Consumer Credit and Coronavirus: Additional Guidance for Firms (FCA Draft Guidance)

Response from the Finance & Leasing Association

About the FLA

The Finance & Leasing Association (FLA) is the leading trade association for the UK consumer credit, motor finance and asset finance sectors. FLA member companies include banks, the finance subsidiaries of major manufacturers and independent finance firms. They offer credit services to customers from all social groups, via credit and store cards, personal loans, point of sale finance, motor finance, mortgages and a number of other consumer credit products, as well as a wide range of leasing and hire purchase services to businesses of all sizes. FLA members have so far received approximately 2,100,000 requests for Covid-19 related forbearance from customers.

This response has been prepared in consultation with FLA members who provide a broad range of credit products including credit cards, retail revolving credit, personal loans and motor finance.

Introduction

We welcome the opportunity to comment on the FCA's updated draft *Payment Deferral Guidance* and *Additional Guidance for Firms* for consumer credit in response to the Covid-19 pandemic. We also welcome the very collaborative approach the FCA has adopted in advance of the draft Guidance being published, and we appreciate that the regulator is seeking to achieve a swift and seamless transition to the updated requirements. We have therefore focused this response on where further clarification could usefully be included within the final Guidance (or Feedback Statement), so firms are clear on the revised regulatory expectations.

Key issues

- FLA members remain committed to supporting customers in financial difficulty during the pandemic, via both the Payment Deferral Scheme and more tailored forbearance support where appropriate. Changes to the Scheme should, as far as possible, align with the timing of other Government initiatives for managing the pandemic to ensure a coordinated approach. While consultation periods are necessarily short, it will be important for the FCA to keep under review the broader impact the changes are having on customers' access to credit, funding availability, market competition, the integrity of credit reference agency data and where any uncertainty in the Guidance might arise. We look forward to working with the FCA on these issues.

- We support the approach adopted in the draft Guidance, whereby a payment deferral spanning 6 months would be structured in two consecutive phases and be

subject to a review process to ensure good customer outcomes. However, further flexibility should be also permitted, where firms want to offer two or more payment deferral periods which together last for 6 months.

- Under the proposals, where a customer has already benefitted from an initial payment deferral and subsequently resumes repayments, they would not be able to apply for a further repayment deferral. While we agree that these customers would benefit from tailored forbearance support should they face further payment difficulties, the Guidance should allow firms the flexibility to offer these customers a further payment deferral where they consider this would be in the customer's interests.

- The policy messaging set out within the FCA's Press Notice of 4 November 2020 and information on the FCA's website should ideally be included within the updated Guidance, to ensure that the operational guidance and policy intention are completely aligned.

- FLA members recognise the need for a proportionate approach to repossessing goods or vehicles during the pandemic and accept that this should only take place in exceptional circumstances until 1 February 2021. It would be helpful for the Guidance or Feedback Statement to confirm that this restriction only applies where customers are in financial difficulty due to Covid-19 and not more broadly - as there has previously been some uncertainty on this point.

- While FLA members remain fully committed to supporting their customers, it must be recognised that the exceptional levels of forbearance they have been providing, and will continue to provide, come at considerable cost. While wholesale finance rates have recently come down, it will be very important for the Bank of England and others to ensure that all lenders, both bank and non-bank, are able to benefit from lower cost funding that can support their forbearance efforts.

- The FCA's *Retail Lending Forbearance Project* is currently seeking extensive information from firms on forbearance polices and processes. As these will now be subject to change following the updated Guidance, could the timetable for submitting information be revisited to avoid firms having to potentially resubmit the information within a short time-period, incurring additional resource?

