FINANCIAL
CONDUCT
AUTHORITY

FS20/11: Further support for consumers impacted by coronavirus: feedback on draft guidance and rules (motor finance and high-cost credit products)

15 July 2020

Contents

1 Summary

1.1 On 3 July we announced a range of further proposals to provide continued support for users of certain consumer credit products who are facing temporary payment difficulties because of the exceptional circumstances arising out of coronavirus (Covid-19).

1.2 The proposals set out the further support firms would be expected to provide to motor finance, buy-now pay-later (BNPL), rent-to-own (RTO), high-cost short-term credit (HCSTC) and pawnbroking customers coming to the end of a payment deferral, as well as those yet to request one.

1.3 We wanted to act quickly to protect consumers in these difficult times and, therefore, did not formally consult on the proposals or produce a cost benefit analysis. We consider that the delay in doing so would be prejudicial to the interests of consumers. However, we invited comments on our proposals and received 23 responses from firms, trade bodies, consumer bodies and individuals.

1.4 The majority of respondents supported the overarching approach, and acknowledged that consumers in temporary payment difficulties continue to need support. There was broad support for keeping the 'window' in which a consumer could apply for temporary support open until 31 October.

1.5 There were a number of areas where respondents challenged, or sought clarification on, various aspects of the proposals. We have taken the responses into account in finalising the rules and guidance, and provide further feedback on these issues below.

1.6 These rules and guidance support our consumer protection objective and are designed to protect consumers by providing them with temporary support in the light of the current exceptional circumstances arising out of coronavirus. In developing the policy and considering responses, we have had regard not only to our consumer protection objective, but also to our market integrity and competition objectives, in particular in considering the different impacts on firms of the proposals.

1.7 We do not consider that the rules and guidance will adversely affect consumers with protected characteristics under the Equality Act 2010.

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

- Motor finance (including personal contract purchase and personal contract hire)
- Buy-now pay-later
- Rent-to-own
- High-cost short-term credit
- Pawnbroking

1.9 We have made some small technical changes to our guidance and we are clarifying various issues raised by respondents in this feedback statement, including:

- That it is in customers' interests to pay what they can wherever possible
- The approach to be taken when customers do not engage or respond
- The application of aspects of the guidance to pawnbroking

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

1.11 The rules and guidance come into effect on 17 July and, unless renewed or updated, expire on 31 October 2020, save for those aspects of our guidance that remain in force after 31 October to enable firms to address residual issues for those customers coming to the end of payment deferrals after that time.

Next steps

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

2 General issues

Summary

2.1 Respondents broadly supported the proposals but raised a variety of cross-cutting issues as well as issues relevant to specific sectors. This chapter provides further detail on the cross-cutting issues raised and our response.

2.2 The main issues raised included whether it was appropriate for interest to accrue on high-cost credit products and whether messaging to customers around the appropriateness of further payment deferrals was sufficiently clear.

2.3 Some firms and trade bodies also highlighted the potential financial impact on firms and interaction with our regulatory objectives, and raised issues around the approach to be taken to customers who do not engage with or respond to communications.

Interest accrual

2.4 Some consumer bodies highlighted that allowing interest to accrue on high-cost credit products (other than HCSTC) could result in customers accruing significant additional debt, as the interest rates on these products can be high. They suggested that in the light of the cost of these products it was inappropriate to allow interest to accrue under any circumstances.

Our response

2.5 We are conscious that our guidance is intended to help consumers in temporary payment difficulties, and a payment deferral will not be appropriate for all customers of these products. Our guidance states that firms can offer alternative solutions where a payment deferral is obviously not in the customer's interests.

2.6 We have also made clear that firms should consider a customer's ability to repay any accrued interest once the payment deferral ends, and that the interest rate and remaining term are likely to be key relevant considerations. Our guidance also highlights that alternative solutions would be better if the effect of additional accrued interest would be to create a higher overall debt burden that is unsustainable for the customer.

2.7 We recognise that some respondents believe that it is inappropriate for interest to be allowed to accrue at all during payment deferral periods. However, we consider that we have struck an appropriate balance between the interests of firms and consumers, and that those customers most in need of assistance will receive targeted additional support in the form of an interest waiver where they are entitled to forbearance under our existing rules at the end of a payment deferral period.

