

## Draft guidance

# High-cost short-term credit and coronavirus: further updated temporary guidance for firms

November 2020

### **About this guidance**

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**This draft guidance sets out how the FCA proposes to update the FCA’s guidance entitled “High-cost short-term credit and coronavirus: updated temporary guidance for firms” made in July 2020.**

**The proposed updates to the earlier guidance are contained in paragraphs 1.1 and 1.3 and the section headed “Debt Help and Money Guidance”.**

### **Equality and Diversity**

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**We are required under the Equality Act 2010 to have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, and to foster good relations between people who share a protected characteristic and those who do not.**

**As part of this, we ensure we consider the equality and diversity implications of any new policy proposals. We do not consider this guidance will adversely affect consumers with protected characteristics.**

### **How to respond**

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**We want to act quickly to continue to protect customers in these difficult times. We consider that the delay involved in publishing a formal consultation accompanied by a cost benefit analysis would be prejudicial to the interests of customers. We are therefore not doing so. This is not a statutory consultation. There is no statutory requirement to prepare a cost benefit analysis in relation to guidance.**

**We would welcome comments from stakeholders on this draft guidance by 10.00 on Friday 6 November 2020.**

**Please send your comments to: [FCAconsumercredit@fca.org.uk](mailto:FCAconsumercredit@fca.org.uk)**

# 1. High-cost short-term credit and coronavirus: further updated temporary guidance for firms

- 1.1 We originally published this guidance on 24 April 2020 and updated it on 17 July 2020. This further update to our guidance comes into force on [X] November 2020. Unless renewed or updated, this guidance expires on 31 January 2021.**
- 1.2 Guidance is relevant to firm behaviour only to the extent it is current at the time of the behaviour in question. Please check this page for updates to this guidance.**
- 1.3 Where a firm has dealt with customers in the period between 31 October 2020 and the date this updated guidance came into force on [X] November 2020 it should review whether the outcome the customer will receive under the “Consumer Credit and Coronavirus: Updated Additional Guidance for Firms” guidance (‘Tailored Support Guidance’) is equivalent to, or more favourable than what the customer would likely have received under this guidance in its current form. If it is not, the firm should make reasonable efforts to contact the customer and give them an opportunity to take up any further help under this guidance. Where a firm provides a payment deferral in these circumstances, we expect it to work with the customer and Credit Reference Agencies (CRAs) to ensure that any necessary rectifications are made to credit files to ensure no worsening status is recorded in respect of the payment deferral period.**
- 1.4 This guidance applies to regulated firms that enter into high-cost short-term credit (HCSTC) loans, including payday loans and applies to firms that have acquired such loans. It applies to both current loans and loans entered into after the guidance comes into force.
- 1.5 This guidance applies in the exceptional circumstances arising out of the coronavirus pandemic (Covid-19) and its impact on the financial situation of HCSTC customers. It is not intended to have any relevance in circumstances other than those related to coronavirus.
- 1.6 This guidance sets out our expectation that firms provide, for a temporary period only, exceptional and immediate support to customers facing payment difficulties due to

circumstances arising out of coronavirus. It is intended to provide help to those who might be having temporary difficulty in making payments due to a loss of or reduction in their income (or income of other members of their household) or to those who expect to experience such difficulties.

1.7 This guidance applies where customers are experiencing or reasonably expect to experience temporary payment difficulties as a result of coronavirus. Where a customer was in pre-existing financial difficulty, our existing forbearance rules and guidance in CONC 7 would continue to apply. These would include for example the firm considering suspending, reducing, waiving or cancelling any further interest or charges, deferring payment of arrears or accepting token payments for a reasonable period of time.

1.8 This guidance builds on Principle 6 ('A firm must pay due regard to the interests of its customers and treat them fairly') and Principle 7 ('A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading'). It sets out our expectations for firms to provide coronavirus related support for customers who are experiencing (or reasonably expect to experience) temporary payment difficulties.

