

FS 20/16 Coronavirus and customers in financial difficulty: additional guidance for insurance and premium finance firms - Feedback on draft guidance

30 October 2020

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1 Summary

- 1.1 The effects of the coronavirus (Covid-19) pandemic are profound. They have been felt within every industry and affected millions of consumers and businesses. In the past months, we have intervened to support both consumers and businesses during this period of uncertainty.
- 1.2 This included temporary guidance first published in May 2020 and updated in August (the August Guidance) setting out how we expected firms to support insurance and premium finance customers who were facing temporary payment difficulties because of the exceptional circumstances arising out of coronavirus.
- 1.3 The August guidance was designed to enable firms to act quickly to deliver immediate and temporary support to their customers as the coronavirus pandemic and the Government's response to it evolved. This temporary support was designed to help consumers bridge the immediate crisis and get back on their feet. The steps firms have taken under the guidance have helped many consumers through the first months of the current emergency. Many peoples' finances are expected to recover and those who have deferred payment of their insurance premiums, and can afford to resume full repayments, should do so. However, some consumers will continue to be affected, or will be affected for the first time by circumstances relating to coronavirus.
- 1.4 On 16 October 2020, we published draft additional guidance setting out our proposals for how insurance and premium finance firms should provide tailored support to customers who have already benefitted from the previous guidance and those newly in financial difficulty due to changed circumstances relating to coronavirus.
- 1.5 For insurance arrangements, this includes measures such as:
 - Re-assessing the risk profile of the customer to see whether they could be offered lower monthly payments.
 - Considering whether other products can be offered which better meet the customer's needs.
 - Providing help to avoid the need to cancel necessary cover.
- 1.6 Where customers have entered into regulated credit (premium finance) agreements, help could include:
 - Allowing the customer to make no or reduced payments for a specified period.
 - Suspending, reducing, waiving or cancelling any further interest or charges.
 - Allowing the customer the opportunity, and reasonable time, to repay the debt, including by deferment of payment of arrears.

- 1.7 The overall aim of the additional guidance is to prompt firms to help customers, where possible, to:
- Reduce the impact of financial distress.
 - Ensure that customers continue to have insurance that meets their demands and needs.
- 1.8 We wanted to act quickly to protect consumers in these difficult times and provide clarity to firms on the fair treatment of customers unable to resume full payments at the end of a payment deferral. So, we did not formally consult on the proposals or produce a cost benefit analysis because the delay would be prejudicial to the interests of consumers.
- 1.9 However, we invited comments on our proposals and received 15 responses from a combination of consumer organisations, firms and trade bodies. Most respondents supported the introduction of additional guidance to support customers and provide clarity for firms. This document summarises the key issues raised by respondents on our proposed guidance and our responses to these issues.
- 1.10 We are now publishing our [final guidance](#), subject to the change set out below:
- We have amended the guidance to reiterate the guidance in CONC 7.3.8G which sets out an example of where a firm might contravene Principle 6 in relation to customers in default or in arrears, and the guidance in CONC 7.3.13G that a firm seeking to recover debts should have regard, where appropriate, to the provisions in the Common Financial Statement or equivalent guidance. This is a change to the draft guidance which set out an expectation that firms should carry out an Income & Expenditure assessment where the insurance is not regarded as an essential living expense. We explain this amendment in more detail paragraphs 2.36-2.39.
- 1.11 We do not consider our guidance will adversely affect consumers with protected characteristics under the Equality Act 2010.
- 1.12 The guidance affects firms that carry on regulated activities relating to insurance and regulated credit (premium finance) agreements.

Next steps

- 1.13 The guidance comes into effect on 1 November 2020.
- 1.14 The guidance applies in the exceptional circumstances arising out of the coronavirus pandemic and its impact on the financial situation of customers holding insurance products and those that enter into regulated credit (premium finance) agreements. It is not intended to have any relevance in circumstances other than those related to coronavirus. It remains in force until varied or revoked.

