FS20/13: Coronavirus and customers in temporary financial difficulty: feedback on draft updated guidance for insurance and premium finance firms

11 August 2020

Contents

1 Summary

1.1 On 24 July, we announced our proposals to provide continued support for users of insurance and premium finance products who are facing temporary financial difficulties because of the exceptional circumstances arising from coronavirus (Covid-19).

1.2 The original measures came into force on Monday 18 May 2020. We committed to reviewing them within 3 months and revising them if appropriate.

1.3 The proposals set out our intention to extend the rules and guidance for a further 3 months, until 31 October 2020, although some specific parts will continue beyond that date. The proposals also set out in more detail our expectations on how firms should treat customers still in financial difficulties at the end of a payment deferral.

1.4 We wanted to act quickly to protect consumers in these difficult times and so did not consult formally on the proposals or produce a cost benefit analysis. We consider that the delay in doing so would not be in consumers' interests. However, we invited comments on our proposals and received 15 responses from a combination of firms, trade and consumer bodies.

1.5 Most respondents supported our approach, and acknowledged that consumers in temporary financial difficulties continue to need support. There was broad support for keeping the 'window' in which a consumer can apply for temporary support open until 31 October.

1.6 There were a few areas where respondents asked for amendments or clarification. We have taken these into account in finalising the rules and guidance, and give further feedback on these issues below.

1.7 These rules and guidance support our consumer protection objective. They are designed to protect consumers by providing them with temporary support in the exceptional circumstances 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, the different impacts on firms of the proposals.

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

We are now publishing our finalised rules and guidance, subject to a small number of changes. These include amendments to clarify:

- our expectations when firms are required to send information to customers under the Consumer Credit Act 1974 (CCA)

- that where a firm allows a customer to pay via pay-as you-go arrangements or provides credit under an exempt credit agreement, and grants a payment deferral, the firm should not cancel the policy during the payment deferral period, solely because of non-payment

- our expectations about what happens at the end of the deferral period where customers are still not able to pay the premium, even after firms have taken all the steps outlined in the guidance

1.9 The rules and guidance affect a range of firms including:

- insurers
- insurance intermediaries (including appointed representatives)
- premium finance lenders that provide credit to fund the payment of insurance premiums in instalments
- premium finance brokers that carry on regulated activities relating to credit granted for the purposes of financing insurance premiums in instalments
- debt collectors
- other firms that may be involved in insurance arrangements and/or in relation to the provision of premium finance

1.10 The guidance and rules come into effect on Tuesday 11 August. Unless renewed or updated, they expire on 31 October 2020, apart from 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

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

1.12 When we announced these proposals, we also asked if the parts of the guidance giving our expectations for how insurance distributors should consider supporting customers in financial difficulties (excluding granting payment deferrals and reviewing interest rates) should be made permanent. We asked for views on whether these expectations should be applied to any situation where customers are in financial difficulties, including those unrelated to coronavirus. We noted that our approach in this area will involve further engagement with stakeholders and we will progress this over the coming weeks.

1.13 If we believe these elements of the guidance should be put in place permanently, we will consult on this in the normal way and give stakeholders an opportunity to comment on our proposals.

2 Key issues raised and our response

2.1 Respondents broadly supported our proposals to extend the guidance. They generally felt that the proposals are cohesive, clear and broadly consistent with those for other credit products, which will minimise the risk of confusion and unfairness among consumers who hold multiple credit products.

2.2 There were nevertheless some issues raised. This chapter sets out the key issues and our response.

Short-term nature of the measures

2.3 A few respondents were concerned that the measures in the guidance were designed to only provide short-term support when they believe longer-term solutions are likely to be needed.

2.4 One respondent did not support extending the measures beyond 31 October 2020. They felt that financial support should be unwound in line with the Government's own support measures. They considered that this would send a consistent message to customers and would also recognise that firms need to balance customer needs against their own financial obligations. They were concerned about the commercial implications if such alignment was not maintained, and the longer-term impact this could have on firms' ability to support customers.