1.9 When implementing this guidance, firms should take account of the particular needs of their vulnerable customers. If using digital channels, firms should make it easy for customers less able to use these to access alternatives.

1.10 The guidance is potentially relevant to enforcement cases and the FCA may take it into account when considering whether it could reasonably have been understood or predicted at the time that the conduct in question fell below the standards required by Principle 6, Principle 7 and CONC.

## 2. Payment deferrals

- 2.1 In this guidance, 'payment deferral' means an arrangement made on or after 27 April 2020 under which a firm permits the customer to make no payments under their regulated credit agreement for a specified period, or extends the period until payments are due, without being considered to be in arrears.
- 2.2 Where a customer is experiencing or reasonably expects to experience temporary payment difficulties as a result of circumstances relating to coronavirus, and wishes to receive a payment deferral, a firm should grant the customer a payment deferral for at least 1 month. The firm should not seek to persuade such a customer to make full or partial payments. Nor should firms seek to persuade customers not to make requests for payment deferrals. A payment deferral would entitle the customer to request that the payment due on the next contractual due date can be deferred until at least the following monthly due date.
- 2.3 An example of a situation in which a payment deferral may be appropriate is where there is or will be a temporary reduction in household income that would have otherwise been used to make loan payments.
- 2.4 In order to treat customers fairly in the current exceptional circumstances, any interest that would not have accrued but for the payment deferral should not be charged. The effect of this should be that a customer would not, in respect of the deferred amount, be in a worse position, in terms of interest, than if they had paid such amount in full in accordance with the agreement. This deferment of the payment and interest should have no impact on the firm's calculation of the total costs of the agreement for the purpose of the Total Cost Cap in CONC 5A.2.2R. Such costs should continue to be calculated as though there had been no payment deferral.
- 2.5 The firm should allow the customer to repay the deferred payment over such period and in such amount as the customer can reasonably afford, including over a period that extends beyond the original period of the loan. For example, in some circumstances the payment could be repaid in a single amount 1 month after the end of the term or in others, over an extended period by smaller amounts.

- 2.6 This guidance does not prevent firms from providing more favourable forms of assistance to the customer if they choose to do so, in line with Principle 6, for example by extending the temporary measures for a period longer than 1 month.
- 2.7 There is no expectation under this guidance that the firm makes enquiries with each customer to determine the circumstances surrounding a request for a payment deferral, (or whether this is not in the customer's interests). Firms can, however, choose to make the enquiries they consider necessary in order to satisfy themselves that the customer is eligible for support and to identify whether the customer would benefit from any additional support, provided that this does not delay the provision of timely support. We have disapplied [CONC 6.7.18R](#), [6.7.19R](#) and [CONC 6.7.21G](#) to give effect to this. We have also disapplied [CONC 6.7.23R](#) to remove a restriction to enable consumers to benefit from these measures.
- 2.8 Customers should be able to request a payment deferral at any point **up to 31 January 2021**. This means that a payment deferral could go beyond that date. The application for a payment deferral can only be made once under this guidance, although where customers encounter further difficulties arising from coronavirus firms will need to consider forbearance under our rules where these apply.
- 2.9 Firms should make clear in their communications, including on their websites, that the payment deferral is available as set out in the circumstances described above. This should include the fact that no additional interest will be charged as a result of the deferral. Firms should make it as easy as possible for their customers to contact them both online and by phone. In addition, if, during an interaction between the firm and the customer, the customer provides information suggesting that they may be experiencing or could reasonably expect to experience temporary payment difficulties as a result of circumstances relating to coronavirus, the firm should ask whether the customer wishes it to consider granting a payment deferral. Firms should also make customers aware, when contacting them about missed payments, of the availability of a payment deferral if their payment difficulties relate to circumstances relating to coronavirus.
- 2.10 A firm should give customers adequate information to enable them to understand the implications of a payment deferral. Firms are also reminded of their obligations to provide the customer with an information sheet, where this is required, pursuant to [CONC 6.7.20R](#). Firms should also explain that while a worsening status will not be reported to the customer's credit file in respect of any payment deferral taken under this guidance, lenders may take

into account other information when making future lending decisions. This may include for example, information provided by applicants or bank account information.