2 Key issues raised and our response

General

- 2.1 Most respondents welcomed the additional guidance and its focus on ensuring that customers who have suffered an adverse financial impact because of the ongoing pandemic are adequately supported. Respondents acknowledged the need for additional guidance given the uncertainties around how the pandemic might develop over the coming months. It was noted that the measures in the guidance remain balanced and flexible, which will help customers to access the support they need.
- 2.2 Respondents also raised some issues and queries regarding our proposed approach. We set out below the key issues raised by respondents and our response.

Process

Issues raised

- 2.3 Several respondents noted they were disappointed that they had only three days to review our proposed guidance and provide comments. They stated that we should allow a longer period for comments in future to enable a more comprehensive review of any proposals and to canvass views from a wider range of stakeholders.
- 2.4 One respondent noted that, while our proposals provide very good guidelines, monitoring firms' compliance with them is just as important. They requested further assurances from us about how these important guidelines are being monitored.
- 2.5 One respondent explained that firms have implemented our measures quickly by updating existing processes and using workarounds, rather than making systems changes, due to the short timescales. This means the availability of management information (MI) on their effect may be limited. They asked that we take a pragmatic approach to any future requests for MI.

Our response

- 2.6 We have acted quickly to support customers facing difficulties in the exceptional circumstances arising out of the coronavirus pandemic. We updated our temporary guidance on 11 August 2020 and engaged with firms in September 2020 to understand how the guidance had been implemented and the take-up of support by customers. This work informed our decision on what to do next.
- 2.7 The August guidance expires on 31 October 2020 for customers who have not agreed a payment deferral beyond that date by then and we believe it was important to take urgent steps to ensure our additional guidance was in place by 1 November 2020 to ensure firms provide continuity of support for customers during these difficult times. We recognised this would only allow for a short period for comments on our draft guidance, but noted that our proposals were limited to revising guidance that has been in place since May and is based on existing rules. We value the feedback we receive from all stakeholders on our policy proposals and we carefully consider the impact of our proposals on customers and the firms we regulate.

- 2.8 We recognise the importance of monitoring firms' compliance with the guidance. We carried out supervisory engagement to check firms had embedded the guidance following its introduction in May 2020 and again when it was extended in August 2020. Monitoring how firms are responding to the changing environment, and the extent to which they are acting in line with our guidance, will continue to be an area of supervisory focus.
- 2.9 We understand 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.

Scope

Issues raised

- 2.10 Two respondents expressed the view that the guidance should be made permanent, rather than just a temporary measure in response to coronavirus, and it should apply to anyone in financial difficulty, regardless of the cause. In contrast, one respondent expressed a concern that the guidance is too broad and it does not make clear that the sole focus is financial difficulty as a direct result of the pandemic.
- 2.11 Two respondents also noted it will become more difficult to determine whether coronavirus is the cause of financial difficulty as the pandemic develops.
- 2.12 Some respondents noted that the premium finance section of the additional guidance applies only to regulated credit agreements. This is different from the August guidance which applied to all customers that paid for their insurance in instalments regardless of whether their agreements are regulated. They queried this and highlighted a risk that some providers could focus on making agreements exempt to allow for faster cancellations.

Our response

- 2.13 Our additional guidance has been designed to support customers facing financial difficulty because of coronavirus. This includes the wider economic impact of the pandemic and we expect firms to make reasonable judgements about when the guidance is applicable to customers' circumstances. In practice, we think it likely that many of those consumers experiencing, or expecting to experience, payment difficulties over the coming months will do so because of circumstances related to coronavirus. Firms should also be mindful that the guidance is based on high-level rules, including The Principles, and firms are already required to treat all their customers fairly where they encounter financial difficulty for any reason.
- 2.14 If we were minded to broaden the application of the guidance beyond the exceptional circumstances arising out of coronavirus or to amend our Consumer Credit sourcebook (CONC), this would be undertaken with full public consultation, and a cost-benefit analysis.
- 2.15 The overarching principle that underpins our approach to this guidance is that we move to a position that more closely reflects our existing rules and, in particular, the forbearance framework in CONC. This has enabled us to develop guidance that can respond to the changing environment and could remain in place for a longer period of time than the temporary measures that have been in place to date.