Consumer messaging on payment deferrals

2.8 Firms and trade bodies highlighted the importance of ensuring that our communications are pitched appropriately to mitigate against payment deferrals being seen as a 'right' with no possible downsides. They also raised concerns that media coverage may encourage consumers to apply for payment deferrals irrespective of their particular circumstances, and suggested that alternative forbearance solutions should be given equal prominence in the guidance and communications.

Our response

2.9 We have made clear in our communications that consumers should consider carefully whether a payment deferral is in their best interests, particularly given that additional interest will typically accrue during this period. Our overarching intention is to ensure consumers who aren't able to repay are provided with appropriate temporary support by having payments reduced to a level they can afford, and we have reiterated in our communications that it is in their best interests to pay what they can wherever possible.

2.10 We also consider that firms should be able to provide other forms of support where a further payment deferral is not in the customer's interests. This has been a key component of our temporary guidance across credit products.

2.11 For example, an alternative could include a shorter payment deferral period or forbearance in accordance with CONC 7, including a longer payment deferral, where a payment deferral under our guidance is clearly not in the customer's interests. We consider that our guidance is sufficiently clear on this point and strikes an appropriate balance by affording firms with sufficient flexibility to determine appropriate solutions that are in the customer's interests.

2.12 We have provided further information for consumers on our website about the potential implications of payment deferrals, and will continue to work with industry to ensure that the messaging around our guidance is clear.

Financial impact on firms and interaction with regulatory objectives

2.13 Some trade bodies highlighted that payment deferrals have placed a prudential and liquidity burden on non-bank lenders, and argued that liquidity support should be made available to non-bank lenders to help preserve the future viability of certain sectors.

2.14 Some firms and trade bodies also questioned whether we had sufficiently taken into account our competition and market integrity objectives, and called for us to publish further analysis on the potential impact of our guidance on firms in this sector.

Our response

2.15 We recognise that the current circumstances present significant financial challenges for some firms. We also acknowledge that firms in these sectors may be unable to access certain Government funding schemes and some may need to seek renegotiation of existing funding arrangements. However, this does not affect our expectation that consumers should be offered appropriate support in accordance with our rules and guidance where necessary, particularly given the current exceptional circumstances. We also consider that it is essential that, wherever possible, consumers receive the same high standard of protection at the present time, whatever the business model of their lender, and that our guidance strikes a fair balance between the interests of consumers and the interests of firms.

2.16 As stated in our draft guidance, we considered that the delay involved in publishing a formal consultation accompanied by a cost benefit analysis would be prejudicial to the interests of consumers. We also noted that there is no statutory requirement to publish a cost benefit analysis in relation to guidance. However in the time available, we have carried out an analysis of the financial impact of these measures on firms, including the potential impact on non-bank lenders. Our view is that the costs of compliance with our guidance need to be set against the counterfactual alternative that, in light of the undoubted economic shock arising from the pandemic, firms would have to move some customers into forbearance under our existing rules, and in some cases experience default, which could have similar or worse cashflow implications for firms to temporary support under our guidance.

2.17 In light of this, we consider that any potential impacts of our guidance on firms are proportionate and justified by the significant consumer protection benefits. We therefore remain of the view that the guidance strikes a fair balance between the interests of firms and consumers in the current exceptional circumstances.

2.18 Where firms, including those subject to insolvency procedures, are concerned about the impact of providing payment deferrals or other forbearance in accordance with this guidance they should contact us at the earliest opportunity. `

Customers who do not engage or respond

2.19 Some firms and trade bodies questioned what approach to take to customers who do not engage or respond to communications.

Our response

2.20 Our guidance is clear that, where at the end of a payment deferral period a customer does not respond to communications, firms are entitled to proceed on the basis that they are able to resume repayments or, in relation to a customer within a BNPL promotional period or pawnbroking redemption period, that they are no longer in payment difficulties. Where customers miss the initial payment due after the end of payment deferral period, firms should then offer further appropriate support in line with our guidance.

