers whose debt is clearly persistent.

Additionally, our proposals do not prevent firms from helping consumers earlier. As stated in CP17/10, our proposals on persistent debt are designed to be complementary and work together with our earlier intervention proposals and our existing rules on forbearance in CONC 7.3.4R. So, for example, if a customer who has been subject to the 18 month intervention subsequently falls into arrears and is being treated under CONC 7.3.4R (the requirement to treat customers in default or in arrears difficulties with forbearance and due consideration) or earlier intervention equally or more favourably than they would under the persistent debt rules, a firm would not need to send the notifications at 27 and 36 months.

We do not consider that presenting customers with a repayment choice they can opt-out of would be appropriate as we would expect firms to put in place an appropriate vehicle following engagement with the customer and depending on what the customer confirms they can afford.

We do not agree that firms should be permitted to give customers the option of continuing with their current repayment behaviour as long as they are aware of the implications. If a customer is unable to afford any of the options for increasing repayments, our rules require a firm to exercise forbearance and due consideration.

Our proposed guidance gives examples of the repayment options firms could suggest (for example, a repayment plan or transferring the balance to a fixed sum personal loan) and makes clear that firms can offer forbearance at this stage (for example, by writing off the balance on the account). It would not, however, be appropriate for us to prescribe the mechanisms of repayment as these will depend on a number of factors such as what the customer confirms they can afford, the options firms are able to offer, the firms' business models and the nature of any forbearance being exercised.

It is not clear how we would be able to introduce the concept of a 'time order' in our rules which would have the effect of amending or suspending contractual rights and obligations, and of imposing a binding repayment schedule on terms that an independent arbiter had determined on a reasonable basis.

Firms would have to take reasonable steps to ensure customers do not get into persistent debt in relation to new spending. We agree that firms may wish to consider conducting affordability checks to test whether customers in this situation should have a reduced credit limit. However, we do not propose to prescribe this action in our rules as whether this is necessary will depend on the customer's individual circumstances.

We do not agree our rules on the allocation of payments require amendment as they already give firms enough flexibility to address the rare circumstance where further spending is repaid before the persistent debt balance. For example, this issue only arises where a firm:

- puts in place a repayment plan
- does not suspend a card, and
- the interest on the new spend is higher than the interest rate on the plan

Firms have the options of:

- seeking an increased payment from the customer if they consider this was needed for the customer to be able to repay in a reasonable period
- offering forbearance, or
- applying the same rate of interest to the new spend or place limits on any new spend

We would expect customers in 'closed and pay down' status and meeting the definition of persistent debt to still receive the persistent debt communications (which firms can tailor to avoid any confusion) encouraging them to repay faster as such customers may be in a position to either increase their repayments or agree to a more suitable repayment mechanism.

In Chapter 1, we set out our intentions to monitor implementation and outcomes, and review the effectiveness of our remedies. Our persistent debt remedy is designed to create incentives for both firms and consumers to engage and agree a way to repay more quickly before the 36 month intervention is reached. One of the outcomes we will therefore be looking for is that a relatively small number of accounts get to the 36 month point. We also intend to examine the options offered to customers who reach this stage, including the options firms offer and the extent to which they exercise forbearance.

Q4 in CP17/10: Is 3-4 years a reasonable period to repay?

2.29 We proposed that firms contact customers who remain in persistent debt at 36 months and offer them a way, or choice of ways, to repay their outstanding balance more quickly in 'a reasonable period'. Our proposed guidance suggested that a reasonable period would be 3-4 years, similar to the typical length of a personal loan.

2.30 Many agreed that 3-4 years to repay would be reasonable for most customers, but not for all. Some highlighted the risk that customers could feel pressured to agree to levels of repayment which may in practice be unaffordable or cause a customer financial hardship, particularly where the customer has other more pressing debts to pay such as rent or council tax. Others considered that firms needed flexibility to offer longer repayment periods if a customer's individual circumstances warranted this. Some added that an affordability assessment should determine the repayment period.

2.31 Some industry respondents felt that persistent debt plans with forbearance should have a longer repayment period as standard forbearance plans are typically longer than 3-4 years. Others felt that customers who had agreed to fix their payments at the current minimum amount (a 'paydown' plan) should be allowed longer to repay (they felt most customers would be able to repay in around 5-6 years) to avoid the potential negative CRA reporting if forbearance is applied. One respondent added that personal loans typically have a repayment period of 5-6 years.

2.32 A few felt that in practice, many consumers would be repaying their balances over a much longer period than 3-4 years. For example, those customers who fall out of the persistent debt definition after the 18 month intervention or those who cannot afford to repay more and who will have been paying off their debt for over 6 years by the time they reach the 36 month intervention point. As a result, our proposed interventions should be brought forward so that repayment options over 3-4 years are offered at the 18 month stage intervention.

2.33 The FSCP thought we should introduce a requirement for firms to freeze interest and charges or bring them down to a level similar to that of a personal loan. It was also suggested that we require firms to either reduce the interest rate or reduce the balance on the principal to ensure repayment plans are affordable. Another felt we should strengthen our rules around forbearance to require lenders to consider the borrower's Debt Servicing to Income ratio, including what they are spending on other loans, as part of ensuring affordability.

Our response:

In our view, if a customer confirms at the 36 month stage they are unable to pay off their balance within a further 3-4 years, this indicates that they require some degree of forbearance. This is what the rules we propose require. We do not consider the solution should be to offer longer periods of repayment or continuing current low levels of repayments for several more years as this would simply prolong the persistent debt, potentially masking underlying financial difficulties, which would not be in the customer's interests.

However, we note the concerns raised by respondents about the possibility that some customers, especially those in vulnerable situations, may feel pressured to accept repayment plans which may be unaffordable. Additionally, we appreciate that in some cases, there could be a risk that repaying over 3-4 years could cause a customer further financial difficulty.

We have therefore amended CONC 6.7.33G(2) to clarify that, while we expect 3-4 years to be a reasonable timeframe for customers to repay, a period slightly longer than 3-4 years may be reasonable only in exceptional circumstances and where this results in no additional cost to the customer (the total amount the customer repays over the longer period is the same as the total amount they would have repaid under the original repayment option proposed by the firm). If, in order to achieve this outcome, a firm for example ceases to charge interest or reduces interest, this would amount to forbearance and, so, in line with our proposed rules and guidance our expectation is that the card would usually be suspended.

Our expectation remains that firms offer repayment options to customers in such a way as to repay their balance sustainably in 1, 2, 3, or 4 years depending on what the customer confirms is affordable. We intend to consider how this is working in practice through supervisory work and our effectiveness review in due course.

Where a firm offers forbearance, it may wish to report this to a CRA.

We discuss the nature of forbearance under Questions 5 and 9 below.

Q5 in CP17/10: Do you agree with our requirement for firms to exercise forbearance for customers who cannot repay more quickly?

Q9 in CP17/10: Do you agree with our proposal for firms to exercise forbearance where the customer is unlikely to repay the balance in a reasonable period under a repayment arrangement?

2.34 We summarise the responses to both of these questions below as respondents raised the same or similar points.

2.35 We proposed that, where a customer cannot repay more quickly, firms treat the customer with forbearance and due consideration. We did not prescribe the nature of forbearance but said it may include reducing, waiving or cancelling any interest or charges to the extent necessary for the customer to be able to repay their balance in a reasonable period. Where forbearance is shown, we expect it will generally be necessary for the firm to suspend use of the card.

2.36 We also proposed that, where a customer has entered into a new repayment arrangement, firms intervene by offering forbearance if the customer misses repayments in a pattern suggesting it is unlikely they will be able to repay in a reasonable period.

2.37 The majority of respondents agreed with our proposals. A few debt advice firms and the FSCP reiterated that we should prescribe the nature of forbearance we expect, to ensure consistent treatment amongst firms. The FSCP called again for a requirement on firms to freeze interest and charges. One debt advice charity added, that in their clients' experience, firms are reluctant to offer forbearance in practice. The ICO commented that where forbearance is exercised for customers who have so far been making minimum repayments, it is unlikely to be fair if information adversely affecting them is reported to CRAs. Firms will need to make clear to customers the type of information that would be shared with third parties, such as CRAs, and the potential consequences.

2.38 Industry respondents raised a number of issues. For example, it was argued that forbearance should be reserved only for those customers who are in financial difficulty and are unable to maintain their current repayment levels on a fixed repayment plan, in line with current forbearance practices. Some added that customers who cannot afford to sustainably repay more quickly may prefer to continue making low repayments or to fix repayments at their current level than have to accept forbearance which carries a risk of negative CRA reporting. They suggested firms should be able to give customers a choice. It was also suggested that forbearance should not be applied until an affordability assessment had been undertaken.

Our response:

We have not made any changes to our proposals.

Our proposed rules would require firms to offer forbearance where a customer confirms they cannot afford any of the options proposed by the firm or if they agree to a repayment arrangement but then miss repayments in a pattern which suggests they will not repay in a reasonable period. Guidance suggests examples of the types of forbearance that might be applied. We do not think it would be appropriate or proportionate to prescribe the nature of forbearance in these circumstances given the diversity of customers captured by the persistent debt definition. Our rules need to allow firms sufficient discretion to tailor appropriate solutions for different customer needs. As a result, we consider some differing treatment in the application of forbearance amongst consumers is to be expected.

Additionally, prescribing the nature of forbearance, including requiring firms to freeze interest and charges once a customer reaches the 36 month stage, would mean we are being more prescriptive and stringent in the specific circumstances of persistent debt than we are in our existing rules relating to other borrowers who require forbearance such as customers who are in arrears or default difficulties (who are likely to be in a worse financial position). There is also a risk that a guarantee of interest and charges being automatically frozen could provide the incentive for some to remain in persistent debt rather than increase their repayments.

We do not agree with the suggestions made by industry respondents. The aim of our proposals is to help customers repay their debts more quickly and provide assistance where this is not affordable. The aim of the forbearance under our rules and guidance is to assist the customer in repaying the balance in a reasonable period. The alternative to exercising forbearance (which a firm might report to CRAs) would be to have customers remain in persistent debt and incur the associated costs for several more years. This may also disguise underlying financial difficulty or indeed make a customer's situation worse. As described above, however, we have amended our draft rules and guidance to allow a repayment period slightly longer than 3-4 years to be offered only in exceptional circumstances and where this results in no additional cost to the customer.

Our proposals do not prevent firms from undertaking an assessment of affordability in order to determine the appropriate repayment options and forbearance to offer customers. Additionally, we expect that firms would put in place appropriate arrangements following engagement with the customer and exploration of the available options and what is affordable.