- 2.16 Section 4 of the guidance applies to regulated credit (premium finance) agreements only and the guidance sets expectations that firms provide tailored support appropriate to customer circumstances. This is consistent with our well-established approach to forbearance in CONC.
- 2.17 Given this approach, we have revised the scope of the guidance so that it is in line with the scope of CONC – rather than look to apply CONC requirements to agreements normally outside the scope of our rules. As the guidance states, this does not prevent firms from applying the guidance to exempt agreements or other arrangements and firms will need to ensure they act in accordance with rules and guidance that apply where insurance is sold using such arrangements. We do not think this guidance creates a new or heightened risk that firms focus on making agreements exempt to avoid regulatory requirements.

Communications

Issues raised

- 2.18 Some respondents noted that this guidance differs from the August guidance in that firms are not expected to proactively contact all consumers who miss payments. They disagreed with this approach, stating that firms should be proactive and contact those who have missed payments as there will likely be a new group of consumers who now find themselves struggling financially, where they may not have been before. One respondent expressed the view that firms should write to their customers to make them aware of the support available.
- 2.19 One respondent expressed a concern that vulnerable customers and others will need to access one-to-one conversations with staff members and that overburdened call centres with very long waiting times may not be able to fulfil this requirement.

Our response

- 2.20 The guidance sets out expectations that firms should:
- Make clear in their communications, including on their websites and apps, the different options available to customers, and encourage them to make contact if they are in financial difficulty due to coronavirus.
 - Consider if it would be necessary or appropriate to contact a customer to offer support where the customer has missed payments during the pandemic, even if they have not contacted the firm.
 - Consider what steps they should be taking where it has been identified that the customer is, or could potentially be, vulnerable.
 - Include information to make customers in financial difficulties aware that they can contact the firm to explore potential options where firms are sending communications to customers about missed payments.
- 2.21 It stops short of mandating proactive contact with all customers who miss a payment. Our supervisory work has identified that take-up of support by customers is lower for premium finance than some other credit products. So, we think this package of measures provides an appropriate degree of protection for consumers and represents a proportionate approach at this stage of the pandemic.

- 2.22 We expect firms to have appropriate systems and controls in place to manage their operations, including call centres. Further information on firms' responsibilities relating to operational resilience can be found on our [coronavirus webpage](#). It is also important that firms respond to the needs of vulnerable consumers during this crisis. Principle 6 requires all firms to treat their customers fairly, and we expect firms to exercise particular care with their vulnerable consumers.
- 2.23 The guidance makes it clear that firms are responsible for putting in place sufficient resources to enable them to meet their obligations to treat customers fairly and provide them with appropriate forbearance. We recognise that achieving this in the current environment where many customers require support may be challenging. However, long or unpredictable call waiting times during busy periods can put customers off engaging with firms. Firms should consider what they can do to mitigate this. Approaches could include: being transparent about average waiting times, and times when customers are likely to experience longer or shorter waiting times, use of call-backs, offering pre-booked appointments, referring customers to on-line tools where these are available and clearly communicating the information or documents customers will need to have to hand.
- 2.24 Protecting vulnerable consumers is a key priority for us. On 29 July 2020, we proposed new draft [guidance](#) for firms on the fair treatment of vulnerable customers. The draft 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.

Insurance arrangements

Issues raised

- 2.25 Two respondents expressed a concern that the actions proposed in relation to a customer's insurance arrangements in Section 3 of the guidance could lead firms to risk crossing the boundary between an advised and a non-advised sale. They note that the guidance needs to ensure firms can continue to operate within the non-advised space.

Our response

- 2.26 The aim of the guidance has remained consistent since it was first introduced in May. The actions firms can take have also remained the same, including reassessing the customer's risk profile to see if lower premiums can be offered and considering whether there are other products the firm can offer which would better meet the customer's needs.
- 2.27 Regardless of whether insurance is provided on an advised or a non-advised basis it should be consistent with the customer's demands and needs as required by ICOBS 5.2. We expect firms to be able to provide support to customers and explain the options available to them without providing regulated advice where this is not a service they would usually provide.