Consumer Credit Act

2.21 As with the previous guidance, industry respondents highlighted concerns with their ability to remain compliant with Consumer Credit Act 1974 (CCA) while granting payment deferrals to consumers. In particular, trade bodies noted that providing support to customers in temporary financial difficulties could trigger obligations to send information to customers such as a Notice of Sums in Arrears (NOSIA).

Our response

2.22 We recognise that this could be an issue for lenders, and made clear in our updated guidance that, where a firm (acting reasonably) considers that documentation risks confusing the customer, the firm must provide contextual information to reduce that risk.

2.23 It is important that the contextual information that accompanies the NOSIA is provided in a way that consumers can understand. It is up to firms to consider ways in which the communications can be delivered that is fair, clear and not misleading.

2.24 Where a firm has already provided a customer with information that explains the purpose and contents of the NOSIA where a payment deferral is agreed (for example, at the start of a payment deferral), this may be sufficient if the firm reasonably consider that this mitigates the risk of confusion that could be caused by the interaction between the NOSIA and the payment deferral. Where this is the case, a firm would not need to accompany a NOSIA with further contextual information.

2.25 As set out in FS20/9, we recognise that these measures have been introduced quickly and that some firms have told us that they may face operational challenges in complying with the detailed CCA requirements. We will, where relevant, take into account the circumstances of any breaches of CCA requirements and resulting consumer detriment when making regulatory decisions.

Firms in administration

2.26 A consumer body asked whether the guidance applies to firms in administration and how well placed such firms are to deal with requests for payment deferrals.

Our response

2.27 Our guidance continues to apply to [those] firms in administration. We are liaising closely with the administrators in terms of firms' compliance with the guidance including their resources and capacity to continue to act in accordance with the guidance and to engage with customers effectively.

2.28 Where firms, including those subject to insolvency procedures, are concerned about the impact of providing payment deferrals or other forbearance in accordance with this guidance, they should contact us at the earliest opportunity.

Debt help and advice

2.29 A respondent asked that we consider making it clearer that a firm cannot make it a requirement that a customer must seek debt advice before granting a payment deferral. Another suggested that customers seeking an extension to their payment deferral should engage with a debt counsellor before it is granted.

Our response

2.30 Our guidance states that firms should encourage customers in financial difficulties to seek advice. However, we consider it is also sufficiently clear that firms must not make granting a payment deferral conditional on seeking debt advice.

3 Motor finance

Summary

3.1 Respondents broadly supported our intention to provide further exceptional and immediate support for customers with motor finance agreements who are facing temporary payment difficulties arising from coronavirus.

3.2 We set out our below the main points raised by respondents and our responses.

Repossessions

3.3 The majority of respondents were supportive of continuing our guidance on terminating agreements and repossessing vehicles in respect of customers who are suffering temporary payment difficulties resulting from coronavirus.

3.4 Consumer groups highlighted the need for firms to work with customers who wish to keep their vehicles. However, some firms and trade bodies highlighted that it would not always be in the customer’s best long-term interests to continue suspending repossession activity in view of the continuing depreciation of the asset.

Our response

3.5 Our guidance makes clear that firms should ensure their customers are kept fully informed, and made aware of the potential consequences of the firm suspending any actions towards taking repossession of the vehicle, including on the residual value. In exceptional circumstances, such as when a customer provides consent, initiating the termination and repossession process would not contravene our guidance or Principle 6 ('A firm must pay due regard to the interests of its customers and treat them fairly'). Government advice on social distancing and self-isolation should be consulted to determine how this is to be carried out.

Understanding customers’ financial circumstances and affordability of repayment plans

3.6 While respondents were supportive of the overall approach outlined in the guidance, some trade bodies asked for further clarity on the information firms should require to accurately determine what is in a customer’s best interests and what they can afford to repay. Some industry respondents also asked us to clarify the approach to non-respondents. A lender asked us whether we would be supportive of firms offering a payment deferral solution that allows the customer to make a nil or partial payment for a 3 month period with the deferred amounts being made up through increased payments over the remaining term without the need for firms to conduct a creditworthiness assessment in accordance with CONC 5.2A.