As stated above, our supervisory work and our planned effectiveness review will consider the extent to which firms exercise forbearance and the impact on customers.

Q6 in CP17/10: Do you agree with our proposals for suspending credit card use?

2.39 At the 36 month stage, we proposed that firms cancel or suspend a customer's card if they:

- do not respond to the repayment options proposed by the firm or
- confirm that one or more of the options are affordable but that they will not make increased payments

2.40 We also indicated in guidance that, where a firm is exercising forbearance at the 36 month stage, we would generally expect the firm to suspend or cancel use of the card. But this expectation would not apply where suspension or cancellation would have a significant adverse impact on the customer's financial situation.

2.41 Many respondents raised concerns about our proposal that card suspension may be reported to CRAs. In particular, it was widely felt that suspending the card where a customer had so far not breached their contract (as they had been making minimum payments) was unfair and subsequent CRA reporting would be unduly harsh due to the potential negative implications on credit scores. Some firms added they would need to notify their customers of a change to their terms and conditions before they could mention the possibility of card suspension in their 18, 27 or 36 month communications.

2.42 Some commented that the threat of card suspension may have the unintended consequence of leading a customer to spend further prior to the suspension taking effect or to consumers seeking higher cost alternative credit. It could also have a disproportionate effect on those trying to build their credit history. It was suggested that customers should be allowed instead to opt-out of having their card suspended provided they were aware of the implications of their repayment choices. Others felt card suspension should be accompanied with information about seeking debt advice particularly if customers are using their cards for everyday expenses.

2.43 A debt charity felt card suspension was sufficient in terms of incentivising customers to act and that we should not take forward our proposal for CRA reporting. Some added that we should instead focus on requiring firms to positively support and encourage customers to repay, through sensitive messaging and forbearance where appropriate.

2.44 A few highlighted that the UK payments infrastructure does not enable the blocking of all spend (for example, continuous payment authorities for subscriptions and offline spending on cards) and so in practice firms will not be able to fully suspend use of the card. Some felt our proposal was incompatible with the Payment Services Regulations 2017 (PSRs) and the Consumer Rights Act 2015.

2.45 One CRA pointed out that their systems do not include any flag or marker that would signify that a card has been suspended and so such a mechanism would need to be developed. Additionally, they felt card suspension may not make a material difference when assessing the creditworthiness of an individual, once other indications have been taken into account. For example, minimum payments are already reported by some credit card issuers. Nevertheless, they felt that the wording for customer communications about card suspension and reporting to CRAs would need to be drafted carefully to avoid creating any unwarranted concerns about the sharing of data with CRAs, its role and purpose.

2.46 One respondent, while agreeing with our proposal, suggested firms be permitted to leave a small credit limit on the card for emergency purposes.

Our response:

As stated earlier under Question 2, we have amended our draft rules and guidance to make clear that firms have flexibility to tailor their persistent debt communications, particularly around CRA reporting.

We have made changes to CONC 6.7.28G(3) and CONC 6.7.32G(3) to clarify that that our rules do not specify the form of words firms must use in their persistent debt communications at 18, 27 and 36 months and that firms can tailor the language and tone of these communications to the circumstances of the customer.

We have also replaced the requirement for firms to warn customers in their communications that card suspension may be reported to CRAs with a high-level provision that firms make customers aware of the potential implications of continuing with low repayments, including the possibility that the account may be suspended, as well as any other steps that the firm might take, and the possible impact on the customer's credit file.

We consider these changes address many of the concerns expressed about CRA reporting being seen as a threat (as opposed to an incentive for customers to engage).

We do not agree that our proposals for card suspension are incompatible with the PSRs. Regulation 64(2) disapplies regulation 71(2) to (5) where section 98A(4) of the CCA applies. Nor do we agree that our proposals are inconsistent with the Consumer Rights Act 2015. Firms will need to ensure their card suspension and cancellation powers make clear the circumstances under which card suspension may occur.

Additionally, the rules and guidance we propose:

- **do not require** firms to automatically report customers that have had their card suspended to CRAs. The information that firms share with CRAs about card suspension and forbearance, the impact of this information on credit files and the development of any markers will, amongst other things, be for firms and CRAs to determine
- only require card suspension if a customer does not respond to the repayment options proposed by the firm or confirms that one or more of the options are affordable but that they will not make increased payments
- allow for customers, who are receiving forbearance, to retain the use of their card if suspension or cancellation would have a significant adverse impact on their financial situation, for example, where the customer depends on the card to meet essential living costs such as mortgage, rent, council tax, food and utility bills, and
- require firms to make customers aware of the availability of debt advice at this stage

Q7 in CP17/10: Do you agree with our proposals for customers who do not engage at 36 months?

2.47 While most agreed that, in principle, customers who have not engaged at 36 months should have their card suspended, some reiterated their concerns (as set out under Question 6 above) about card suspension and the potential associated CRA report being unduly harsh. Others highlighted that it was very common for customers suffering from stress or anxiety due to financial difficulties to ignore a firm's communications.

2.48 Some agreed there may be objectively justifiable grounds under section 98A of the CCA to suspend use of the card where a customer had failed repeatedly to respond to a firm's communications.

2.49 Some felt we should prescribe in more detail what actions firms should take in respect of the outstanding balances of customers in this situation. Suggestions received included that firms look at the data available for customers who are not engaging at 36 months, in order to establish if they are at risk of financial difficulties and consider forbearance for those customers who are. Some suggested firms automatically increase the minimum repayments of these customers.

2.50 It was suggested that customers should be allowed to take themselves out of the persistent debt regime by signing a declaration (similar to that available for high net worth individuals) that they are aware of the implications. Some thought firms should be prohibited from terminating the credit agreement and calling in the debt as this may make a customer's financial situation worse. Another commented that firms would not be able to terminate the customer's agreement and call in the full debt because the customer would not be in breach of their contractual obligations.

2.51 It was also suggested that firms could freeze the minimum payment at its current level for customers who do not engage (for example, by transferring such customers to a paydown plan).

Our response

We have not made any changes to our draft rules and guidance in this area.

We address the comments made in respect of CRA reporting in the response section for Question 6 above.

As stated in CP17/10, there are a number of options firms could consider in respect of the outstanding balance of customers who do not engage with their credit card firm at 36 months. For example, allowing customers to repay at their current level, exercising forbearance (if this is appropriate) or treating customers in line with our earlier intervention rules which require firms to use their data to identify, contact and take appropriate action where customers are at risk of financial difficulties.

However, we continue to consider that it would not be appropriate for us to prescribe the specific actions firms must take as we need to strike a balance between requiring firms to further intervene and consumers' responsibility for their own actions if they choose not to engage with the firm. Additionally, the actions to take will depend on the customer's individual circumstances and the mechanisms firms are able to offer.

Allowing customers to opt-out of the persistent debt interventions would undermine the policy intention of our proposals to create strong incentives for firms and customers to engage.

_Q8 in CP17/10:_ ***Do you have any views on the potential need for novation[7] of existing contracts or modifying agreements in order to suspend use of a card, provide forbearance or put in place a repayment plan?***

7 Question 8 of CP17/10 referred to 'novation' of existing contracts. This was queried in the consultation feedback. We meant 'variation' of contracts not 'novation', as was set out in the heading above paragraph 2.50 of CP17/10.

2.52 In CP17/10, we explained that we recognise some firms may have to use a unilateral power of variation to introduce terms necessary to allow them to suspend or cancel a customer's use of their card, offer forbearance or put in place a repayment plan as part of the persistent debt intervention at 36 months. We also said that it is possible some firms may not have an appropriate unilateral power of variation that would allow them to introduce such a term and would have to enter into a modifying agreement with each customer. We requested feedback on the approach firms would need to take to suspend use of a card, provide forbearance or put in place a repayment plan.

2.53 We received a variety of responses from firms, setting out the approach they think they may take in these areas. Suggestions received included that firms might variously:

- unilaterally change the terms and conditions of the credit card agreement by notice of variation to existing customers, so as to permit the firm to suspend or cancel the card at 36 months and/or implement repayment plans
- rely on existing clauses which permit changes as a result of regulatory requirements
- require a modifying agreement in order to permit the firm to suspend or cancel the card at 36 months
- waive the firm's rights in order to offer forbearance
- take steps at the 36 month stage which constitute a modifying agreement which would need to be documented as such in accordance with the CCA
- treat the customer as being in breach of their agreement

Our response

In the light of the responses received, we sought further information from UK Finance on the approaches firms think they may take and why.

Having considered the responses and the further information from UK Finance, we remain of the view that it should be possible for some firms to rely on their existing terms and conditions in order to suspend or cancel a customer's credit card or offer repayment options. However, we also accept that some firms will need to vary their contracts, and others may wish to do so as a way of being transparent with customers.

Similarly, we continue to expect that many firms should be able to amend their contracts, where necessary, by relying on their existing variation clauses. However, we also accept that some firms may consider it necessary to enter into modifying agreements to amend their credit card agreements so they can suspend or cancel a card and/or implement an appropriate range of options at the 36-month stage. The procedure for modifying agreements is governed by the CCA and associated regulations.

We also consider that there are a range of options available for firms to propose to their customers at the 36 month stage, among which are options that could be implemented without the steps taken constituting a modifying agreement, which would need to be documented in accordance with the CCA.

We do, however, recognise that some arrangements entered into by firms at the 36 month stage could constitute a modifying agreement within the meaning of the CCA, or be argued to constitute a modifying agreement. It will be for firms to determine what appropriate options to offer to customers, given their individual circumstances, and how best to implement and document the option selected.

We have also reconsidered our CBA in light of responses from firms to Question 8 regarding the contractual changes they may need to make to implement the persistent debt remedy and the modifying agreements that it has been suggested some firms may need to put in place. We discuss this further in Annex 2.

We also wish to make clear that we do not consider that anything in the draft rules requires firms to treat customers in persistent debt as accordingly in breach of their credit card agreement. Whether or not a customer is in breach of their credit card agreement will ultimately depend upon the terms of that agreement.

Q10 in CP17/10: Do you agree with our proposed commencement date?

2.54 We proposed that firms comply with our rules 3 months after they come into force.

2.55 There was a clear split in opinion between consumer groups and debt advice firms - who supported our proposals (despite some accepting this might be challenging for firms) - and industry, many of whom felt the proposed implementation period was not sufficient.