Regulated credit (premium finance) agreements

Impact on firms

- 2.28 Some respondents felt that the draft guidance may have significant and material adverse effects on insurance brokers who engage with premium finance lenders on a recourse basis and who are required to reimburse lenders for any sums owed by customers who do not pay off their loans.
- 2.29 The guidance sets an expectation that firms should not unilaterally exercise the right to cancel an insurance policy during a payment deferral. Respondents were concerned that this could negatively impact the liquidity position of brokers.

Our response

- 2.30 The aim of the guidance is to help ensure that insurance is maintained where there is a chance the customer may recover their position if given the opportunity. We consider that these measures represent a proportionate approach considering the uncertainties and challenges that many customers will face due to the coronavirus pandemic.
- 2.31 We recognise that the current circumstances may present financial challenges for some firms. We are also aware that the recourse arrangements that are commonly in place between premium finance lenders and the brokers that introduce customers to them mean that often, brokers may ultimately be liable for the customer's debt if a customer in payment difficulty cannot repay the monies owed. This risk will be relevant for the subset of customers who ultimately default where a recourse arrangement is in place, and is more material the longer a customer is treated with forbearance.
- 2.32 But as we make clear in the guidance, we encourage all firms in the distribution chain to work together in a joined-up way to ensure they achieve the best outcomes. For example, lenders that have entered into recourse arrangements with brokers may want to consider whether it is appropriate to rely on the recourse arrangements during the current exceptional circumstances, where a customer is experiencing temporary financial difficulty because of coronavirus.
- 2.33 As we also set out in the guidance, the obligation on firms to treat customers with forbearance and due consideration is unaffected by any separate arrangements or security that lenders may have for the payment of sums due under a credit agreement. For example, where a lender has entered into recourse arrangements with a broker.
- 2.34 We expect customers to be offered appropriate forbearance in accordance with our guidance where necessary, particularly given the current exceptional circumstances.
- 2.35 Given that this guidance is broadly aligned with our forbearance rules in CONC we believe the financial impact on firms will not be significant. However, where firms, including those subject to insolvency procedures, are concerned about the impact of the measures set out in this guidance, they should contact us.

Income and expenditure assessments and sustainable arrangements

- 2.36 The draft guidance set out expectations for firms when agreeing new payment arrangements with customers. It asked firms to undertake income and expenditure

assessments to arrive at a sustainable repayment amount where the associated insurance is not an essential living expense.

2.37 Some respondents expressed concern that this proposal was disproportionate and not reflective of the nature and risks involved in general insurance for the following reasons:

- While an income and expenditure assessment may be useful where the debt is a significant financial outgoing, it will be less useful for premium finance which is typically a relatively small monthly outgoing.
- It could act as a barrier to customers engaging with firms in this area, if firms are expected to gather detailed information regarding customers' income and outgoings where the insurance is not judged to be an essential living expense.
- It raises complex questions around determining whether the insurance is an essential living expense or not.

Our response

2.38 On further reflection, we understand these concerns and, in view of this, we have amended the guidance to remind firms of the expectations set out in CONC 7.3.8G and CONC 7.3.13G. As set out in CONC 7.3.8G, an example of where a firm is likely to contravene Principle 6 is where the firm does not allow for alternative, affordable payment amounts to repay the debt due in full, where the customer is in default or arrears difficulties and the customer makes a reasonable proposal for repaying the debt or a debt counsellor or another person acting on the customer's behalf makes such a proposal. In line with CONC 7.3.13G, a firm seeking to recover debts should have regard, where appropriate, to the provisions in the Common Financial Statement or equivalent guidance.

2.39 This is guidance already set out in our Handbook, which firms should be taking into account as part of their normal forbearance practices.

Forbearance not always in the customer's best interest

2.40 Some respondents expressed concern that the draft guidance is mandating that insurance contracts are not cancelled but instead the lender explores further forbearance measures with the customer. They felt that an extended period of forbearance is not always in the customers best interests. Another respondent felt that the draft guidance implies an expectation of continued and open-ended support to customers.

2.41 Some respondents asked whether there was an expectation for a firm to offer a repayment solution that goes beyond the current term of insurance where the customer renews with another provider.

