

Regulator Assessment: Qualifying Regulatory Provisions

Title of proposal: Thematic review: Early arrears management in unsecured lending TR16/10

Lead regulator: FCA

Date of assessment: 27 March 2017

Commencement date: The thematic review commenced in summer 2015 with the publication of our findings on 13 December 2016.

Origin: Domestic

Does this include implementation of a Cutting Red Tape review? No

Which areas of the UK will be affected? Whole of UK

Brief outline of proposed new or amended regulatory activity

The aim of the thematic review was to examine how firms were treating customers who fell into arrears. We sought to better understand firm practices, whether they had embedded treating customer fairly, were delivering good customer outcomes and were complying with relevant existing provisions of the Consumer Credit Act and subordinate regulations and FCA handbook rules and guidance, in particular CONC Chapter 7.

Our review examined a range of unsecured lending products including credit cards, personal loans, store cards and point-of-sale finance. The firms we looked at varied from large retail banks to smaller single product providers.

We published a factual report of our findings on 13 December 2016¹ setting out the key findings from the review as well as observations on firms' different approaches. We did not consult on or produce new rules or guidance.

The thematic review found that overall most firms were complying with the majority of relevant requirements in the FCA Handbook, principally in the Consumer Credit Sourcebook (CONC), and relevant provisions of the Consumer Credit Act 1974 and subordinate regulations, but there was room for significant improvement. We identified actual and potential non-compliance with FCA requirements and provided examples in the report.

Which type of business will be affected? How many are estimated to be affected?

Whilst our review of unsecured lending focused on credit cards, store cards, personal loans and retail finance, we encouraged all firms across the wider industry which collected consumer

¹ <https://www.fca.org.uk/publication/thematic-reviews/tr16-10.pdf>

credit debts to read the report, to consider their approach to arrears and to make improvements where necessary. We estimate the number of firms to be in the region of 5,300.

Price base year	Implementation date	Duration of policy (years)	Business Net Present Value	Net cost to business (EANDCB)	BIT score
2016	13 Dec 2016	10	-1.27	0.1	0.5

Please set out the impact to business clearly with a breakdown of costs and benefits

Note – for all cost estimates below we have assumed the changes will be applied by experienced compliance staff at an estimated rate of £48/hour. The 2016 Robert Half salary guide estimates that a compliance manager in the risk and compliance function of a financial services company based in London earns between £70,000 and £104,000 per annum. Based on working 8 hours per day for 260 days each year our rate equates to £100,000 per annum and is therefore considered a suitably prudent figure for the purposes of our estimates.

We encouraged firms to read the report, to consider their approach to arrears in light of our findings and to make improvements where necessary. The relevant costs related to this are outlined below.

Familiarisation costs

The familiarisation cost covers firms reading and digesting the report. The report contained 16,000 words. At a reading speed of 100 words per minute, we consider that it would take around 5 hours on average to read and digest the report.² Therefore, we estimate the one off familiarisation cost to be:

5,300 firms x £48 x 5 hours = £1,272,000.

Remediation costs

The report provides factual descriptions of what we found in firms, for example in their policies and from observations of telephone conversations between firms' staff and their customers. In summary:

- For the most part, we consider this publication creates no costs for business because the practices and expectations set out in it are wholly inherent in the existing rules and guidance [see sub-section (1)].
- There are a small number of areas, which we set out further below, where there are currently no rules, where we provide further clarification that firms should pay due regard to the interests of customers and treat them fairly (FCA Prin 6) [see sub-section (2)].

1) Examples where the report creates no costs for business (existing rules and guidance)

In the report, we often described the compliance (or non-compliance) of a practice we identified with an existing requirement and clearly drew a link to and restated (verbatim or

² We arrived at the five hours estimate based on the following calculation. The thematic report contains approximately 16,000 words. The speed of reading technical text is 50-100 words per minute based on EFTEC (2013), "Evaluating the cost savings to business revised EA guidance - method paper". The remaining time is for readers to digest the content and relevance of the report to the firm.

summarised) the relevant rule or guidance. Or, we provided a narrative and examples of what we found then reminded firms in the same section of the report of the relevant requirement. In these cases, we consider there are no remediation costs for business because the expectations set out in it are wholly inherent in the existing rules and add no new obligations to those rules for any firms. For example:

- At paragraph 3.42 – ‘In most firms we found that forbearance options were not set out clearly in policies, procedures or guidance and there were inconsistencies between firm policy and what was offered in practice. In some cases these gaps were significant and we consider firms may be in breach of the requirement in CONC 7.2.1R to establish and implement clear and effective policies and procedures for customers whose accounts fall into arrears.’
- At paragraph 3.22 – ‘...we identified a number of cases where a firm refused to change the time of its calls in response to a reasonable request from the customer. We listened to calls from a small number of firms where agents pressed customers to have conversations at unsuitable times, for example, when a customer was at work and stated that they could not take the call or when a customer was driving. In some cases we witnessed agents telling customers they were not able to schedule a call back at a more convenient time, but when we questioned firm management said it was possible to do so. Firms are reminded of the requirement set out at CONC 7.9.4R not to contact customers at unreasonable times and to pay due regard to the reasonable requests of customers in respect of when, where and how they may be contacted’
- At paragraphs 3.28 and 3.29 – ‘Most firms set out the consequences of non-payment in a clear, fair and not misleading way. However, some firms wrote to customers in arrears to encourage them to contact the firm, setting out the consequences of non-payment in potentially misleading ways. For example we saw letters:
 - which suggested the customer could be charged default interest, where the firm’s process and policy was to not charge default interest
 - stating that the non-payment of arrears would result in the firm taking legal action where the firm did not take legal action against customers in arrears
 - stating that the firm intended to begin legal action where the customer did not meet the firm’s set criteria for such action
 - indicating that home visits would be undertaken to recover the debt when the home visit’s aim was to re-establish contact with the customer and/or to gather information on their circumstances
- We consider that some of the statements we observed are misleading and unfair in breach of PRIN 7 and CONC 3.3.1R. Firms should not mislead customers by stating that they will take action against them, which the firm knows it will not take. We have set out our expectations to affected firms that they remedy any breaches and may take further action as necessary.’

In some other areas of the report, notably under the findings for ‘assessing customers’ circumstances’, where we reported a number of our factual observations, good and bad practices in the examples and outcomes we described are evident to a reasonable third party. These are a common sense application of CONC 7.3.4R which states ‘*Firms must treat customers in default and arrears difficulties with due consideration*’.

For example statements which could be read as poor practice and are a common sense application of CONC 7.3.4R include:

- 'A common theme across many of the firms we examined was that firms failed to take into consideration indicators that a customer may be in financial difficulties or vulnerable. Some firms missed triggers altogether, while in other cases the firms only realised the significance of this information after a number of engagements with the customer.' (paragraph 3.33)
- 'Firms were also failing to pick up on general comments such as 'I have been burying my head in the sand' and 'I'm struggling, juggling lots of bills'. This resulted in missed opportunities to identify vulnerable customers and those in financial hardship.' (paragraph 3.33)
- 'We found that these firms' approaches were highly payment-orientated and conversations between agents and customers in arrears were primarily focused on obtaining payment of arrears or a promise to pay (PTP) the arrears at the earliest possible date, regardless of the customer's ability to pay.' (paragraph 3.34)

An example statement which could be read as good practice and a common sense application of CONC 7.3.4R is:

- 'The remaining two thirds of firms we reviewed took an approach focused on seeking to establish the customer's circumstances.' (paragraph 3.35)

As compliance with regulatory requirements is assumed as part of the Enterprise Act, any costs incurred by firms to bring themselves to a compliant standard are not included. Therefore we have estimated a cost to business of **zero** in relation to these areas

2) Cases where the report creates new guidance: likely costs and benefits to firms

There are a small number of instances in the report where we set expectations for firms in areas where there are currently no specific rules or guidance which may lead to costs and benefits to firms; in the areas of engaging with customers pre-arrears and waiving and refunding fees and interest.

- 'We remind firms that, while there is no requirement in our rules to offer forbearance until a customer is in arrears, they must pay due regard to the interests of all customers and treat them fairly.' (paragraph 3.5))
- 'If firms choose to waive fees to influence or incentivise customer choices in particular circumstances, they should be mindful of their obligations to treat customers fairly.' (paragraph 3.95)

In these cases we state, for clarification, that firms should treat their customers fairly, which is a requirement under the FCA's Principles for Business (PRIN) (Prin 6). We envisage impact for firms that may need to make improvements which might incur costs but may also lead to benefits.

When we undertook the review and when the report was being produced, we were not required to quantify the number of firms potentially impacted by our expectations nor collect costs and benefits. We do not consider that it would be proportionate to collect the additional cost and benefits to firms retrospectively.

Please provide any additional information (if required) that may assist the RPC to validate the BIT Score.

When the report was issued, we were not required to collect these costs and we do not consider that it would be proportionate to collect the additional cost to firms retrospectively.

Link to Robert Half salary centre:

<https://www.roberthalf.co.uk/news-insights/salary-centre-2016>