3.7 A consumer organisation argued that firms should not be entitled to make enquiries to determine whether the customers’ financial difficulties arose as a result of Covid-19. There were also some questions about the level of enquiries firms could make to determine whether the customer was eligible for support under the guidance.

Our response

3.8 We have been clear that where customers are able to resume full or partial repayments, it will be in customers' best interests to do so. Firms should engage with their customers in good time before the end of a payment deferral and our guidance makes clear that this can be done through a digital or scripted process. Our guidance also sets out that where the customer does not respond firms are able to proceed on the basis the customer is able to resume repayments, but where the first payment due is missed or the customer indicates they are unable to meet this payment, firms should offer further support in line with our guidance.

3.9 While we do not expect that the majority of firms will undertake enquiries to determine individual circumstances surrounding a request for a payment deferral, we think our guidance strikes the right balance by allowing firms to do so where they deem it to be necessary. Where those enquiries are being undertaken, they should not delay the provision of timely support and we would therefore expect them to be fair and proportionate. As stated in FS20/4, where a customer was already experiencing payment difficulties unrelated to coronavirus, our existing forbearance rules and guidance in CONC would continue to apply. This could include a payment deferral if appropriate in the circumstances.

3.10 With regards to the affordability of repayment plans, our guidance provides sufficient flexibility for firms to determine appropriate solutions based on customers' circumstances and the solutions they provide to them. Our creditworthiness rules require a firm to undertake a creditworthiness assessment, amongst other things, before the firm enters into a regulated credit agreement. This trigger for a creditworthiness assessment reflects the Consumer Credit Directive. Where our creditworthiness rules apply we expect firms to comply with them. Where a creditworthiness assessment is required then the firm can undertake this in a proportionate manner having regard to the matters in CONC 5.2A.

Guaranteed Minimum Future Values

3.11 The majority of respondents continued to support the guidance on setting revised guarantee minimum future values (GMFVs), but asked for confirmation that revised values can continue to be set using normal depreciation data.

Our response

3.12 Our guidance does not prevent firms from adjusting GMFVs or residual values at this time, provided customers are treated fairly. This could include adjusting those values to reflect the expected depreciation of a vehicle prior to car values being affected by the coronavirus situation.

Interest Waivers

3.13 A firm asked for clarification on the approach to interest waiving under the guidance.

Our response

3.14 Our intention is that, where customers require forbearance under our rules at the end of a payment deferral period, any interest that would not have accrued but for the payment deferrals should be waived. The effect of the interest waiver should be that a customer would not, in respect of deferred amounts, be in a worse position in terms of interest than if they had paid those amounts in full in accordance with the agreement.

Term of the support

3.15 A number of respondents sought additional clarity on the length of the support to be provided to customers experiencing temporary payment difficulties. One firm asked us to confirm that the total period of support afforded to customers could be up to 6 months.

Our response

3.16 As set out above, the rules and guidance come into effect on 17 July and, unless renewed or updated, expire on 31 October 2020, save for those aspects of our guidance that remain in force after 31 October to enable firms to address residual issues for those customers coming to the end of payment deferrals after that time. This means that the overall term of the support for some customers could be up to 6 months.

4 Buy-now pay-later, rent-to-own, pawnbroking

Issues raised

4.1 Stakeholders were generally supportive of extending the application window for customers who had not yet taken a payment deferral until 31 October 2020.

4.2 A firm asked for confirmation of the period in which a pawnbroking customer can request a payment deferral. They gave an example of a loan that expired in March where a notice to sell letter has been sent and the customer had been given an initial 3 months to request a payment deferral. They questioned whether in such cases where the customer did not respond the pawnbroker would be prevented from putting the goods up for sale to repay the loan until 31st October.

4.3 A trade body was of the view that CONC 7 (treatment of customers in arrears) would not be engaged in the case of a pawnbroking customer who could not repay the loan. They argued that pawnbrokers do not pursue debts but sell the item taken in pawn and do not pursue any shortfall from the sale (including any accrued interest).

Our response

4.4 In our guidance, we state that we recognise many customers will be able to resume full payments at the end of a payment deferral period. If they can, it is likely to be in their interests to do so. A firm should make all reasonable attempts to contact them to find out whether this is the case. But if the customer has not responded, and provided the firm has taken all reasonable steps to establish contact with them, the firm may proceed on the basis the customer, in relation to a pawnbroking redemption period, is no longer in payment difficulties.