2.56 This was because, between the final rules for persistent debt being made and coming into force, firms felt they would need to:

- identify the correct customers at each of the intervention points and create new operational procedures to deal with the 36 month stage intervention. Also, for those firms reliant on third parties, the development of changes or systems solutions would not commence until the final rules were published
- implement changes to terms and conditions which would require at least 60 days' notice to be given to customers. Additionally, firms would need time to amend associated other pre-contractual credit disclosures
- trial the effectiveness of messaging for different customer groups at the 18 month point which, again, would take time to develop and implement. Additionally, some suggested the industry would want to undertake an education and awareness campaign which again would take time to agree and develop
- develop a new industry-wide CRA marker to denote things done at the 36 month stage (some acknowledged, however, that this would not need to be in place until the 36 month stage)

2.57 It was suggested by some firms and UK Finance that firms be allowed to take a phased approach to implementation, staggering their communications over several months at least to help manage the volume of enquiries to firms and debt advisers and to avoid overwhelming those consumers with persistent debt on more than one card. Some added they would need longer to consider how the 27 and 36 month interventions would work practically and legally and so would not wish to mention these actions in the 18 month customer communications until these issues had been resolved.

2.58 Some firms also thought implementation in 3 months would be difficult due to other new requirements that would have to be implemented around the same time (for example, the PSRs changes coming into force in January 2018 would require firms to issue notices of variation in order to change their terms and conditions).

2.59 Some suggested a phased implementation over 6 months would be sufficient. Other suggestions ranged from 12 to 18 months. UK Finance suggested options for phasing which might include:

- an initial focus on more recently opened accounts (where terms and conditions reflect our proposals)
- the targeting of certain populations of customers
- an alignment to the customer's annual credit card statement or
- more random methodology which allows firms to receive feedback across a sample of customers, improving their messaging

Our response

As stated in CP17/10, we want to minimise the period of time before the 18 month intervention is triggered to avoid delaying help to customers already in persistent debt who would be put in an even worse position if they had to wait an additional 12 to 18 months after these rules are made. We therefore do not agree that we should increase the implementation period significantly.

However, we accept that a 3 month implementation period may be operationally challenging for some firms, particularly those who consider that they need to change their terms and conditions whether by unilateral notice given in advance in accordance with the terms of the credit card agreement or by modifying agreement to the credit card agreement.

We therefore propose to give firms a further 3 months in which to implement our proposals. This means that firms would have a total of 6 months, from the date we make our final rules and guidance, in which to provide the required advance notifications and begin to issue their 18 month communications to customers.

We have no objection to firms taking a phased approach to their 18 month communications as some have indicated they plan to do. Where a firm issues the 18 month communication during the proposed 6 month implementation period, then that would start the clock running for the steps to be taken at 27 and 36 months.

Q11 in CP17/10: Do you agree with our proposals on the overlap between persistent debt and earlier intervention and CONC 7.3.4R?

2.60 We stated that our proposals on persistent debt and earlier intervention are designed to be complementary and work together with our existing CONC rules requiring firms to treat customers in default or arrears difficulties with forbearance and due consideration.

2.61 We therefore proposed that the interventions at 18, 27 and 36 months would not apply where a customer's account is already subject to equivalent or more favourable treatment under our CONC rules or earlier intervention proposals.

2.62 The majority of respondents agreed that our proposals and existing rules were complementary and that customers already receiving treatment that is equivalent to, or more favourable than, that available based on them falling within the persistent debt definition should not be notified about their persistent debt.

2.63 Some industry respondents asked that customers who leave the arrears process but are still in persistent debt at that point should be given breathing space before they receive a new set of communications relating to persistent debt as this could risk such customers feeling overwhelmed by the messaging and requests being made of them. A 3 month grace period was felt to be appropriate in these circumstances.

2.64 Some stated they would expect all customers currently in arrears to be excluded from the persistent debt interventions, even where not subject to favourable treatment under CONC 7.3.R or earlier intervention. This was on the basis that it was not reasonable to ask customers who are not able to afford their current repayments to consider increasing these to avoid persistent debt, and potential card suspension and CRA reporting.

2.65 One CRA commented that using credit card behavioural data including cash advance information and promotional activity flags can help to refine the review of a customer's financial situation. The ICO added that customers must be made aware of how firms are using CRA data in line with data protection transparency requirements. A few respondents reiterated that our forbearance rules should be strengthened. The FSCP felt we should enforce our rules more strongly as, in their view, our rules were not working in practice given the extent of problem credit card debt identified during our market study.

Our response

We do not agree that firms should wait for a period of time before sending persistent debt communications to customers that have come out of arrears as this would further delay assistance to these customers. As the 18 month intervention involves voluntary action by the customer, there is less risk that such a customer would feel pressurised to take immediate action. Additionally, the changes we have made to our draft rules and guidance relating to firm's communications with their customers should provide firms with flexibility to tailor their messaging and to decide how best to communicate with such customers to avoid confusion or them feeling overwhelmed.

We do not agree that a customer in arrears must automatically be excluded from the persistent debt interventions. Persistent debt communications would not be required if such a customer is receiving equivalent or more favourable treatment under our forbearance or earlier intervention requirements.

3 Feedback to CP17/10: earlier intervention

3.1 In this chapter, we summarise the responses we received to each of the questions we asked in CP17/10 on our earlier intervention proposals. We also set out our feedback to the comments received.

3.2 We have not made any changes to the proposed rules and guidance we consulted on in CP17/10.

Q12 in CP17/10: ***Do you agree with our proposal to require firms to monitor other data in addition to a customer's repayment record?***

3.3 We proposed to build on our existing requirements for firms to monitor a customer's repayment record for signs of actual or potential difficulties by requiring firms to:

- use the data they hold to see if customers are at risk of potential financial difficulties
- take appropriate actions
- establish, implement and maintain an adequate policy for dealing with customers showing signs of actual or possible financial difficulties, even though they may not have missed a payment

3.4 The majority of respondents agreed with our proposals. A few debt advice firms commented that these should extend to all credit firms, in particular home collected credit and catalogue credit providers. An advice body expressed concern about firm practice varying and so suggested we work with firms to establish best practice guidelines. One respondent thought monitoring of CRA data should not be optional. The FSCP called for lenders of any debt product to share real-time data with CRAs.

3.5 UK Finance thought our guidance suggesting, as an example, that customers 'who reduce their payments to the minimum due without showing any corresponding reduction in spend may be a sign of actual or potential financial difficulty' was overly prescriptive and we should avoid highlighting just one example if our policy is that firms should use a breadth of data.

3.6 It was felt by some respondents that our proposals would create uncertainty around the scope of the data firms are expected to collect and how that data should be used. They added that we should consider how Open Banking and the PSRs will enable better decisions to be made by firms. A debt charity felt we should prescribe in more detail the type of data we expect to be monitored as this will enable us to properly supervise our proposals.

3.7 A few thought our proposals should require firms to also gather new data, for example in relation to multiple debt and multiple sources of credit, so that firms can take a holistic view, taking into account a customer's full financial picture. Suggestions received for other data that could be routinely monitored included:

- significant numbers of cash withdrawals
- gambling transactions
- regular transfers between different lending products
- the presence of children (in order to deal effectively with the greater vulnerability of families to debt)
- county court judgements

Our response

We have not made any changes to our proposals.

While we understand some respondents would prefer more prescription in our rules, the types of data firms will be able to collect and utilise will vary between firms and change over time (according to economic conditions and consumer behaviour), as demonstrated by the responses we received. Additionally, firms have more data on their customers than we do and are well placed to decide how to put into practice the requirements we proposed. Setting out prescriptive rules that try to cover every eventuality is therefore unlikely to be helpful or possible.

We have not prescribed requirements around the use of CRA data given such data are not necessarily available to all firms.

The guidance proposed at CONC 6.7.3BG(3) was intended to provide clarification around the possible treatment of minimum repayment behaviour. As this is guidance, we are not prescribing the approach firms must take.

We will take the views respondents raised about extending our proposals to other forms of credit into account as part of our ongoing work on the review of high-cost credit.

Q13 in CP17/10: Do you agree firms should be required to take appropriate action where there are signs of actual or possible financial difficulties?

Q14 in CP17/10: Do you agree with our proposal that signs of actual or possible financial difficulties should include where there is a significant risk of one of the matters in CONC 1.3.1G occurring?

3.8 The majority of respondents agreed with our proposal that firms should be required to take appropriate action where there are signs of actual or possible financial difficulties. UK Finance noted, however, that many customers entering financial difficulty show no preceding signs, for example, in the event of sudden life events such as loss of income or illness. One respondent requested further guidance on what would constitute appropriate action in the event of possible but unconfirmed financial difficulty.

3.9 On the question of whether signs should include where there is a significant risk of one of the matters in CONC 1.3.1G occurring (for example, consecutively failing to meet minimum repayments or adverse accurate entries on a credit file), the majority of respondents agreed with our proposal. One respondent requested clarification on the interaction between our proposed earlier intervention rules and CONC 6.7.10R which prohibits re-pricing when a customer is in financial difficulties as defined in CONC 6.7.11G (which is much narrower than the existing CONC 1.3.1G).

3.10 The respondent explained that 'risk of default' is a factor lenders consider when setting prices. If a firm considers there is a risk of default meriting a rate increase, this could also be classed as a significant risk of 'consecutively failing to meet minimum payments' under our proposed CONC 6.7.3BG/CONC 1.3.1G so triggering the obligation to take appropriate action and suspend interest and charges.

3.11 Examples of how we envisage our proposals working in practice or the length of time firms should monitor these matters were requested. Some suggested we expand our guidance to include additional examples of signs including:

- regularly meeting or exceeding credit card limits
- evidence of reliance on overdrafts
- evidence of persistent minimum payments
- being at risk of meeting the definition of persistent debt
- the existence of multiple credit cards with high credit utilisation
- asking the lender for help
- evidence of vulnerability
- paying priority household bills using credit cards and
- evidence of repeated cash transfers from credit cards

Our response

We have not made any changes to our proposals for similar reasons to those stated above.

We agree there will be a wide range of signs of (actual or possible) financial difficulties and the broad variety of suggestions made by respondents support this view. The range of circumstances that customers at risk of financial difficulties could be in is enormously diverse, which is why we consider firms should use their judgement rather than follow prescriptive rules that try to cover every possible circumstance.

In respect of the interaction between our earlier intervention rules and CONC 6.7.10R, our proposed guidance also suggests other appropriate actions a firm can take such as notifying the customer of escalating debt, additional interest or charges and of potential financial difficulties. These could be incorporated in the notice required under CONC 6.7.12R explaining (in broad terms) the reason for the interest rate increase and that this will increase repayments.

We do not consider our proposals force firms to change their current approach or require them to suspend interest and charges each time the firm considers there is a risk of default. In any event, while a risk-based increase may reflect an increased risk of default, this may not be 'significant' under CONC 6.7.3BG and may not be likely to lead to consecutive missed payments for CONC 1.3.1G purposes.

