RENT-TO-OWN, BUY-NOW-PAY-LATER AND PAWNBROKING AGREEMENTS: UPDATED DRAFT CORONAVIRUS GUIDANCE FOR FIRMS

RESPONSE BY THE FINANCE & LEASING ASSOCIATION

This response comments on the FCA's draft updated Temporary Guidance for *Rent-to-Own, Buy-Now-Pay-Later and Pawnbroking Agreements*. Together, FLA members provide over a third of consumer credit written in the UK via credit cards, personal loans, point-of-sale finance (including BNPL) and revolving credit. By the end of May 2020, FLA members had received an estimated 1,623,000 requests for Covid-19 related forbearance of which 723,000 were from consumer finance customers and 88% had been granted by that date.

The FLA has already responded in detail to the FCA's comparable draft *Guidance for Credit Cards, Revolving Credit and Personal Loans*. We welcome the FCA taking on board a number of our suggested changes in the finalised Guidance published last week and for clarifying certain issues in the Feedback Statement – which will assist with implementation. We have also found the FCA's commitment to ongoing dialogue with us over the past few months particularly helpful, in seeking to develop a proportionate approach to assisting customers at this challenging time. While we do not intend to repeat our comments again in this response, we remain concerned that:

- If lenders are to provide longer-term payment deferrals, it is essential that funding is made available via the Government's support schemes – particularly for non-bank lenders who are currently ineligible. These firms are playing a key role in supporting customers during the pandemic and will also do so as part of the economic recovery. The FLA has developed a *Coronavirus Lending Forbearance Guarantee*, aimed at sharing some of the cost of providing payment deferrals – see Annex. We are currently discussing the Guarantee with the Government and would welcome the FCA's support for this initiative.

- The integrity of the data shared with the Credit Reference Agencies will be severely compromised if payment deferrals are not reflected appropriately. The FCA has confirmed in Feedback Statement 20/9 that it is keen to hear of further approaches. We would urge the FCA to take a proactive stance on this issue, to ensure future responsible lending decisions are not adversely affected.

- We welcome the FCA's recent confirmation that its customer information campaign will lead on the message that '***it's in your best interests to resume payments if you can***' and that this will also be promoted in the messaging of other stakeholders. If customers believe that future payment deferrals are an ‘automatic right’, this risks the potential for widespread unsustainable debt in the future.

BNPL

This response only relates to the BNPL aspects of the FCA’s draft Guidance. Overall, the Guidance is clear on the approach firms are required to adopt. There are, however, two aspects on which further clarification are required, in either the finalised Guidance or the Feedback Statement:

Interest Waiver

Paragraph 1.74 refers to the situation where there is a gap between the end of the deferral and the contractual payments falling due. The inclusion of an example of when this would apply would be helpful.

Paragraphs 2.39 and 2.41 of Feedback Statement 20/9 clarify the FCA’s expectations with regard to the waiver of interest during a payment deferral, ie, where a customer requires further forbearance at the end of either an initial or further payment deferral, the interest to be waived would be the interest that would not have accrued but for the initial or further payment deferral – ie, the additional interest that was accrued as a result of the contractual payment not being made.

The interest that would have been payable in any event had the contractual repayment been made as originally agreed (and which would usually have formed part of the contractual payment) would not be required to be waived.

Paragraph 1.76 of the updated Guidance makes it clear that:

The effect of the interest waiver should be that a customer would not, in respect of the 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.

Our understanding is that the updated Guidance and Feedback Statement clarify that this was also the FCA’s intention under the previous Temporary Guidance and should be applied to all deferral periods whether granted under the original or updated Guidance and coming to an end at any time – not just deferral periods that come to an end from 3rd July.

6 July 2020

ANNEX

CORONAVIRUS LENDING FORBEARANCE GUARANTEE

The objectives of the Coronavirus Lending Forbearance Guarantee would be to:

- ensure support can continue to be provided by lenders to consumers and business customers;
- enable the FCA to deliver its integrity objective under FSMA, in particular by protecting and enhancing the soundness, stability and resilience of the UK financial system, and
- enable the FCA to deliver its consumer protection and competition objectives.

Scope	***Description***	***Explanation***
Firms covered	FCA-regulated lenders and owners	• Providers of regulated credit or hire agreements (bank and non-bank)
Products covered	Regulated credit and hire agreements live at 23rd March 2020 and under which no forbearance had previously been requested or offered	• Non-coronavirus related credit risk should remain with the lender or owner • The above includes non-coronavirus related credit risk which crystallises before, during or after the temporary guidance period introduced by the FCA
Duration of cover	The remaining lifetime of the agreements above	• Compliance cost losses brought about by the forbearance offered in accordance with the temporary FCA guidance could crystallise either during or after the guidance period
Extent of cover	Guarantee covers [80%] of exceptional compliance costs suffered by lenders and owners as a consequence of forbearance offered in accordance with FCA temporary guidance	• Lender / owner retention of 20% of risk prevents moral hazard and incentivises them to provide forbearance responsibly • 100% cover disincentives cost-effective forbearance and could be inflationary • Lower cover disincentivises provision of forbearance
Limitation of cover	Cover excludes compliance costs below a threshold ('excess') set by the FCA	• Compliance costs of forbearance that are not exceptional should not be covered.

		• The 'exceptional' threshold to be set by the FCA, taking into account its integrity and competition objectives.
		• Factors to take into account in setting the threshold include:
		    ○ retention of diverse and viable lending and hiring provision which ensures effective ongoing competition in the interests of consumers and business customers;
		    ○ the ability of the financial system to serve and meet the needs of diverse consumer and business segments (including SMEs non-prime, self-employed, low-income, gig economy and key workers), and
		    ○ the ability of the financial system to enable acquisition by consumers and businesses of assets, including in particular green assets.