CREDIT CARDS, RETAIL REVOLVING CREDIT & PERSONAL LOANS: UPDATED DRAFT CORONAVIRUS GUIDANCE FOR FIRMS

RESPONSE BY THE FINANCE & LEASING ASSOCIATION

This response comments on the FCA's draft updated Temporary Guidance for personal loans, credit cards and retail revolving credit. Together, FLA members provide over a third of consumer credit written in the UK via credit cards, personal loans, point-of-sale finance 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 88% had been granted by that date.

Executive Summary

- FLA members remain committed to supporting customers who remain in financial difficulty due to Covid-19. As the first tranche of payment deferrals come to an end, we welcome the FCA providing further Guidance on how firms should manage this situation and the factors to be considered. We want to work with the FCA and the Government on an approach which prevents customers from becoming over-indebted, encourages repayment where possible and supports lenders in delivering the forbearance required.

- Payment deferrals are a core feature of the FCA's aim to '*build a bridge from one side of the crisis to the other'* and '*provide a smooth way of getting as many people back to what feels almost like normality from the point of view of their finances, if we possibly can'.* To assist lenders in providing longer-term deferrals, more funding needs to be made available via the Government's support schemes – particularly for non-bank lenders who are currently excluded. As a prudential regulator, the FCA has an important role to play in helping facilitate this.

- Requiring further payment deferrals could leave many customers with unsustainable debts, they will struggle to repay. This unintended consequence affects not only the customer, but also the lender's ability to offer effective forbearance. To prevent this, the Guidance should position additional payment deferrals on an equal footing with other forms of forbearance, rather than mandating it as the primary option alongside a test many firms will be unable to rebut if little customer information is provided.

- Revolving credit facilities should be suspended during a further payment deferral, to prevent more debt accruing in the interim. Allowing customers to continue to borrow when no payments have been made for up to 6 months, would leave them susceptible to payment shock and more would be categorised as in persistent debt.

- The integrity of the data shared with the Credit Reference Agencies would be compromised for many years if further payment deferrals are not reflected appropriately. This could also adversely impact responsible lending decisions in the future.

- We support the FCA's recognition that customers must be advised that lenders will look at other information when making future lending decisions, which may indicate that payment deferrals have occurred. This will be essential in delivering transparency and avoiding the potential for confusion or complaints at a later stage.

- The FCA's Information for Consumers should encourage customers to resume repayments where possible, actively engage with their lender and be aware that their credit file will be affected if they remain in financial difficulty.

Funding future payment deferrals

If lenders are to provide further payment deferrals during this exceptional period, they need to be in a strong financial position to do so. While the Government and Bank of England schemes to support businesses during the Coronavirus (including the Term Funding Scheme and CBILS) have been extended, these are not currently available to many non-bank lenders. Firms have also seen the closure of capital and securitisation markets, warehouse providers' appetite reducing and funders applying restrictions on facility sizes. Forbearance measures have also increased funding requirements significantly, leading to constraints on meeting new lending requests.

While we are continuing to press the Government to do more to support non-bank lenders, providing further payment deferrals will have a significant impact on these firms. We ask the FCA to take this into account when finalising the updated Guidance and to lend its support to the inclusion of non-banks within the Government's funding schemes - in the wider interests of consumers and the forbearance they require at this time.

We know that the FCA is currently surveying firms on their financial stability and that it will take a while for the data for be fully analysed. Feedback from FLA members confirms that providing further payment deferrals will have a destabilising prudential impact for some lenders. While they have managed to accommodate the risk generated by the first phase of payment deferrals, without appropriate funding and similar levels of forbearance from wholesale providers of debt funding to the sector, this becomes less sustainable for the second phase. These firms play a key role in ensuring there is a diverse and competitive consumer credit sector serving a broad range of customers – and they will play a crucial part in the economic recovery following the pandemic.

The FCA, FRC and the PRA need to repeat and reinforce the messages included in their joint statement of 26 March 2020, to the effect that funding lenders are expected to provide appropriate levels of support by agreeing to waive covenant breaches which arise as a result of firms offering payment deferrals to customers currently unable to repay. They should also do so without levying excessive fees or additional charges. This message is not being taken on board by funders and this will be exacerbated where further payment deferrals are provided.

If funding constraints remain, it will be even more important for customers to be encouraged to repay where they can, so assistance is properly targeted at those who really need it.

Payment deferrals

We agree with the proposal to extend the window for applying for a payment deferral to 31 October 2020. This will align with the Government's support schemes for individuals and ensure that customers are able to seek assistance during these uncertain times.

However, requiring firms to offer further payment deferrals, based only on what could be limited information provided by the customer, is likely to leave many with unsustainable debts they will find difficult to repay. While we welcome the Guidance not precluding lenders from offering other forms of forbearance, this is only an option where a payment deferral would not be in the *customer's interests*. Where customers do not provide sufficient information, lenders will be unable to rebut this test and the default position will always be a payment deferral - which customers could challenge this later as their debt increases. While the Guidance provides examples of when a payment deferral might not be in the customer's interests, these would be difficult to apply to credit cards and revolving credit products where assessing repayment over a 'reasonable period' is harder to determine due to the nature of the credit.