***Q15 in CP17/10:* Do you agree with our proposed guidance on what may constitute appropriate action?**

3.12 The majority of respondents welcomed our proposed guidance on the appropriate actions firms could take, especially the inclusion of forbearance and encouragement to access debt advice. It was highlighted that suspending or waiving charges may require CRA reporting. A few firms stated they would firstly seek to engage with a customer before taking action. Others felt we should differentiate between actions to take where the customer is actually in financial difficulty (suspending interest and charges) and actions to take where the customer is showing signs of possible difficulties (notifying the customer and providing details of debt advice).

3.13 Suggestions received for other actions that may be appropriate included:

- writing-off principal and/ or interest, fees and charges for the most vulnerable
- agreeing a debt repayment plan
- offering alternative payment options in line with those at the 36 month stage of the persistent debt remedy
- breathing space measures and
- allowing token payments to be accepted in other circumstances and replacing 'token payments' with 'reduced payments' (as 'token' suggests a very small amount whereas in practice a firm could consider offering reduced payments for a reasonable period of time based on an affordability assessment)

3.14 Some reiterated that we would need to monitor our proposals to ensure firms offer forbearance where appropriate. A few commented that our proposals may put pressure on debt advice services and so we should ensure we review how our proposals are working in practice, as well as the Money Advice Service levy funding arrangements to ensure that appropriate funds are available to not-for-profit debt advice charities.

Our response

We have not made any changes to our proposals.

Again, it is clear from responses that there is a wide range of views on what could constitute appropriate action. Our proposed guidance is, however, not exhaustive as the particular action a firm takes will depend on the individual's circumstances and this is matter of judgement for the firm. Additionally, firms will need flexibility to develop their own approaches in the light of their operating models and customer portfolio.

We set out our proposed plans to review the effectiveness of our rules and monitor implementation and outcomes in Chapter 1.

4 Next steps

This consultation

4.1 The rules and guidance on which we are consulting are in the draft instrument in Appendix 1. The CBA is in Annex 2. We are seeking views on the following questions in Annex 1:

Q1: Do you have any further comments on our amended proposals and the draft Handbook text in Appendix 1?

Q2: Do you have any comments on our revised assessment of the costs and benefits of our proposals in Annex 2?

4.2 **Respondents are asked to focus their comments only on any new points and do not need to repeat points already made to us in their response to CP17/10.**

4.3 This consultation closes on 25 January 2018. We will then review the responses and publish our feedback and final rules and guidance.

4.4 We set out our proposed plans to review the effectiveness of our rules and monitor implementation and outcomes in Chapter 1.

Update on voluntary industry remedies on credit limit increases

4.5 An important objective of our regulation of the credit card market is to ensure that consumers, especially those at risk of debt problems and those in financial difficulty, are not given unaffordable credit limit increases and have proper control over their credit limits. This is so they can avoid borrowing more than they intend to and avoid a worsening of their circumstances.

4.6 To address this, we set out in Chapter 4 of CP17/10 our analysis of data collected as part of the CCMS and proposals on unsolicited credit limit increases. This offered some insight into how credit limit increases operate across the credit card market and their impact on customers who receive them. In particular, we found that:

- The number of credit limit increases has grown in recent years. In 2014, 18% of all accounts received one, whereas the figure was just over 10% in 2010.
- 'Low and grow' cards (we use this term to refer to credit cards that typically have an interest rate starting around 30% and are mainly targeted at non-prime consumers) account for a significant proportion of credit limit increases. This is what we would expect to see given that this business model involves giving customers an initially low credit limit which can then be increased over time as customers demonstrate their ability to manage the card and firms are better able to judge the customer's creditworthiness.

- Our analysis of 2014 data showed that receiving a credit limit increase is associated with an increase in spending, with accounts that received a credit limit increase having an average balance £458 higher at the end of the year. The average credit limit increase was £1,321.
- It does not, however, show a clear causal link between credit limit increases and problem debt or widespread consumer detriment as a result of credit limit increases, even within the 'low and grow' segment. This is likely to be because firms try to target credit limit increases to their more creditworthy customers.

4.7 In the light of our findings, CP17/10 explained that we had engaged with the credit card industry about our concerns relating to consumer control and the risk of detriment for customers in financial difficulties. We also set out the voluntary remedies the industry are adopting, which we believe achieve our objectives in an effective and timely manner, to give customers greater control over their credit limit, including that:

- existing customers will have the ability to tell their credit card firm that they want to explicitly accept any offer of a credit limit increase (opt-in), rather than have firms automatically increasing it if they do not reject the offer (opt-out)
- new customers will be given the choice of how increases will be offered, while existing customers will be given a more straightforward means of declining an increase and more choice as to how increases will be offered in future
- all customers will be made aware of their existing right to choose not to receive offers of credit limit increases
- unsolicited offers of a credit limit increase will be presented neutrally, rather than as a reward

4.8 Since we published CP17/10, the industry has agreed that customers meeting our definition of persistent debt for a period of 12 months will not receive offers of credit limit increases. This would be instead of the previously published restriction in relation to making minimum repayments.

4.9 We consider this revised, simpler approach is at least as effective as the previous industry proposal. We expect this to result in approximately 1.4 million accounts per year not being eligible for offers of credit limit increases.

4.10 Progress with implementation and monitoring of compliance will be overseen by the Lending Standards Board and the Finance & Leasing Association, and we will monitor outcomes with a view to considering whether this approach is working well. We can, if necessary, reconsider this approach in the light of new evidence.

Testing behavioural remedies to address under-repayment

4.11 Chapter 5 of CP17/10 explained how we are currently carrying out behavioural trials with a number of credit card firms to test the effect of different ways of presenting repayment options, with the intention of finding ways to encourage people making low repayments to repay more where it is affordable for them.

4.12 This work is ongoing. Once the trials are complete, we will consider the results and the most appropriate way to achieve the outcomes we are seeking. This may include options such as changes to how repayment options are presented to customers, or increases to minimum repayments.

0% credit card deals

4.13 We said in CP17/10 that we would have concerns if the headline rate or period for 0% credit card introductory deals were not available to a significant number of consumers or if any limitations on its availability were not made clear in financial promotions. We said this is an area where we would be undertaking further work to look at the issue and consider the case for additional rules or guidance if necessary.

4.14 We are currently undertaking a survey of firms' practices in this area. The data and information we collect will help us to further consider what action, if any, it would be appropriate to take.

Industry work on quotation searches

4.15 The industry continues to develop their work, being undertaken over the next year, by UK Finance and the Finance and Leasing Association to further examine quotation search tools. The industry plans to consult relevant stakeholders as this work develops, taking into account wider related developments such as the CMA's market study into digital comparison tools.

Other consumer credit policy work

Creditworthiness

4.16 In July 2017, we published a CP on proposed changes to our rules and guidance on firms' assessments of creditworthiness, including affordability[8]. These apply across the consumer credit market but we proposed particular changes for credit cards and other running-account credit, including elevating some provisions from guidance to rules and clarifying their application.

4.17 In particular, we proposed:

- requirements for firms to make reasonable assumptions about likely drawdowns and repayments over the duration of the credit card agreement. Firms must be satisfied that, if the customer drew down the entire credit limit on day one, they would be able to repay over a reasonable period, without this significantly affecting their overall financial situation
- clarifying the existing requirement for a fresh assessment to be undertaken each time a credit limit is increased significantly by proposing that this can include a

8 www.fca.org.uk/publications/consultation-papers/cp17-27-assessing-creditworthiness-consumer-credit

number of separate increases which, while not significant individually, are collectively significant in terms of the customer's ability to repay affordably

4.18 Our CP also highlights the important role played by CRAs in the provision of data and analytics to inform firms' assessments of credit risk and affordability. We invited views on a number of issues identified in relation to firms' access to, and use of, CRA data and products. These include the coverage, timeliness and consistency of data. We may consider further work in this area and will set out more details after analysing consultation responses.

4.19 Consultation closed on 31 October 2017. We are currently considering the responses received.

High-cost credit review

4.20 In July 2017, we published our feedback statement on high-cost credit including our review of the price cap on high-cost short-term credit[9]. We are investigating the issues outlined in that paper further and for those issues where further research shows intervention is needed and justified we aim to consult in Spring 2018.

CCA retained provisions review

4.21 Legislation requires us to review whether repeal of the CCA, in whole or in part, would adversely affect the appropriate degree of protection for consumers. In particular, we must:

- consider which provisions could be replaced by FCA rules or guidance
- consider the principle that a burden imposed must be proportionate to the benefits, in general terms, that would result from its imposition
- report to the Treasury by 1 April 2019, and publish a copy of the report

4.22 We are currently progressing the review and will publish an interim report in 2018.

9 www.fca.org.uk/publications/feedback-statements/fs17-2-high-cost-short-term-credit

Annex 1
Questions in this paper

Q1: **Do you have any further comments on our amended proposals and the draft Handbook text in Appendix 1?**

Q2: **Do you have any comments on our revised assessment of the costs and benefits of our proposals in Annex 2?**

Annex 2
Cost benefit analysis

Introduction

1. FSMA, as amended by the Financial Services Act 2012, requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made'.

2. In CP17/10, we provided a cost benefit analysis (CBA) of our proposals. In the light of feedback received, this analysis presents revisions to the estimates of compliance costs contained in paragraph 118 of Annex 2 of CP17/10, the CBA.

3. This Annex must be read alongside the parts of the CP17/10 CBA which are unchanged and so are not repeated here. Taken together, our analysis in this Annex and in CP17/10 presents estimates of the significant impacts of our proposal. We provide monetary values for the impacts where we believe it is reasonably practicable to do so. For others, we provide estimates of outcomes in other dimensions. Our proposals are based on carefully weighing up these multiple dimensions and reaching a judgement about the appropriate level of consumer protection, taking into account all the other impacts we foresee.

Revisions to CP17/10 CBA

4. In preparing the CBA in CP17/10, we carried out a survey of firms. Based on the responses of firms to that survey, we estimated that the one-off implementation costs of the persistent debt remedy would range from £5,000 to more than £1m per firm, with a weighted average one-off cost of £700,000 per firm. We estimated that on-going compliance costs would vary from £6,000 to more than £3m, with weighted average on-going costs of £1.9m per year, per firm.

5. We estimated that the one-off implementation cost to the industry would total £7.2m, and the annual on-going compliance costs would total £20.6m[10] but we comment further on these figures below.