Our response

2.5 Our measures are designed to treat customers fairly by:

- supporting the wider social measures introduced by the Government
- preventing unnecessary pressure being put on the debt advice sector, by ensuring consumers receive timely support
- helping firms do more to help their customers manage their financial situations
- supporting firms by setting out clearly how we expected them to treat customers fairly at an unprecedented scale

2.6 The guidance expires on 31 October 2020 (unless renewed or updated), apart for the aspects that remain in force beyond this date to enable firms to address residual issues for those customers coming to the end of payment deferrals after that time. However, firms can continue to offer the support provided for in the guidance after this date should they wish to do so.

2.7 As we highlighted when we published the draft guidance, we are also considering whether to retain certain aspects of the guidance on a permanent basis.

2.8 We will keep the guidance under review and work with firms, consumer groups, debt advice providers and the Government to consider what other forms of support may be needed.

Vulnerable customers

2.9 One respondent said that overburdened call centres with very long wait times may not be able to adequately engage with vulnerable customers and others needing access one-to-one conversations with staff.

Our response

2.10 We expect firms to have appropriate systems and controls in place to manage their operations, including call centres. It is also important that firms respond to the needs of vulnerable consumers during this crisis. Principles 6 requires all firms to treat their customers fairly, and we expect firms to exercise particular care with their vulnerable consumers.

2.11 Protecting vulnerable consumers is a key priority for us. On 29 July 2020, we published new best practice guidance to help firms do more for vulnerable consumers. The guidance aims to provide a framework that allows all firms to assess accurately whether they are treating vulnerable consumers fairly, ensuring consistency across the financial services sector. It is open for consultation until 30 September 2020.

Communication

2.12 Some respondents had concerns that many customers may not understand that they can get support from their insurer and/or credit firm. So, firms should proactively make the support they offer to customers prominent in their communications, including by writing to them, rather than just relying on their websites and apps as we proposed in the draft guidance.

2.13 Other respondents asked how firms are being encouraged to communicate the measures set out in the guidance (such as payment deferrals) to customers.

Our response

2.14 As we set out in the guidance, firms should make clear in their communications, including on their websites and apps, the range of different options available to customers, and encourage customers to make contact if they are in temporary financial difficulty because of coronavirus. Firms should make it as easy as possible to contact them, and consider the needs of customers with different communication needs (eg those needing to communicate through channels other than telephone) to ensure all customers that need help can access it easily. We also expect firms to act both where a customer contacts them and also where a customer has missed payments, indicating that they may be in financial distress, even where the customer did not contact the firm.

2.15 We remain of the view that the guidance strikes the right balance between making sure consumers are aware of the support available, without overburdening firms at an already challenging time (for example by requiring them to contact all customers). However, we remind firms of the importance of clear communication about the support customers can get.

Customers in financial difficulty before coronavirus

2.16 One respondent was concerned that we had previously stated that premium finance customers would not be given forbearance where a customer was in financial difficulty before coronavirus. They were concerned that these customers will be further disadvantaged now and perhaps need forbearance measures more than most.

Our response

2.17 Both the original and current updated guidance do not apply where a customer was in financial difficulty before coronavirus. In these cases, our existing forbearance rules and guidance in CONC continue to apply. Examples of the types of forbearance a firm might consider include suspending, reducing, waiving or cancelling any further interest or charges, deferring payment of arrears or accepting token payments for a reasonable period.

2.18 We remind lenders of the obligation under CONC to treat customers in default or arrears difficulties with forbearance and due consideration.

Insurance products

2.19 One respondent asked whether we have considered asking suppliers to sign up to a range of basic insurance products so that low income consumers are not excluded from access to products.

2.20 A few respondents asked that we take a pragmatic approach to requests for information from firms, noting that firms have employed process workarounds rather than systems changes to implement measures quickly.

Our response

2.21 We think it is important that consumers have access to the insurance products they need and the aim of the guidance is to help consumers keep key cover in place during the period they experience financial difficulty. However, it is designed to support customers in financial difficulty as a result of Covid-19, rather than address all aspects of firms' dealings with low income customers.

2.22 We recognise that firms have had to take steps to implement measures quickly to support customers and there may be some limitations in their ability to extract accurate data as a result. However, we still expect firms to have appropriate systems and controls in place to monitor that customers are receiving fair outcomes.