We agree that there should be a range of options to assist customers at the end of an initial payment deferral – including further payment deferral – but these should be considered as alternatives based on the customer's circumstances and without a further payment deferral being the primary option.

Allowing revolving credit customers to retain their credit facility where no payments have been made for up to six months could result in significant payment shock at the end of the period. We urge the FCA to reconsider this requirement to ensure customers are treated fairly and irresponsible lending/borrowing is avoided. Maintaining the facility will also do little to encourage customers to repay, where they are able to.

Credit Reference Agency Data

Financial services firms make extensive use of Credit Reference Agency (CRA) data in reaching responsible lending decisions and therefore the accuracy of that data is essential. If an additional payment deferral is not reflected on a customer's credit file, any future lender would be unaware they have been unable to meet their repayments for up to six months. While we support customers' credit files not being affected during an initial payment deferral as the assistance is intended to be temporary, the accuracy of CRA data will be compromised if this position is retained over the longer-term – with implications for future lending decisions.

Over the past two years there has been a steady increase in irresponsible lending decisions being submitted to the Financial Ombudsman Service by claims management firms. As drafted, the current Guidance could generate a larger number of further complaints and adversely impact the reliability of CRA data for years to come. This could also have implications for future pricing across all customers, due to the prospect of increased credit risk.

We support the new requirement that customers be made aware that lenders consider a range of data when making future lending decisions – which could highlight that a payment deferral has been in place. While credit files will not show a worsening position due to a payment deferral, in the interests of transparency it is essential that customers are aware of the wider implications. The FCA could usefully make it clear in either the Guidance of the Feedback Statement that this is indeed the intention of this new disclosure requirement.

Draft Guidance – Clarification Required

The following paragraphs comment on specific aspects of the two sets of Guidance and in some cases seek further clarification. Where clarification is required, it would be helpful if the FCA could provide this either in the final Guidance itself or in the Feedback Statement, so firms have a regulatory audit trail and to ensure consistency in interpretation across lenders. In the recent exchange of letters between the FCA and the Financial Ombudsman Service, the Chief Ombudsman noted ***the importance of the FCA maintaining a clear record of the changes it has made and the circumstances in which they apply***, when dealing with future complaints.

- **Timing**

The updated Guidance will expire on 31 October 2020. Where an initial payment deferral expires after the 31 October 2020 and the Guidance is no longer in place, is the expectation that firms will deal with post-payment deferral cases in line with Principle 6 and CONC 7 **or** would the post-payment deferral provisions still apply as the initial deferral was granted before 31 October 2020?

- **Customers already assisted post-payment deferral**

Where customers have already been contacted following a payment deferral and received assistance, is the expectation (under paragraph 1.8) that lenders should go back and apply the updated Guidance requirements? This could lead to some customer confusion, especially if further assistance has only recently been put in place.

- **Credit facility suspension**

We have outlined above our concerns at the requirement that credit facilities must continue to be provided and the potential impact on unsustainable debt.

The Guidance notes that an exception to this would be where firm act in accordance with its obligations under section 98A of the Consumer Credit Act 1974 and provides the example of where fraud has occurred. It would be helpful if the example could also mention (6)(b) as a further exemption under this provision - *where there is a significantly increased risk of the debtor being unable to fulfil his obligation to repay the credit.*

- **Making enquiries**

While the Guidance continues to refer to there being no expectation that lenders will make enquiries of the borrower when offering an initial payment deferral, the updated Guidance now refers to the fact that lenders may choose to make enquiries of the customer if they choose to. The Feedback Statement could usefully include some reasoning for this change and confirm that nothing new is expected of lenders who have already granted deferrals.

- **NOSIAs**

The Guidance asks firms to consider whether a NOSIA should be accompanied by some additional information to put it into context and to reduce the risk of customer confusion. While some firms may already adopt this approach, this is not the case across all lenders. There could also be significant systems implications if this were to be mandated in all cases. For example, many NOSIAs are usually generated automatically and the Notice and Information Sheet included within the same envelope which is designed for two sheets of information. Any additional information would necessitate IT changes to accommodate the extra piece of paper. There are also timing implications if NOSIAs have already been, or are about to be, dispatched.

It would be helpful if the Feedback Statement could usefully address these issues and provide a view on whether it would be acceptable for any additional information to be included on the reverse of the Information Sheet – which may help some firms from an operational perspective.

The FCA is aware that the FLA proposed secondary legislation to the Government which would have removed the need for NOSIAs to be sent during a deferral period and created a more streamlined process for modifying agreements during the pandemic. The Government has decided not to take these changes forward and noted that part of the reasoning was that the FCA had not asked it to make these changes. We know that the FCA supports changes to the modifying agreement provisions (as outlined in its Final Report on the CCA Review in Spring 2019), and we would welcome the regulator's support in securing much needed improvements in the future.