6. As a result of the responses received to Question 8 in CP17/10, we sought further information about the likely implementation costs from the industry, through UK Finance. The feedback from UK Finance estimated implementation costs as generally higher than the estimates firms provided in response to the pre-consultation survey upon which the CBA in CP17/10 was based. This was a result of firms providing higher estimates of the costs than were previously estimated, as well as identifying additional

10 The costs discussed here include implementation and compliance costs. They do not include lost revenue, such as reduced interest income.

categories of costs that were not included in the responses to the survey that preceded CP17/10 or identified in the CBA in CP17/10.

7. Based on responses from its members, UK Finance estimated that the categories of costs included in the CBA in CP17/10 would impose a total one-off cost on industry of £20.3m to £25.3m[11].

8. Firms also separately identified an additional category of costs associated with making changes to consumer contracts in order to comply with the proposed rules. Based on information from its members, UK Finance estimated the total one-off cost to industry of making these changes to be between £19m and £24m. This estimate is given in the context of their view that:

- all firms would need to change the terms and conditions of their credit card agreements and
- some firms, representing around 20% of customers, see a likely need to enter into modifying agreements.

9. In addition, 1 firm identified additional one-off costs relating to:

- testing to improve the effectiveness of interventions
- development of new solutions to help customers manage debt
- systems upgrade to allow repayment functionality and
- CRA reporting requirements.

10. UK Finance extrapolated the cost estimates from that 1 firm to a total industry cost of £32m to £52m.

11. In summary, UK Finance estimates a total one-off implementation cost ranging from around £71.3m to around £101.3m.

12. Having received these further estimates, we revisited the information we had gathered in preparing our CBA in CP17/10. In doing so, we identified data which 2 firms had submitted but which we had omitted from our calculations. Including that data in our calculations would have resulted in the following figures being set out in the CBA[12]:

- the one-off costs of setting up and running a function to identify customers who are in persistent debt and intervening to help them would have varied from £5,000 to £3.5m;
- the weighted average one-off cost would have been £0.8m to £1.4m per firm (1 firm provided a range of estimates);
- the weighted average ongoing cost would have been £1.7m per year, per firm;

11 A few firms provided estimates for sub-categories of costs, such as developing strategic solutions to communication with customers and mobile app and web servicing. The total one-off cost of £20.3m to £25.3m includes these estimates. However, we did not scale these costs up to the whole industry as it was not clear (a) whether other firms already covered these costs in their response and (b) whether other firms would incur these costs.

12 See paragraph 118 of the CP17/10 CBA: www.fca.org.uk/publication/consultation/cp17-10.pdf.

- the total estimated one-off implementation cost to the industry would have been £7.4 to £12.1m; and the annual ongoing cost would have been £17.7m per year[13].

13. Comparing the revised estimates derived from the survey carried out prior to preparing the CBA in CP17/10 with the estimates provided by UK Finance, it is apparent that most of the difference in the costs estimates comes from differences in the categories of costs included in the calculations. For the costs included in the original survey, our revised estimate of one-off implementation costs is £7.4m to £12.1m. The estimate from the UK Finance survey of its members is £20.3m to £25.3m. The estimate provided by UK Finance is based on submissions from its members that have the benefit of firms having had the opportunity to consider the detail of the proposed rule, and therefore we use this as our estimate of these categories of costs.

14. With regard to the costs associated with contractual changes, we consider the UK Finance estimate of £19m to £24m to be an upper bound of the likely actual costs. A small number of firms, at the time of the UK Finance survey, were still in the process of fully assessing their legal options including whether they would seek to rely on existing clauses. Additionally, whether it is necessary for firms to enter into modifying agreements will depend on the options offered to customers at the 36 month stage and firms' individual circumstances.

15. Similarly, the costs estimate for the categories of costs identified by a single firm, ranging from £32m to £52m, we believe is an upper bound. It is not clear that firms would need to engage in these activities in order to comply with the proposed rule, and the fact that only 1 firm identified these costs suggests that not all firms are likely to incur these costs.

16. Our upper bound estimate of the total one-off implementation costs is £101.3m. This comprises £20.3m to £25.3m in 'core' implementation costs, plus an upper bound estimate of £24m in costs associated with making contractual changes, and an upper bound estimate of £52m in costs associated with testing the effectiveness of the interventions, developing new solutions to help customers manage debt, upgrading systems to improve repayment functionality and undertaking any CRA reporting. To be clear, we consider costs could be significantly lower than this in practice. With regard to on-going costs, our revised estimate is £17.7m per year.

13 On the basis of this data, collectively the firms that responded to our questionnaire represent approximately 53% of all accounts (rather than 40%). The estimated one-off costs are £0.22 per account (rather than £0.13), and ongoing costs are £0.32 per account (rather than £0.37).

Summary of estimated compliance costs: persistent debt

17. The following table summarises our analysis, as described above, to show the:

- estimated compliance costs of our proposed persistent debt intervention as published in CP17/10
- updates to these estimates based on additional data we have identified and estimates from UK Finance

		Published in CP17/10	Updated	
			In the light of additional data	Based on UK Finance data
One-off costs	Core compliance costs: systems, additional staff, etc.	£7.2m	£7.4m to £12.1m	£20.3m to £25.3m
	Contractual changes	-	-	£19m to £24m[1]
	Additional testing and systems changes (extrapolated to full industry based on submission by one major firm)	-	-	£32m to £52m[1]
	Total	£7.2m	£7.4m to £12.1m	£71.3m to 101.3m[1]
Total on-going costs		£20.6m per year	£17.7m per year	No estimates provided

1. We consider these to be upper bound estimates. Costs could be significantly lower than this in practice.

Benefits to consumers

18. Our CP17/10 CBA estimated that consumer benefits, in terms of lower interest payments resulting from faster debt repayment, would peak at £0.3bn to £1.3bn per year. The total cost savings to consumers were expected to be within the range of £3bn and £13bn by 2030. Other non-monetary benefits, such as reduced consumer stress and harm and greater flexibility to deal with income or expenditure shocks, were also described. We consider that the estimates of these benefits remain valid.

19. We therefore believe that our proposed intervention continues to be proportionate, considered in general terms, even on the recalculated figures set out above.

Annex 3
Compatibility statement

Compliance with legal requirements

1. This Annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).

2. When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules is (a) compatible with its general duty, under s. 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives, and (b) its general duty under s. 1B(5)(a) FSMA to have regard to the regulatory principles in s. 3B FSMA. The FCA is also required by s. 138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.

3. This Annex also sets out the FCA's view of how the proposed rules are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (s. 1B(4)). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.

4. In addition, this Annex explains how we have considered the recommendations made by the Treasury under s. 1JA FSMA about aspects of the economic policy of Her Majesty's Government to which we should have regard in connection with our general duties.

5. This Annex includes our assessment of the equality and diversity implications of these proposals.

6. Under the Legislative and Regulatory Reform Act 2006 (LRRA) the FCA is subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex sets out how we have complied with requirements under the LRRA.

The FCA's objectives and regulatory principles: Compatibility statement

7. We consider the proposals in this CP are compatible with the FCA's strategic objective of ensuring that the relevant markets function well because we expect them to address a significant market failure in the credit card market to deliver a better

outcome for affected consumers. For the purposes of the FCA's strategic objective, 'relevant markets' are defined by s.1F FSMA.

8. The proposals set out in this CP are primarily intended to advance the FCA's operational objective of achieving an appropriate degree of protection for consumers.

9. The intention of our proposals in relation to persistent credit card debt is to tackle a market failure whereby a significant number (albeit a minority) of customers carry a credit card balance for a long period of time without significantly paying it down. This can lead to very high debt servicing costs and may be caused by customers either deliberately or unintentionally repaying slowly, or simply being unable to afford to repay more quickly. Firms do not have an incentive to intervene since these customers are profitable and, provided they do not fall into arrears, will continue to be so for an extended period of time.

10. We are aiming to align customers' and firms' incentives to encourage customers to repay more quickly where they can afford to do so, and to deliver forbearance where customers are struggling to repay their debt.

11. Our proposals on earlier intervention are intended to encourage credit card firms to identify customers who are at risk of potential financial difficulties before those difficulties crystalise. We propose to require credit card firms to use relevant data available to them to identify such customers and take appropriate steps.

12. Section 1B (4) of the FSMA requires us, so far as is compatible with acting in a way which advances the consumer protection objective, to discharge our functions in a way which promotes effective competition in the interest of consumers.

13. We do not expect our proposals on persistent debt to undermine competition and, while they are not directly addressed at encouraging greater competition, they may nonetheless do so. This is because customers in persistent debt are profitable and at the 36 month point many may be more receptive to offers of balance transfer deals than they would otherwise have been. While a firm acquiring their custom would not be receiving interest income for the period of the promotional deal, such customers are likely to be attractive, as there is typically a balance transfer fee and some customers may not repay the full balance within the promotional period. A balance transfer deal is likely to be in customers' interests as it would likely see them repay their debt more quickly without having to increase monthly repayments (as they may have to do if they stayed with their current credit card firm). As a result, some firms may increasingly compete to attract customers in persistent debt through balance transfer deals. If this was the case, firms may respond by offering existing customers in persistent debt other inducements not to switch, such as offering a promotional interest rate period on their existing balance. This is also likely to be in customers' interests.

14. In relation to earlier intervention, the customers affected are not generally likely to be customers that firms are likely to compete for, as they will tend to be at an increased risk of developing financial difficulties. Our proposal is intended to achieve the appropriate level of consumer protection. As such, we do not consider it is likely that proposals in this area could have the effect of promoting competition.

Persistent credit card debt

Matters we must have regard to under the consumer protection objective

15. Below we explain how we have had regard to each of the eight matters listed in s.1C (2)(a)–(h) FSMA.

The differing degrees of risk involved in different kinds of investment or other transaction

16. We have taken this matter into account in bringing forward proposals on persistent credit card debt, recognising that the features of credit cards create a risk of persistent debt that does not necessarily exist in the same way in other credit products, in particular fixed-sum loans. It is possible for customers to sustain a credit card balance for a long period of time by making minimum repayments while paying significant interest charges, but not significantly reducing the balance.

The differing degrees of experience and expertise that different consumers may have

17. Our proposals in relation to persistent debt take this into account and it is reflected in the design of our proposed intervention. We recognise that customers in our persistent debt definition are likely to be in a diverse set of circumstances, and our proposals are intended to filter these customers in such a way that they receive the most appropriate intervention. For example, some customers who are intentionally or unintentionally repaying slowly, but could afford to repay more quickly, may change their behaviour in response to the prompts at 18 months or, if not, agree to an affordable schedule of repayment at 36 months. Customers in persistent debt who cannot afford to repay more quickly will be treated with forbearance and due consideration, which may include interest rate concessions to assist the customer to repay more quickly.