Payment deferrals

2.23 The draft guidance defines a payment deferral as:

- an arrangement made on or after May 14 2020 under which a firm permits a customer that pays their insurance premium in instalments to make no payments under their particular arrangements for a specified period, without being considered in arrears, and
- without the authorised party exercising the right to cancel the insurance policy unilaterally because of the payment deferral.

2.24 A few respondents asked for this to be amended to reflect the help that some firms had already provided to support customers before 14 May when our original guidance came into effect. They felt the guidance would mean that where firms provided customers with support before the original guidance came into effect, they would have to consider up to 3 months' further payment deferrals for customers who were supported before 14 May but not for those that were provided with support after 14 May, under the guidance. A few respondents asked for more clarity about our expectations on what happens at the end of the payment deferral period where customers are still not able to pay their premiums even after the firm has followed all the steps outlined in the guidance.

2.25 One respondent asked us to clarify whether our expectation that firms do not cancel insurance policies applies only during the period of the payment deferral.

2.26 Another respondent requested clarity on whether the guidance was intended to apply to customers who have already requested and been granted a payment deferral under our earlier guidance.

Our response

2.27 We know that many firms started providing support to customers in temporary payment difficulties because of the exceptional circumstances of coronavirus before our original guidance started to apply on 14 May.

2.28 The guidance sets out our expectations for the fair treatment of customers experiencing or reasonably expecting to experience temporary financial difficulties due to circumstances from coronavirus. Where firms gave customers support before the original guidance came into effect, such customers should not be prevented from applying for a payment deferral under our guidance if it would mean they would be treated differently from a customer given support under the guidance. However, where a customer received support before the guidance came into effect, the combination of that support and support provided under the guidance need not go further than that required by the guidance, ie a payment deferral of up to 3 months. In any event, our guidance makes it clear that where a customer applies for a payment deferral under the guidance, a firm should grant it to the customer unless the firm determines (acting reasonably) that it is obviously not in the customer's interests to do so. So, in such circumstances, we would expect firms to take into account the earlier payment deferrals granted, in considering whether a further payment deferral would be in the customer's interests.

2.29 As we set out in the guidance, where firms do not consider a payment deferral is appropriate they should, without unreasonable delay, offer other ways to provide temporary relief to the customer in accordance with treating the customer fairly. For example, accepting reduced repayments, or rescheduling the term, waiving missed or late payment fees and charges and permitting a customer to amend their repayment date without any cost.

2.30 The guidance is aimed at enabling customers who have not yet requested a payment deferral to be able to do so at any point during the period up to 31 October 2020. We expect firms to grant deferrals of between 1 and 3 months, though firms can go beyond 3 months should they wish to do so, and it is in the customer's interests.

2.31 We have updated the guidance to make it clear that where an insurer allows a customer to pay via pay-as you-go arrangements or provides credit under an exempt credit agreement, and grants a payment deferral, the insurer should not cancel the policy during the deferral period solely because of non-payment.

2.32 We have also amended the guidance to make it clear that where a customer is unable to resume payments at the end of a deferral period, in line with treating customers fairly, we expect firms to act in customers' interests. For premium finance arrangements, this will involve considering several connected factors. The guidance also highlights that where, at the end of a payment deferral, a customer is entitled to forbearance under our forbearance rules (ie they are still in financial difficulties) they should be treated in accordance with CONC.

Access to assistance under the guidance

2.33 One respondent was concerned that the draft guidance sets out our expectation that the decision about the deferral period that is in a customer's interest can be made at a cohort rather than individual level. They felt that this was inconsistent with our approach for other credit products. They were also concerned that this could result in customers having difficulty getting support if firms relied on this provision to automatically reject a group of customers applying for relief.

Our response

2.34 This provision is consistent with our guidance on other credit products. In FS20/9 (feedback on draft guidance and rules for personal loans, credit cards and overdrafts) we explained that firms can determine whether a payment deferral is obviously not in customers' interests at a book or cohort level. However, when determining whether a deferral is obviously not in a customer's interests, firms' alternative solutions should treat customers fairly by taking into account their individual ability to pay what they can afford in their particular circumstances.