- **Initial Payment Deferrals**

As noted above, we support customers being advised that lenders will refer to other information when making future lending decisions – such as bank account information – which could infer that a payment deferral has been in place. This is a new requirement for initial payment deferrals and was not included in the earlier Guidance. Is the intention that this only applies to new payment deferral applications from the date the updated guidance comes into force? We believe this would be the most practical approach and avoids retrospection.

- **Persistent Debt Remedy (Credit card and revolving credit guidance)**

We welcome the additional clarification included within the updated Guidance on the interaction between payment deferrals and the persistent debt remedy. Does this mean that the full time periods between PD18 and PD36 and between PD27 and PD36 will still apply once a customer's payment deferral has ended?

Paragraph 1.37 suggests that '*it may be'* appropriate to allow a customer up to an additional 3 months to respond to PD36 letter when considering what is a *'reasonable period'* to respond to options to increase payments. It would be helpful for the Feedback Statement to provide further context on this and examples of when it may be appropriate. Under the FCA's BNPL Guidance, the BNPL period must always be extended by the deferral period to ensure customers have sufficient time to make payments before any interest accrues. Further insight into why a similar approach is not being adopted for persistent debt periods would be helpful.

Currently, the FCA has stipulated that customers in receipt of a 36-month persistent debt letter will have up to 1 October 2020 to respond to the lender, due to the current circumstances. When will the FCA be providing a further update on this?

Where a customer has already received a PD36 letter (and agreed a repayment approach with their lender) but then subsequently has a payment deferral, would the reasonable period for repayment be extended by the period of the deferral? And would a payment deferral be classified as an 'exceptional circumstance' under CONC 6.7.33G allowing the period to run beyond 4 years?

Feedback Statement FS20/3 recognised that some lenders were unable to suspend persistent debt letters during this period and asked firms to contact them. The Guidance could helpfully acknowledge this point, as some firms will still be in this position.

The first PD36 letters for catalogue and store card customers are scheduled to be sent just before Christmas this year. While this timing was always going to be challenging for customers wanting to use their credit facility at this time, this timing is even more acute during Covid-19 when many customers are struggling to manage their finances. This was also the reasoning why the FCA delayed customers having to respond to PD36 letters at the outset of the pandemic. It would be helpful if the FCA reviewed the timing of these PD36 communications, in the current circumstances.

- **Customers no longer experiencing temporary difficulty**

Where a customer confirms that they can resume payments and then contacts the lender seeking further assistance before the first payment is due, the lender must provide this in line with the Guidance - which include the option of a further payment deferral. We understand that this **only** applies before the first payment is due and that where a customer resumes payment for several months and then needs further help, the Guidance would not apply, and lenders would assist in line with CONC 7. It would be helpful if the Feedback Statement confirmed this approach, which is currently being adopted under the recently updated Temporary Guidance for mortgages – following confirmation from the FCA.

- **Debt Counsellors' views**

Where a debt counsellor's view prevails over that of the firm, the counsellor will need to provide written confirmation of how that decision was reached, so firms can meet the requirements under the Guidance on recording, monitoring and demonstrating that the options were consistent with customers' interests. The Guidance should be updated in this regard, so firms have a clear audit trail of the decision-making process.

- **Commercial Interests**

Stipulating that firms should have no regard to their own 'commercial interests' could be usefully clarified so firms are aware how this interacts with the FCA's requirements that firms manage operational risk effectively.

- **Debt Help & Money Guidance**

The Guidance includes new requirements on signposting customers to assistance with debt and money management. Does this only apply to customers coming to the **end** of an initial payment deferral or would it also apply to customers seeking a first payment deferral once the updated Guidance comes into force?

- **Inconsistencies**

There are several places where similar requirements in the two sets of Guidance are inconsistent. For example, only CONC 7 is referred to in paragraphs 1.11 and 1.13 of the Guidance for personal loans, whereas CONC 6 & 7 are referenced in paragraphs 1.10 and 1.12 of the credit card and revolving credit Guidance.

Paragraph 1.11 in the credit card Guidance has the word 'temporary' in bold but this is not replicated in the equivalent paragraph in the personal loans Guidance.

Consumer Information

Both the updated ***Information for Consumers*** and the ***Consumer Page*** on the FCA's website should ideally include more information at the outset on the importance of letting lenders know as soon as repayment difficulties arise and the need to respond to contact from their lender during a payment deferral period. This will help customers to understand the importance of sharing relevant information, so outcomes can properly reflect their interests.

The information should also refer to the fact that lenders will consider other information when making future lending decisions – such as bank account information which might identify that a payment deferral has been in place. It will be important that information from both lenders and the FCA are equally transparent on this point.

The list of organisations that can offer help and advice includes organisations where there is **no** telephone number. Not all customers will be able to access web-based only services and therefore phone numbers should ideally be provided by these advice providers.

We would be happy to discuss any aspect of this response in further detail.

Finance & Leasing Association
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