The needs that consumers may have for the timely provision of information and advice that is accurate and fit for purpose

18. We have explicitly recognised this in our proposals by requiring that firms inform customers in our persistent debt definition over 18 months that: they should repay more quickly if they can afford to; their repayment pattern is likely to lead to high debt servicing costs; and, if they do not repay more quickly, they will face stronger interventions in a further 18 months.

19. In addition, we propose that where a customer is continuing to repay in such a way that it appears likely they will remain in persistent debt at the 36 month point, firms must remind customers mid-way through the period in order to give them an opportunity to engage and agree to repay more quickly.

The general principle that consumers should take responsibility for their decisions

20. We have taken this principle into account when developing our proposals on persistent debt, and it has shaped the structure of our proposed intervention. For example, we are proposing that a customer would have to be in persistent debt for a period of 36 months before firms would be required to make stronger interventions. Interventions prior to 36 months would place the onus on customers to take responsibility for their decisions and repay more quickly if they could afford to do so.

21. We have decided that an easily accessible exception that would allow customers to opt-out of the intervention, or parts of the intervention, would undermine the policy intention. In order to create a strong incentive for customers to engage, and for firms to effectively seek to elicit engagement, we propose that customers who do not engage with their credit firm at 36 months, or who confirm they can afford faster repayments but decline to make them, would have their ability to use the card suspended. This would give firms an incentive to intervene effectively since suspending use of customers' cards is likely to increase lost revenue from further spending. It also gives customers an incentive to engage, and to agree to repay more quickly where affordable, if they wish to avoid suspension of their card and the potential impact of this on their credit file.

The general principle that those providing regulated financial services should be expected to provide consumers with a level of care that is appropriate, having regard to the degree of risk involved in relation to the investment or other transaction and the capabilities of the consumers in question

22. Our proposal on persistent debt was developed with regard to this matter, which is intended to place incentives (and requirements) on firms to intervene when customers are in persistent debt. At present, firms have few incentives, and no requirements to do so, as these customers remain profitable. The risk to customers in this position is primarily that they are paying significant debt servicing costs which, where customers cannot afford to repay more quickly, may be reducing their ability to repay the debt any faster than through minimum or near minimum repayments.

The differing expectations that consumers may have in relation to different kinds of investment or other transaction

23. Our proposals take this matter into account through proposing a series of prompts and interventions that would be delivered to customers who, for reasons of inertia or misunderstanding of the nature of the credit card product, are sustaining a persistent level of debt without making significant reductions when they could afford to repay more quickly.

Any information which the consumer financial education body has provided to the FCA in the exercise of the consumer financial education function

24. This matter is not relevant to these proposals, as we have not been provided with any relevant information by the consumer financial education body on this subject.

Any information which the scheme operator of the ombudsman scheme has provided to the FCA pursuant to section 232A

25. This matter is not relevant to these proposals, as we have not been provided with any relevant information by the scheme operator pursuant to section 232A on this subject.

The FCA's regulatory principles

26. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in s.3B FSMA. Below, we explain how we have done this (except where the principle is the same as one of the principles we must have regard to under the consumer protection objective, in which case it is explained above).

The need to use our resources in the most efficient and economic way

27. We consider that the proposals are compatible with this principle, on the basis that we have identified that persistent debt is a significant issue facing a large number of customers and using FCA resources to design, consult, implement, supervise and review an intervention in this space is proportionate.

The principle that a burden or restriction should be proportionate to the benefits

28. We have considered this carefully when designing our proposed intervention. Where there are burdens or restrictions (for example, requiring firms to stop customers using their credit card or to show forbearance), they will only apply to sub-groups of customers who have been in persistent debt for a period of at least 18 months. The more significant burdens occur once a customer has been in persistent debt for 2 consecutive periods of 18 months. This will help to ensure that we target the groups of customers who are unequivocally carrying a credit card debt over a long period of time without making meaningful reductions in their balance. The burdens are proportionate to the benefits of consumers repaying more quickly, and potentially being offered an interest rate reduction to help them out of persistent debt.

29. These interventions are designed to align incentives for both customer and firm to avoid getting into persistent debt in the first place, but also to engage to agree the best route to tackle it where it develops. We have also taken the approach of proposing a high-level rule requiring firms to help affected customers repay their balance more quickly without setting rigid expectations on firms about how they will achieve this outcome.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

30. We have had regard to this principle in developing our proposals. While credit card transactions and interest payments contribute to GDP, and our proposals are (on face value) likely to lead to fewer transactions and lower interest payments by some customers, the net effect of this could be beneficial for sustainable growth.

31. Customers who repay more quickly, and therefore pay less in interest than they would otherwise have done, may spend the money they have saved over the medium term in the wider economy, thus contributing to economic growth. This is also true where customers in persistent debt who cannot afford to repay more quickly are given assistance to help them repay. The counterfactual for these customers sees them potentially spending a significant proportion of their disposable income on interest payments over a long period of time. Clearly, where customers are paying less in interest this implies forgone revenue for firms which would offset at least some of the potential growth as a result of customers having increased disposable income in the medium to long term. In addition, some customers may offset their increased repayments by spending more on the card. Ultimately, there are a range of potential effects depending on how firms and consumers behave over the longer term, but we do not believe our proposals are incompatible with this principle.

The responsibilities of senior management

32. We consider that this principle is not relevant to the persistent debt proposals, as it does not create or affect any responsibilities directly placed on senior management.

The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation

33. Our proposal would apply to firms offering credit cards to consumers, regardless of the type of person carrying out that activity, but we do not expect it would present any particular difficulties for mutual societies or other kinds of business organisation engaged in this activity.

The desirability of publishing information relating to persons subject to requirements imposed under the FSMA, or requiring them to publish information

34. This principle is not relevant to these proposals, as they do not involve any requirements imposed under the FSMA, nor do we judge that there is a particular benefit in requiring them to publish information.

The principle that we should exercise of our functions as transparently as possible

35. We have had regard to this principle and ensured, where possible, that we have discussed the issues identified as part of our work with relevant stakeholders, including the industry, trade bodies and consumer groups. We have shared our thinking on remedies insofar as was appropriate, and discussed with the industry their proposals for voluntary intervention. We have also published our proposals in CP17/10, sought further information and data in the light of the feedback we received and, through this consultation, are seeking further feedback from stakeholders.

36. In formulating these proposals, the FCA has had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s.1B(5)(b) FSMA). The proposals are not relevant to this as they do not affect, either positively or negatively, the risk of financial crime.

Earlier intervention

Matters we must have regard to under the consumer protection objective

37. The proposals set out in this CP regarding earlier intervention by credit card firms primarily advance our operational objective of securing an appropriate degree of protection for consumers.

38. In formulating these proposals, we have considered the appropriate degree of protection for consumers in light of the matters set out in section 1C of the FSMA.

Differing degree of risk involved in different kinds of investment or other transaction

39. Our proposals are rooted in the principle that the extent and scope of monitoring, identification and action by credit card firms should be proportionate to the risks that individual customers may be at risk of or in financial difficulties. In general, firms should consider the complexity of customer behaviour, variations in products and customer profiles when assessing the level of risk and deciding on the appropriate assessment process. Our existing rules require firms to monitor repayment records for signs of actual or potential financial difficulty but we believe it is necessary to go further in relation to credit cards. This is because the ability to vary spending and repayment behaviour is significantly different than on a personal loan, for example, and this behaviour in itself – among other data – may be a useful indicator for actual or potential financial difficulty.

Differing degrees of experience and expertise that different consumers may face

40. Promotion of earlier intervention by credit card firms to identify, contact and take appropriate action where customers are at risk of financial difficulties should particularly enhance protection of sub-prime and vulnerable customers. The proposals should help to reduce cycles of financial difficulties, and promote the provision of information by firms to customers on the risks that may result from missed payments and sources of debt advice in order to encourage informed choices.

41. We expect that the proposals should also encourage and facilitate affordable borrowing, which offsets the risks that some customers may suffer from behavioural biases (such as 'present bias' or over-confidence) or lack financial sophistication.

The needs that consumers may have for the timely provision of information and advice that is accurate and fit for purpose

42. The proposals would require credit card firms to take appropriate action where customers are identified as being at risk of financial difficulties. Appropriate action may include the provision of information such as notifying the customer of the risk of escalating debt, additional interest or charges and of potential financial difficulties. We consider that this requirement will reduce risks of variation across credit card firms on whether to contact customers who are in potential financial difficulties.

The general principle that consumers should take responsibility for their decisions

43. Our proposals are intended to place greater responsibility on credit card firms to intervene earlier and take action where consumers are at risk of financial difficulties. In some circumstances the appropriate action will be to notify the customer of the risk of escalating debt, or provide details of debt advice bodies, steps which place responsibility for further action on consumers.

The general principle that those providing regulated financial services should be expected to provide consumers with a level of care that is appropriate, having regard to the degree of risk involved in relation to the investment or other transaction and the capabilities of the consumers in question

44. Our proposals aim to enhance responsible lending by requiring firms to monitor for and identify customers in financial difficulties, which takes into account changes in circumstances that impact on the customer's ability to repay. Firms will have better data than the FCA on their customers, and will have incentives to identify and take effective action, since defaulting customers are expensive. Firms will therefore be in the best position to decide what steps are required and take clear, effective and appropriate action on customers at risk of financial difficulties.

The differing expectations that consumers may have in relation to different kinds of investment or other transaction

45. Proportionality is likely to be in line with customer expectations in that a consumer may anticipate greater monitoring according to the size of firm. For example, a more rigorous degree of monitoring and action, including customer contact, might be expected depending on whether the firm is monoline (offering one credit card service only) or a bank offering variations in products and with different customer profiles.

The FCA's regulatory principles

46. In preparing the proposals set out in this consultation, we have considered the regulatory principles set out in s.3B FSMA. We explain below how our proposals demonstrate such regard for each of the regulatory principles.

The need to use our resources in the most efficient and economic way

47. We do not believe our proposals will have a significant impact on our resources or the way in which we use them. On the contrary, by requiring firms to establish and implement clear and effective policies and procedures for earlier intervention, they should enhance our ability to supervise firms effectively and enforce compliance with the rules where there are breaches.

The principles that a burden or restriction should be proportionate to the expected benefits

48. We have concluded that our proposals will not impose costs of more than minimal significance. More generally, we are satisfied that any burdens imposed on firms by the proposed rules and guidance would be proportionate to the expected benefits.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

49. We do not believe our proposals undermine this principle. The proposals seek to address unsustainable credit that can lead to over-indebtedness and debt-related problems and defaulting customers are expensive to firms.