2.35 Our guidance makes it clear that we expect firms to have sufficient information and should consult with customers when determining the payment deferral period that is in the customer's interest. Factors that a firm should consider in determining the deferral period include:

- the remaining term of the credit agreement
- the customer's ability to repay the accrued debt within the remaining term once the payment deferral period ends
- whether it may be possible for the customer to get an extension to the insurance policy and credit agreement, and
- the impact of the payment deferral period on the customer's ability to get credit to pay for an insurance policy in instalments in the following year

Interest charges

2.36 One respondent was concerned about firms continuing to charge interest when a customer is in temporary financial difficulties because of coronavirus. They considered that the best approach was for firms to waive interest as standard practice in these circumstances.

Our response

2.37 Our guidance asks firms to consider reviewing any interest rates associated with instalments to ascertain whether they are consistent with the obligation to treat customers fairly in the light of the exceptional circumstances arising out of coronavirus.

2.38 In addition, where a customer at the end of a payment deferral is entitled to forbearance under our forbearance rules, the firm should treat them in accordance with our rules. Examples of forbearance set out in CONC include considering suspending, reducing, waiving or cancelling any further interest or charges.

Consumer Credit Act

2.39 A few respondents highlighted concern about remaining compliant with Consumer Credit Act 1974 (CCA) while granting payment deferrals to customers. In particular the triggering of obligations to send information to customers such as a Notice of Sums in Arrears (NOSIA).

2.40 Another respondent asked how the CCA applied to the payment deferrals process, particularly when the firm is not authorised to undertake credit related activities.

Our Response

2.41 We have amended our guidance. It now makes it clear that where a firm is required to send information to customers under the CCA, such as a Notice of Sums in Arrears (NOSIA), and the firm, acting reasonably, considers these communications risk confusing the customer due to the interaction with the payment deferral, the firm must accompany this with contextual information to explain the communication and so reduce the risk of confusion. This information should be clear, fair and not misleading in accordance with Principle 7.

2.42 It is important that the firm provides the contextual information that accompanies the NOSIA 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.

2.43 Where a firm has already given a customer information that explains the purpose and contents of the NOSIA where a payment deferral is agreed (for example, at the start of a deferral), this may be sufficient if the firm reasonably considers this reduces the risk of potential confusion from 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.

2.44 As set out in FS20/9, we recognise we have introduced these measures 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 harm when making regulatory decisions.

2.45 For the applicability of the CCA to firms not authorised to carry on credit-related regulated activities, the CCA requirements only apply to agreements regulated by the CCA. Where a firm is not carrying on credit-related regulated activity, it would not need to comply with the CCA requirements. Where the firm is simply deferring payments using non-contractual indulgences to give deferrals then it is unlikely to be offering credit. One of the elements of credit is that there is a contractual deferment of a payment obligation.

Commercial interests

2.46 As in our temporary guidance on other consumer credit products, the guidance sets out our expectation that firms should not have regard to their own commercial interests when considering what is in the customer's interests when customers are unable to resume repayments at the end of a payment deferral period.

2.47 A few respondents said this was disproportionate and at odds with other elements of regulation including our Principles for Businesses, relating to financial prudence and management and control.

Our response

2.48 We recognise that the current circumstances present significant financial challenges for some firms. However, given the current exceptional circumstances, treating customers fairly requires that firms provide customers with appropriate support in accordance with the guidance. The support customer receive should not be affected by the commercial considerations of firms. We also consider that it is essential that, wherever possible, consumers receive consistent treatment that should not be dependent on the firm that the customer has entered into an agreement with. In our view, the guidance strikes a fair balance between the interests of consumers and the interests of firms. The guidance has temporary effect and we are keeping it under review.

2.49 Where firms are concerned about the impact of providing the support set out in the guidance, they should contact us at the earliest opportunity.

Credit files

2.50 One respondent had concern about customers taking on the responsibility of working with credit reference agencies to ensure any rectifications are made to credit files (for any payment deferral period).

Our response

2.51 Our guidance does not place responsibility on customers to resolve any errors on credit files. Firms should work with customers and Credit Reference Agencies to ensure that any necessary rectifications are made to credit files.

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