Our response

2.42 We recognise that in some cases cancelling the policy and terminating the associated credit agreement may be a better outcome for a customer, rather than continuing to accrue debt. This guidance is not designed to prevent this. Where cancellation is in the customer's best interests, firms should waive any cancellation fees where they need to do so to ensure they are treating customers fairly.

- 2.43 However, as we make clear in the guidance, we do not expect firms to cancel insurance policies solely because of non-payment without first considering actions to support customers who may be in financial distress due to coronavirus, including treating the customer with forbearance and due consideration.
- 2.44 There is no expectation for a firm to offer repayment solutions that go beyond the current term of the customer's current term of insurance, unless the firm determines that it would be in the customer's interest to do so.
- 2.45 As always, in line with treating customers fairly, we expect firms to act in customers' interests and exercise their judgement.

Debt advice and debt counselling

- 2.46 Some respondents expressed concern that the draft guidance includes references which would require some firms to undertake debt advice or debt counselling activities which are outside their normal areas of practice, expertise and permissions. Another respondent queried whether section 6 of the draft guidance was only relevant to premium finance firms.

Our response

- 2.47 Clearly, firms should not engage in regulated activities without the necessary permission.
- 2.48 Section 6 of the guidance on debt help and money guidance builds on our expectations in CONC 7 for firms to signpost customers in payment difficulty to free and impartial debt advice providers where appropriate.
- 2.49 Our guidance makes it clear that we expect firms to help customers understand what types of debt help or money guidance are available and that this can be done by signposting or referring them to appropriate sources of debt advice.
- 2.50 Although this section of the guidance predominantly applies to firms entering into regulated credit agreements with customers in respect of their insurance premiums, all firms to which this guidance applies are expected to treat all customers fairly and are not prevented from signposting or referring customers to appropriate sources of debt advice if this is appropriate, as set out in section 6 of the guidance. Section 6 of our guidance also signposts firms to [chapter 17 of PERG](#) in our Handbook which provides guidance on what activities are likely to cross the line into the regulated activity of debt counselling.

Credit Reference Agency (CRA) reporting

- 2.51 One consumer group expressed disappointment at the return to normal CRA reporting once a customer's payment deferral period has come to an end under the August guidance, subject to a few principles. They felt that temporary forbearance relating to coronavirus should not be reported to credit files and that this should continue beyond October 2020.

Our response

- 2.52 We recognise the concerns raised by this respondent. However, suspending normal credit file reporting was an exceptional, temporary measure and we consider that it should not continue indefinitely. Accurate credit reporting is essential to responsible lending and preventing individual over-indebtedness. It is important that firms have

confidence in the integrity of the credit reporting system to have the confidence to lend in future.

- 2.53 The guidance therefore confirms that, where a customer has had payment deferral under our August guidance or where a customer receives support after 31 October, firms should report that further support or forbearance as normal on that customer's credit file. The guidance also sets out the broad principles under which we consider normal credit reporting should resume once payment deferrals taken under the August guidance come to an end. This includes that we expect future reporting to resume from the 'frozen' status.

Breathing space

- 2.54 One respondent asked about how the draft guidance might interact with the Treasury's Breathing Space regulations which are due to come into force from May 2021. The Breathing Space regulations will enable certain customers to benefit from a 60-day breathing space from their debts.
- 2.55 They felt that if our guidance were still in place when these regulations came into force there could be competing regulation, for example customers on Breathing Space will have one prescribed forbearance option applied for all their debts whereas the FCA draft guidance specifically notes 'Firms should not take a 'one size fits all' approach and a firm offering a single solution to all customers is unlikely to be acting in a way that is consistent with this guidance or our rule'.

Our response

- 2.56 The guidance sets out what we want firms to do to deliver effective forbearance in the current environment, and is intended to support firms in delivering fair outcomes to customers affected by circumstances relating to coronavirus.
- 2.57 Where a firm must provide 60-day breathing space to a customer in compliance with the Treasury's regulations, we are unlikely to see this as taking a 'one size fits all' or offering a single solution to all customers. However, we will continue to keep our position under review and will update or amend our guidance, or provide new guidance, if it is required.