The general principle that consumers should take responsibility for their decisions

50. Our proposals are intended to place greater responsibility on credit card firms to intervene earlier and take action where consumers are at risk of financial difficulties. In some circumstances the appropriate action will be to notify the customer of the risk of escalating debt, or provide details of debt advice bodies, steps which place responsibility for further action on consumers.

The responsibility of senior management of persons subject to requirements imposed by or under the FSMA, including those affecting consumers, in relation to compliance with those requirements

51. Our proposals are not inconsistent with this general principle. We are proposing that firms should establish, implement and maintain policies for dealing with customers at risk of financial difficulties although we do not propose that responsibility for these will explicitly sit with senior management.

The desirability of the FCA exercising its functions in a way which recognises differences in the nature and objectives of business carried on by different persons

52. The emphasis on proportionality in our rules recognises that firms may have different data available to them on their customers and different products with different levels of risk to consumers. We are keen to avoid over-prescription and our proposed approach allows firms to use the data they have in their possession, rather than specifying particular data they must acquire if they do not have access to it. This would have the potential to create an issue for firms with different business models.

The desirability of publishing information relating to persons

53. We do not consider our proposals undermine this principle and that it is unlikely to be relevant, given that our proposals do not involve publishing information relating to persons.

The principle that we should exercise our functions as transparently as possible

54. We are an open and transparent regulator. While developing these proposals, we invited stakeholders to comment and provide their views on the proposal for earlier intervention.

Expected effect on mutual societies

55. The FCA does not expect the proposals in this paper to have a significantly different impact on mutual societies. The proposed rules would apply to any mutual societies that offer credit cards in the same way as other, non-mutual, firms and we would not expect them to present any advantage or disadvantage to a firm on the basis of their mutual status.

Equality and diversity

56. We are required under the Equality Act 2010 to 'have due regard' to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we conduct an equality impact assessment to ensure that the equality and diversity implications of any new policy proposals are considered.

57. The outcome of the assessment in this case is stated in Chapter 1 of this CP.

Annex 4
List of non-confidential respondents to CP17/10

Anthony Riddle

Barry Cust

Bob Welsh

Brian Berry

Callcredit Information Group

Carolyn Sandwell

Chartered Institute of Credit Management

Christians Against Poverty

Citizens Advice

Citizens Advice Merton & Lambeth

Citizens Advice Scotland

DIAL Great Yarmouth

Danny Moloney

David Finlay

David Walters

Debt Resolution Forum

Doug Cowx

Experian

Finance & Leasing Association

Financial Inclusion Centre

Financial Services Consumer Panel

Gregory Pennington Limited

Helen George

Information Commissioner's Office

Ian Peters

John Pearson

Keep Me Posted

Klos Przemyslaw

Money Advice Scotland

Money Advice Service

Money Advice Trust

Nationwide Building Society

New Economics Foundation (NEF) and Centre for Responsible Credit (CfRC)

Paul Davies

Paul Hare

PayPlan

Rutherglen & Cambuslang CAB

StepChange

The Children's Society

The Consumer Council

The Money Charity

UK Finance (formerly the UK Cards Association)

Tom Shanks

Tony Dowd

Virgin Money

Appendix 1
Draft Handbook text

CONSUMER CREDIT (EARLIER INTERVENTION AND PERSISTENT DEBT) INSTRUMENT 2018

Powers exercised

A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):

(1) section 137A (General rule-making power);
(2) section 137T (General supplementary powers); and
(3) section 139A (The FCA's power to give guidance).

B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on [*date*].

Amendments to the Handbook

D. The Consumer Credit sourcebook (CONC) is amended in accordance with the Annex to this instrument.

Citation

E. This instrument may be cited as the Consumer Credit (Earlier Intervention and Persistent Debt) Instrument 2018.

By order of the Board
[*date*] 2018

Annex

Amendments to the Consumer Credit sourcebook (CONC)

In this Annex, underlining indicates new text and striking through indicates deleted text unless otherwise stated.

6 Post contractual requirements

…

6.7 Post contract: business practices

…

Business practices

6.7.2 R ~~A~~ Except in relation to credit cards, a *firm* must monitor a *customer's* repayment record and take appropriate action where there are signs of actual or possible repayment difficulties.

[**Note:** paragraph 6.2 of *ILG*]

6.7.3 G …

Business practices: credit cards

6.7.3A R A *firm* must monitor a credit card *customer's* repayment record and any other relevant information held by the *firm* and take appropriate action where there are signs of actual or possible financial difficulties.

6.7.3B G (1) Circumstances in which there are signs of actual or possible financial difficulties include where there is a significant risk of one or more of the matters set out in *CONC* 1.3.1G(1) to (7) (Guidance on financial difficulties) occurring in relation to the credit card *customer*.

(2) Examples of appropriate action as referred to in *CONC* 6.7.3AR would include the *firm* doing one or more of the following, as may be relevant in the circumstances:

(a) considering suspending, reducing, waiving or cancelling any further interest, fees or charges (for example, when a *customer* provides evidence of financial difficulties and is likely to be unable to meet payments as they fall due or is only able to make token payments, where in either case the level of debt would continue to rise if interest, fees and charges continue to be applied);

(b) accepting token payments for a reasonable period of time in order to allow a *customer* to recover from an unexpected income shock, from a *customer* who demonstrates that meeting the *customer's* existing debts would mean not being able to meet the *customer's* priority debts or other essential living expenses (such as in relation to a mortgage, rent, council tax, food bills and utility bills);

(c) notifying the *customer* of the risk of escalating debt, additional interest, fees or charges and of potential financial difficulties; and

(d) providing contact details for *not-for-profit debt advice bodies* and encouraging the *customer* to contact one of them.

(3) A *customer* paying the minimum amount required under the agreement is not, by itself, a sign of possible or actual financial difficulties under *CONC* 6.7.3AR. It may, however, be such a sign where, for example, a *customer* with a pattern of paying more than the minimum required payment reduces the payments to the minimum required payment due, but their pattern of drawing down *credit* on the card does not materially change.

(4) In determining what is "appropriate action" under *CONC* 6.7.3AR, a *firm* should take into account any steps it has taken under *CONC* 6.7.30R, *CONC* 6.7.31R or *CONC* 6.7.37R.

6.7.3C R A *firm* must establish, implement and maintain an adequate policy for identifying and dealing with *customers* showing signs of actual or possible financial difficulties, even though they may have not missed a payment.

6.7.3D G The policy referred to in *CONC* 6.7.3CR is in addition to the policy required under *CONC* 7.2.1R.

…

Credit cards: persistent debt

6.7.27 R (1) This *rule* applies to a *firm* with respect to communicating with a *customer* about, and receiving payments or exercising rights under, a credit card agreement if the *firm* assesses that the amount the *customer* has paid to the *firm* towards the credit card balance over the immediately preceding 18 *month* period comprises a lower amount in principal than in interest, fees and charges.

(2) A *firm* must assess whether the condition in paragraph (1) is met at least once a *month*.

(3) The *rule* in paragraph (1) does not apply:

(a) where the balance on the credit card was below £200 at any point in the 18 *month* period; or

(b) where the *firm* has sent a communication to the *customer* in accordance with paragraph (4) in the preceding 18 *months* in relation to the credit card; or

(c) where the *firm* is taking steps to treat the *customer* with forbearance under *CONC* 6.7.37R, is otherwise taking equivalent or more favourable steps in relation to the *customer's* account, or *CONC* 6.7.39R applies.

(4) Where the *rule* in paragraph (1) applies in relation to a credit card *customer*, a *firm* must, in an appropriate medium (taking into account any preferences expressed by the *customer* about the medium of communication between the *firm* and the *customer*) and in plain language:

(a) notify the *customer* that, in the preceding 18 *months*, the amount the *customer* paid comprised a lower amount in principal than in interest, fees and charges;

(b) explain that increasing this level of payment would reduce the cost of borrowing and the amount of time it would take to repay the balance;

(c) encourage the *customer* to contact the *firm* to discuss the *customer's* financial circumstances and whether the *customer* can increase the amount of payments without an adverse effect on the *customer's* financial situation;

(d) warn the *customer* of the potential implications if the *customer's* payments comprise a lower amount in principal than in interest, fees and charges in two consecutive 18-*month* periods; and

(e) provide contact details for *not-for-profit debt advice bodies* and encourage the *customer* to contact one of them.

6.7.28 G (1) For the purposes of *CONC* 6.7.27R, *CONC* 6.7.30R, *CONC* 6.7.34G, *CONC* 6.7.39R and *CONC* TP 8,"principal" comprises only the amount of *credit* drawn down by the *customer* under the credit card agreement, and does not include any interest, fees or charges added to the account.

(2) The potential implications of which the *firm* should warn the *customer* under *CONC* 6.7.27R(4)(d) include the possibility that the account may be suspended, as well as any other steps that the *firm* might take, and the possible impact on the *customer*'s credit file.

(3) *CONC* 6.7.27R(4) does not specify a particular form of words to be used, and *firms* have discretion to tailor the language and tone of the communication required by that *rule* to the circumstances of the individual *customer*.

(4) Where the *firm* complies with 6.7.27R(4)(e), the *firm* may in addition provide the *customer* with the name and contact details of one or more other *authorised persons* who have *permission* to carry on *debt counselling*, provided that to do so is consistent with the *firm*'s obligations under the *regulatory system*.

6.7.29 R (1) This *rule* applies in respect of a credit card *customer* to whom a *firm* is required to have sent a communication under *CONC* 6.7.27R(4).

(2) The steps required under paragraphs (3) and (4) must be taken:

(a) no earlier than nine *months* after; and

(b) no later than 10 *months* after,

the date on which the requirement to send a communication under *CONC* 6.7.27R arose.

(3) The *firm* must:

(a) consider the pattern of payments made by the *customer* over the period beginning on the date on which the requirement to send a communication under *CONC* 6.7.27R(1) arose and ending on the date the *firm* takes steps under paragraph (2); and

(b) assume that this will be representative of the *customer's* payment pattern in the entire 18-*month* period immediately following the date on which the requirement to send a communication under *CONC* 6.7.27R(1) arose.

(4) If the analysis in (3) indicates that it is likely that *CONC* 6.7.30R will apply with respect to the *customer*, the *firm* must repeat the steps required under *CONC* 6.7.27R(4).

(5) The *rule* in paragraph (1) does not apply where the *firm* is already taking steps equivalent to, or more favourable than, those required under *CONC* 6.7.37R.