- 2.11 Where a firm is required to send information to customers under the Consumer Credit Act 1974, such as a Notice of Sums in Arrears (NOSIA), and the firm, acting reasonably, considers this risk causing confusion for the customer due to the interaction with a payment deferral, the firm must accompany this with contextual information to reduce that risk. This information should be clear, fair and not misleading in accordance with Principle 7.
- 2.12 Firms do not need to comply with, or follow, [CONC 7.3.3G to 7.3.6G and 7.3.8G](#) when acting under this guidance except where the guidance states or indicates that firms should comply with, or follow, relevant Handbook rules or guidance. We have disapplied those provisions to that extent.
- 2.13 A customer should have no liability to pay any charge or fee in connection with the permitting of a payment deferral under this guidance.
- 2.14 We expect firms to use the deferral period to engage with their customers to understand the likelihood of their being able to resume payments at the end of the deferral period. Where a customer continues, or reasonably expects to continue, to face payment difficulties, as a result of circumstances relating to coronavirus, the firm should apply CONC 7.3 regardless of whether or not a customer is in default or arrears. Firms will need to assess the customer's needs and ability to pay, and provide appropriate forbearance. Examples of forbearance set out in CONC 7.3.5G include considering suspending, reducing, waiving or cancelling any further interest or charges, allowing deferment of payment of arrears or accepting token payments for a reasonable period to allow a customer to recover from an unexpected income shock).
- 2.15 A firm adopting a single solution for all customers requiring further support at the end of a deferral period is likely to contravene Principle 6.
- 2.16 In considering what is in the customer's interests, a firm should not have regard to its own commercial interests.
- 2.17 Firms should also comply with the other provisions of CONC 7.3. In particular, CONC 7.3.10R provides that a firm must not pressurise a customer:

- to pay a debt in 1 single or very few repayments or in unreasonably large amounts, when to do so would have an adverse impact on the customer's financial circumstances
- to pay a debt within an unreasonably short period of time
- to raise funds to repay the debt by selling their property, borrowing money or increasing existing borrowing.

2.18 Where firms do not take reasonable steps to engage with their customers individually, this should not result in the customer being worse off. In these circumstances, the firm should provide a payment deferral, on the basis set out above, until it has taken such steps.



### 3. Training, monitoring, record keeping and Credit Reference Agency reporting

3.1 Firms should ensure that staff are adequately trained to enable them to implement the firm's process for following this guidance.

3.2 Firms should keep records of how any process was designed sufficient to demonstrate that the support provided was consistent with customers' interests.

3.3 Firms should record and monitor the support provided, including the measures offered where customer require further support at the end of the deferral period, as well as any issues which might impede customers' ability to access the assistance required under this guidance. Firms should use this information to keep their processes for following this guidance under review to ensure that customers' interests are being met and to refine their approach.

3.4 Firm supervisors may request access to a firm's records and the outcomes of a firm's customer monitoring.

3.5 The payment deferrals, described above, should be regarded as being offered in exceptional circumstances outside of the customer's control. In accordance with the relevant Coronavirus Data Reporting Guidance published by the Credit Reference Agencies in consultation with SCOR, firms should not report a worsening status on the customer's credit file during the payment deferral period.

3.6 Where customers have been unable to reach timely agreement with firms for a payment deferral because of firms' operational difficulties and subsequently miss a payment which is reported to their credit file, we would expect firms to work with customers and Credit Reference Agencies to ensure that any necessary rectifications are made to credit files to ensure no worsening status is recorded in respect of the payment deferral period. Firms should also ensure no default or arrears charges are levied in relation to payments missed in these circumstances.