Draft Payment Deferral Guidance

Policy Intention

The FCA's Press Notice dated 4 November sets out the policy intention for extending the Payment Deferral Scheme, how this will work, which customers will benefit and to what extent. The following messaging could very helpfully be included in Section 1 of

the final Payment Deferral Guidance for each product, which provides an overview of the scheme and how it has developed. These include:

- those who have not yet had a payment deferral will be eligible for 2 payment deferrals of up to 6 months in total
- those who currently have an initial payment deferral, will be eligible for another payment deferral of up to 3 months
- those consumers who have already benefitted from an initial payment deferral and subsequently been able to resume payments should be given tailored support under the FCA's Additional Guidance (should they face further payment difficulties due to coronavirus), rather than a further payment deferral. [See also comments below on the need for flexibility in this regard]
- if a customer applies for a payment deferral before 31 January 2021, they will be able to have up to 6 months, ie, if it comes to an end at end-April 2021, the customer can request a second 3 month payment deferral.

While the draft Guidance is structured in a way to deliver on these policy objectives, having them set out in summary form at the outset of the Payment Deferral Guidance would ensure they are firmly embedded as guiding principles for firms to follow and would provide clear reference points should complaints arise at a later stage.

Scope

- **Two Deferral approach**

We support the proposed premise of there being two payment deferrals of up to 6 months in total. This will allow lenders to review a customer's circumstances after an initial payment deferral, to ensure that any further deferral is the right approach for them. This also provides a clear message for both lenders and customers.

Further clarification could usefully be added on the expectation where a customer has made had a partial payment deferral, for example, is the intention for '*the 2 payment deferrals of up to 6 months in total'* approach to apply irrespective of whether the deferral is full or partial?

However, there may be cases where lenders might want to adopt a more flexible approach regarding the number of deferrals offered to deliver the 6-month maximum. This would be particularly useful where several shorter payment deferrals (together amounting to 6 months) would better reflect a customer's circumstances. The Guidance or Feedback Statement should allow lenders the flexibility to take this approach, if they consider it would be in the customer's interests.

- **Customers currently on Tailored Forbearance**

Under the draft Guidance, if a customer has already benefitted from an initial payment deferral and then subsequently resumed repayments, they would not be able to apply for a further repayment deferral. We agree that these customers would benefit from

the more tailored forbearance support offered by firms under the FCA's Additional Guidance, especially as it would be based on their personal circumstances. There could also be complex Consumer Credit Act implications (including modifying agreements and the timing of statutory notices) if lenders were required to always provide a further payment deferral to customers in this situation.

However, the Guidance should not preclude lenders from offering a further payment deferral in this situation should they consider it appropriate and it would be in the customer's interests. Such an approach would also provide the customer with further assistance which would not have a worsening impact on their credit file, as it would be caught under the CRA reporting requirements for payment deferrals.

- **Need for clear Guidance**

As already noted above, the Guidance and Feedback Statement should endeavour to address as many of the common queries firms have raised in trying to align what is in the draft Guidance and the policy intention/public statements. Some of these include:

- To what extent are firms required to revisit tailored forbearance arrangements now in place for customers who have already come to the end of an initial payment deferral?
- If a lender has already demonstrated that a further payment deferral would not be in the customer's interests, to what extent do they need to revisit this decision considering the policy statements?
- How do firms navigate the policy messaging on payment deferrals needing to be consecutive under the Guidance, with the need for a degree of flexibility based on a customer's circumstances?

Draft Additional Guidance for Firms

Section 5: Credit Cards & Persistent Debt

While industry is not advocating a change in approach on the persistent debt requirements set out in Paragraphs 5.72 and 5.73 of the draft Additional Guidance, firms are seeing more and more customers questioning why they are being asked to increase their repayments during this pandemic period. It is being viewed by customers as being in stark contrast to the support being offered via the extension of the Payment Deferral Scheme and the Furlough Scheme.

We understand that some customers have also complained directly to the FCA about this approach and the situation is expected to become more pronounced as retail revolving credit firms begin to issue the PD36 notices in the run-up to the Christmas period. The FCA's consumer messaging on the extension of the Payment Deferral Scheme could usefully include reference to this and that lenders are required to take this action. It would be helpful to keep this situation under review considering customer feedback and the length of the pandemic.