6.7.30 R (1) This *rule* applies:

(a) in respect of a credit card *customer* to whom a *firm* is required to have sent a communication under *CONC* 6.7.27R (1); and

(b) where the amount that the *customer* has paid to the *firm* towards the credit card balance, over the 18-*month* period immediately following the date on which the requirement to send a communication under *CONC* 6.7.27R(1) arose, comprises a lower amount in principal than in interest, fees and charges.

(2) This *rule* does not apply:

(a) where the balance on the credit card was below £200 at any point in the 18-*month* period;

(b) to any part of the balance on the credit card that has previously been subject to the requirements of paragraph (3).

(3) A *firm* must take reasonable steps to assist a credit card *customer* that falls under paragraph (1) to repay the balance on their credit card as it stands at the end of the period specified in that paragraph more quickly and in a way that does not adversely affect the *customer's* financial situation.

(4) The *firm* is not required to take steps under (3) or *CONC* 6.7.31R where the *firm* is already taking steps equivalent to, or more favourable than, those required under *CONC* 6.7.37R, provided that the *firm* continues to take those steps.

6.7.31 R Where a *firm* is required to assist a *customer* to repay more quickly under *CONC* 6.7.30R(3), a *firm* must contact the *customer* to:

(1) explain that increasing this level of payment would reduce the cost of borrowing and the amount of time it would take to repay the balance;

(2) provide contact details for *not-for-profit debt advice bodies* and encourage the *customer* to contact one of them;

(3) set out options for the *customer* to increase payments and request that the *customer*, within a specified reasonable period, respond to either:

(a) confirm that the *customer* will increase payments in accordance with one of the options; or

(b) where applicable, confirm that the options proposed are not *sustainable* for the *customer*; and

(4) inform the *customer* that if the *firm* does not receive a response to the request under paragraph (3) in the time specified, the *firm* will suspend or cancel the use of the credit card.

6.7.32 G (1) The options a *firm* may set out under *CONC* 6.7.31R(3) include, for example, increasing the amount of *monthly* payments on the credit card under a repayment plan, or transferring the balance on the credit card to a fixed-sum unsecured personal loan.

(2) *CONC* 6.7.31R does not prevent a *firm* from treating the *customer* more favourably, for example by writing off the balance on the account.

(3) *CONC* 6.7.31R does not specify a particular form of words to be used, and *firms* have discretion to tailor the language and tone of the communication required by that *rule* to the circumstances of the individual *customer*.

(4) Where the *firm* complies with 6.7.31R(2), the *firm* may in addition provide the *customer* with the name and contact details of one or more other *authorised persons* who have *permission* to carry on *debt counselling*, provided that to do so is consistent with the *firm*'s obligations under the *regulatory system*.

6.7.33 G (1) The aim of the options a *firm* sets out under *CONC* 6.7.31R(3) should be that the *customer* repays the balance in a reasonable period.

(2) The *FCA* expects a "reasonable period" under paragraph (1), *CONC* 6.7.37R and *CONC* 6.7.38G to usually be between three and four years. Only in exceptional circumstances should the repayment period extend beyond four years; and even in such cases, the extension should not be significant and there should be no additional cost to the *customer* as a result of the repayment period extending beyond four years.

6.7.34 G References in *CONC* 6.7.27R, *CONC* 6.7.31R(3) and *CONC* 6.7.32G(1) to a *customer* increasing payments to the *firm* include circumstances where the amount a *customer* pays remains fixed at the same amount the *customer* was previously paying but, assuming there is no further spending on the card, represents an increase in the percentage of the outstanding principal that is repaid each *month* as the balance reduces.

6.7.35 R (1) Where a *customer* does not respond to a *firm's* request under *CONC* 6.7.31R(3), a *firm* must, at the end of the period specified in the request, suspend or cancel the *customer's* use of the credit card.

(2) Where a *customer* confirms that one or more of the options proposed under *CONC* 6.7.31 R(3) is *sustainable*, but states that they will not make the increased payments, a *firm* must suspend or cancel the *customer's* use of the credit card.

(3) Where a *firm* suspends the *customer's* use of the credit card under paragraph (1) and the *customer* subsequently responds to the *firm's* request under *CONC* 6.7.31R(3), the *firm* may withdraw the suspension if this would be in line with the other provisions in this section.

6.7.36 G Where a *firm* suspends or cancels the *customer's* use of the credit card under *CONC* 6.7.35R the *firm* is not, unless the *customer* responds to the *firm's* request under *CONC* 6.7.31R(3), required to take further steps under *CONC* 6.7.37R to *CONC* 6.7.39R. *Firms* are however reminded of *CONC* 6.7.3AR, which requires *firms* to take appropriate action where there are signs of actual or possible financial difficulties, and *CONC* 7.3.4R, which requires *firms* to treat *customers* in default or arrears difficulties with forbearance and due consideration.

6.7.37 R Where a *customer*:

(1) confirms to the *firm* that the options set out under *CONC* 6.7.31R(3) are *unsustainable*; or

(2) informs the *firm* that they will increase payments in accordance with one of the options proposed under *CONC* 6.7.31G(3) but the patterns of payments actually made under the repayment plan after it is put in place, or other indicators, show that the *customer* is unlikely to repay the balance in a reasonable period,

the *firm* must treat the *customer* with forbearance and due consideration.

6.7.38 G (1) The steps a *firm* takes to treat a *customer* with forbearance under *CONC* 6.7.37R should have the aim of assisting the *customer* to make *sustainable repayments* to repay the outstanding balance in a reasonable period, and may include reducing, waiving or cancelling any interest, fees or charges.

(2) The *FCA* expects that it will generally be necessary for *firms* to suspend or cancel the use of the credit card of a *customer* that the *firm* is required to treat with forbearance under *CONC* 6.7.37R with a view to ensuring the *customer* repays the outstanding balance in a reasonable period. This expectation does not apply, however, where the suspension or cancellation of use of the credit card would cause a significant adverse impact on the *customer's* financial situation, for example where the *customer* depends on the credit card for meeting essential living expenses (such as in relation to a mortgage, rent, council tax, food bills and utility bills). Equally, the *FCA* considers that it will generally not be appropriate to withdraw the suspension of the use of a *customer's* credit card under *CONC* 6.7.35R(3) if the *firm* is required to treat the *customer* with forbearance under *CONC* 6.7.37R.

6.7.39 R Where a *firm* does not suspend or cancel the use of the credit card of a *customer* falling under *CONC* 6.7.30R, the *firm* must take reasonable steps to ensure that the *customer* does not, in the 18-*month* period immediately following, repay an amount to the *firm* towards the credit card balance that comprises a lower amount in principal than in interest, fees and charges in relation to any spending on the card in this period.

6.7.40 G Compliance with the any of the requirements in *CONC* 6.7.27R to *CONC* 6.7.39R does not remove or reduce the obligation on a *firm* to:

(1) take appropriate action where there are signs of actual or possible financial difficulties under *CONC* 6.7.3AR; or

(2) treat *customers* in default or arrears difficulties with forbearance and

due consideration under *CONC* 7.3.4R,

and vice versa.

After CONC TP 7 (Transitional provision in relation to the Consumer Credit (Amendment No 2) Instrument 2015) insert the following new transitional provisions. The text is not underlined.

TP 7A Transitional provisions in relation to the Consumer Credit (Earlier Intervention and Persistent Debt) Instrument 2018

(1)	**(2)** Material to which the transitional provision applies	**(3)**	**(4)** Transitional provision	**(5)** Transitional provision: dates in force	**(6)** Handbook provision: coming into force
7A.1	*CONC* 6.7.2R, *CONC* 6.7.3AR to *CONC* 6.7.3DR, and *CONC* 6.7.27R to *CONC* 6.7.40G	R	A *firm* may comply with *CONC* as if the changes made by the Consumer Credit (Earlier Intervention and Persistent Debt) Instrument 2018 had not been made until [*6 months after this instrument comes into force*]. But where a *firm* elects, in relation to a credit card agreement, to comply before that date with *CONC* as amended by that Instrument, it must comply with the relevant provisions in full. Consequently, the time periods set out in the *rules* to which this transitional provision applies are to be determined by reference to the date on which the *firm* first acted in compliance (or purported compliance) with those *rules*.	[*period of 6 months after this instrument comes into force*]	
7A.2	*CONC* 6.7.27R to *CONC*	G	The effect of TP 7A.1 is that on [*6 months after this instrument comes into*	[*period of 6 months after this*	

	6.7.40G		*force*] *firms* must start to look back at credit card *customers'* repayment records over the preceding 18-*month* period and identify any *customers* that fall within the application of *CONC* 6.7.27R (and must thereafter continue to do so on at least a *monthly* basis). *Firms* must then send those *customers* a communication in accordance with *CONC* 6.7.27R(3). Between 9 and 10 *months* after this communication is required to be sent, *CONC* 6.7.29R requires *firms* to take the additional steps set out in that *rule* with respect to that group of *customers*. 18 *months* after this *CONC* 6.7.27R communication is required to be sent, *CONC* 6.7.30R to *CONC* 6.7.40G potentially require the *firm* to take the further steps described in those *rules* in relation to that group of *customers* where *CONC* 6.7.30R applies. *CONC* 6.7.30R applies only where the amount that *customer* has paid to the *firm* towards the credit card balance, over the 18-*month* period following the date on which the *CONC* 6.7.27R communication was triggered, comprises a lower amount in principal than in interest, fees and charges. This means that the earliest date on which a *firm* may have obligations under *CONC* 6.7.30R is [*the date which is 24 months after this instrument comes into force*].	*instrument comes into force*]	

			However, *firms* are not required to delay implementation to the end of the six-*month* period set out in TP 7A.1: where a *firm* takes a step in compliance with one of the *rules* in question before [*the date which is 6 months after this instrument comes into force date*] in relation to a particular credit card agreement (for example, carrying out the 18-*month* review), the time for taking all subsequent steps required to be taken under those *rules* is to be determined by reference to the date of that first step, and not by reference to [*the date which is 6 months after this instrument comes into force*] (or some later date).		

Appendix 2
Abbreviations in this document

APR	Annual percentage rate of charge
CCMS	Credit card market study
CBA	Cost benefit analysis
CRA	Credit reference agency
CMA	Competition and Markets Authority
CONC	Consumer Credit Sourcebook
CCA	Consumer Credit Act 1974
CP	Consultation Paper
EU	European Union
FCA	Financial Conduct Authority
FSCP	Financial Services Consumer Panel
FSMA	Financial Services and Markets Act 2000
HCSTC	High-cost short-term credit
ICO	Information Commissioner's Office
LRRA	Legislative and Regulatory Reform Act 2006
PS	Policy Statement
PSRs	Payment Services Regulations 2017

We have developed the policy in this Consultation Paper in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

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