4.5 In the case of a pawnbroking agreement, a customer may be entitled to forbearance under CONC 7 where the firm seeks to recoup any shortfall from the customer following the sale of a pawn and the customer has difficulties in paying the shortfall.

4.6 We understand that industry practice is not to seek to recoup shortfalls, so the interest waiver would only be relevant to those pawnbrokers who do seek to recoup shortfalls. Where the interest waiver is triggered, the waiver would apply to all the interest accrued as a result of the payment deferral. In practice, this means the firm will need to pass on any sale proceeds to the customer, which are attributable to the interest accrued as a result of the payment deferral.

4.7 We have provided additional clarification our guidance to the effect that a further payment deferral is unlikely to be in a customer's interest where there is significant equity in the pawn and the customer has little prospect of using the extra time to redeem.

5 High-cost short-term credit

Issues raised

5.1 Respondents were supportive of extending the application window for customers who had not yet taken a payment deferral until 31 October 2020.

5.2 A trade body suggested that because the existing forbearance options in CONC offer all the necessary tools to support customers whose finances are affected by coronavirus, requiring an automatic payment deferral in all instances might not result in the best outcomes for customers.

5.3 Some debt advice charities raised concerns that a one month payment deferral was inadequate and did not provide sufficient time within which to agree a sustainable solution for those who needed further support. They questioned why the draft guidance was less detailed than for other credit products, with less advice on segmenting customers. They suggested that there appeared to be less rigorous expectations for engaging with customers with a view to understanding their circumstances and providing tailored support.

5.4 They were also concerned that there might be a risk of firms offering inappropriate forbearance solutions for customers exiting payment deferrals. They questioned how these would be assessed in circumstances where customers have multiple debts, some of which might also be subject to concurrent payment deferrals.

5.5 A trade body asked us to clarify whether consumers could apply for a payment deferral under both the previous guidance and the updated guidance. They also questioned whether there was an inconsistency between firms being required to offer a payment deferral if requested and firms being able to check if a customer was eligible for a payment deferral.

5.6 A firm asked about the level of enquires it needs to make if at the outset it chose to provide support over and above a payment deferral required under the guidance.

Our response

5.7 We recognise that high-cost short-term credit (HCSTC) customers are generally less financially resilient than other consumers, and may be more likely to face payment difficulties for a period longer than one month as a result. In our view, the non-charging of additional interest where a payment deferral is given, and the shorter payment deferral period, strikes a fair balance between the interests of customers and firms. These measures also reflect the fact that HCSTC loans are in general between three and six months in duration.

5.8 We consider that the needs of customers exiting the one month deferral period are best met by firms providing forbearance measures in accordance with our existing rules which are tailored to a customer's individual circumstances. The one month deferral period is intended to give time for firms to engage with those customers to understand the likelihood of their being able to resume payments.

5.9 Furthermore, many consumers have already applied for and been given a payment deferral under our earlier guidance and some will be entering into forbearance where they need further support. We are monitoring firms to examine how effective they are in providing such forbearance through our supervisory work.

5.10 Firms are only expected to automatically provide eligible customers one payment deferral in total under our guidance in respect of each loan. Firms should, of course, consider whether it is appropriate to give a further payment deferral when providing further forbearance.

5.11 The entitlement to a payment deferral under this guidance is not inconsistent with firms being able to establish if the customer is eligible for this support. For example, firms could seek to make reasonable enquiries to ascertain that the customer's payment difficulties arose out of circumstances relating to coronavirus.

5.12 If, at the time a firm receives a request for a payment deferral, it also wishes to offer additional support, our guidance provides that the firm can choose to make such enquires that they consider necessary in order to do this. However, where a customer continues, or reasonably expects to continue, to face coronavirus-related payment difficulties beyond the deferral period, the firm will need to assess the customer's needs and ability to pay, and apply CONC 7.3.

All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 7066 7948 or email: publications_graphics@fca.org.uk or write to: Editorial and Digital team, Financial Conduct Authority, 12 Endeavour Square, London E20 1JN