3.7 Where at the end of a payment deferral period a mechanism to repay accrued amounts is agreed we would not expect this to result in any negative reporting (subject to subsequent payment performance being reported in the usual manner).

3.8 We expect firms to be clear about the credit file implications of other forms of support offered to customers, including at the end of payment deferral periods. We also expect firms to ensure that a reasonable period of time is afforded to determine an appropriate solution with customers before reporting any new arrears or arrangements to credit files.

## 4. Debt help and money guidance

- 4.1 **Firms should have regard to Principle 7 in any communication with their customers. They should also have regard to relevant parts in CONC, in particular, CONC 7.3.7A G.**
- 4.2 **Customers who are coming to the end of a payment deferral or other temporary assistance granted under this guidance, as well as those experiencing payment difficulties after this guidance no longer applies, might benefit from some help to manage repayments under their credit agreement or their money more generally. Customers in different circumstances are likely to have different debt help or money guidance needs.**
- 4.3 **We expect firms to help customers understand what types of debt help or money guidance are available. They can do this by signposting or referring them to appropriate sources of guidance. This could include providing a link to our information page '[Dealing with financial difficulties during the coronavirus pandemic](#)' and to the [Money Advice Service's Navigator Tool](#).**
- 4.4 **When communicating with customers, firms should signpost or refer them to appropriate money guidance, self-help tools or debt advice in a timely manner. For example, where a firm anticipates that a customer may need to wait before the firm can discuss or assess their situation and circumstances, they should consider how to avoid delaying the customer getting appropriate money guidance, self-help tools or referral to debt advice.**
- 4.5 **Where customers could benefit from debt advice we would expect firms to inform the customer that free and impartial debt advice is available from not-for-profit debt advice bodies; and signpost or refer them to one or more sources of such free advice. Signposting can include providing a link to the Money Advice Service's [debt advice locator tool](#).**
- 4.6 **Firms should try to make any referrals as effective as possible, and should consider:**
- **encouraging customers to use digital tools, where appropriate**

- offering to transfer a customer's call directly to a debt advice provider
- whether the customer would benefit from a specialist source of debt advice, such as making a self-employed customer aware of business debt advice providers in the Money Advice Service [Strategic toolkit for creditors](#)

**4.7 Firms should tell customers that they can get guidance or not-for-profit debt advice through both digital and telephone services, and we would expect signposting and referral processes to take the full range of delivery channels into account. Firms should also highlight the availability of face to face services, where this is appropriate, but should help the customer to get debt advice through alternative means in case face to face services are not available.**

**4.8 Where firms handle customers through a digital or scripted process, we expect this to include appropriate signposting or referrals to debt advice or money guidance, as appropriate to the customer's needs.**

**4.9 Where a customer indicates that they are experiencing payment difficulties with other debts, the firm should, where possible within their existing systems capabilities, share a record of any income and expenditure assessment that they complete with customers or make these available to customers so that they are able to share them with other lenders and debt advice providers. Although firms are not required to rely on information collected by third parties, firms should support and encourage customers to re-use up-to-date income and expenditure information previously gathered where possible. For example, an income and expenditure assessment completed by another lender.**

**4.10 Customers who are considering whether an arrangement by which they agree to make no or reduced payments for a specified period is right for them may benefit from firms referring them to the [Money Advice Service's Navigator Tool](#).**

**4.11 Some customers in short-term difficulty may feel they are able to deal with their own debts without needing full debt advice. For these customers, the firm may also wish to:**

- Suggest the customer works out a budget. Firms may find it helpful to refer customers to resources mentioned in our [information page](#).
- Explain to the customer that, for most people, it makes sense to pay essential expenses and priority debts before any discretionary expenses or

**non-priority debts. To see if this is right for them customers can use online guides such as the Money Advice Service [‘How to prioritise your debts’](#) page.**

- **Recommend the customer contacts all their creditors to discuss their repayments.**

**4.12 Firms should have regard to chapter 17 of PERG in our Handbook which provides guidance on the regulated activity of debt counselling.**