Repossessions – Hire Purchase, Conditional Sale and Consumer Hire

While FLA members accept that firms should not terminate a regulated agreement or repossess goods or vehicles under the agreement that the customer needs before 1 February 2021, members remain concerned at the backlog this further moratorium will create and the impact on residual vehicle values. The wording in Section 6 of the draft Additional Guidance could make it clearer that this only applies to customers who are experiencing or reasonably expect to experience temporary financial difficulty because of the coronavirus, and not more widely. This would remove any ambiguity on this point.

The draft Guidance helpfully recognises that there may be some exceptional circumstances where repossession might be required, for example, where a customer has requested that proceedings continue. There are some additional scenarios which could also be reflected in the final Guidance or Feedback Statement - for example, where a vehicle has been abandoned, or the customer has parted with possession of it; where the vehicle has been stolen; where there has been fraud; where the customer has died or where a breach of the finance agreement terms has arisen unrelated to COVID-19. Over the next three months, many firms will see customers reach the end of their 6-month payment deferral and will need clarity on how the repossession moratorium would apply where customers:

- refuse to agree to any of the forbearance options proposed, or
- repeatedly fail to respond to any communications from their lender.

There will also remain cases where customers want to continue to voluntarily terminate and surrender their vehicles during this period. The Additional Guidance should include reference to this, as it would not appear to tie-in with the current exemption that repossession can take place *'where the customer requests that the proceedings continue'.*

We do not think reference to Section 140A under the CCA – Unfair Relationships – needs to be included within the updated Additional Guidance. It was not included in the previous version of the Guidance (September 2020) and this approach should be followed in the updated Guidance. Firms are aware of the need to comply with Section 140A and there is no need to specifically reference this provision in isolation.

We would be happy to provide some draft text to update Section 6 if this would be of assistance.

CRA Reporting

We remain concerned at the impact this extension to the Payment Deferral Scheme will have on the integrity of data held by the Credit Reference Agencies (CRAs). Based on the number of customers who have already received a payment deferral, several million credit files will effectively 'mask' the actual repayment position. While we

understand and support the need for consistency of treatment for customers with a payment deferral, there will remain longer-term implications for responsible lending decisions which utilise this data.

As a result of these proposals, there may be an increase in the number of customers that might seek an initial (or subsequent) payment deferral as a precautionary measure in a similar way to when the FCA's Payment Deferral Scheme was introduced back in March/April this year. This could also have an impact on the availability of future lending for these customers, where a payment deferral may not have been required. We therefore support the FCA's messaging that customers should think carefully about whether a payment deferral is the right option for them and that it might affect their ability to borrow in the future.

In the run-up to the Christmas period and Black Friday, lenders invariably see an increase in credit applications. Alongside the timing of the extension to the Payment Deferral Scheme, this could result in lenders seeing applications for credit followed immediately by applications for a deferral period. While customers have been able to do this throughout the duration of scheme, it might become more prevalent during this immediate next phase due to the alignment of the timing of Christmas/Black Friday and the extension of the scheme.

We will continue to work with the CRAs on updating their Covid-19 Exit Reporting Guidance in light of these proposed changes.

Retail Lending Forbearance Project

The FCA has recently announced its plans for a Retail Lending Forbearance Project, which will look at how firms have adapted to the challenges in the current operating environment and how this has translated into delivering forbearance. This will include asking for firms' arrears related policies and procedures, changes implemented since the FCA's September Guidance was published and communications to customers in financial difficulty.

As firms will now have to update their policies, procedures, and communications in light of the proposed updated Guidance, will the FCA revisit any timeframes already allocated to firms so they can provide the updated information instead? This would avoid the potential for duplicated effort at this busy time and will also ensure that the FCA receives the most up-to-date position from within firms.

Next Steps

We would be happy to provide any further clarification on the points included within this response.

6 November 2020
Finance & Leasing Association.