

Clients & Friends Memo

COVID-19 Update: FCA Publishes Final Guidance on Temporary Financial Relief for Consumer Credit Customers Affected by COVID-19

15 April 2020

Background

As discussed in a previous clients and friends [memorandum](#), on 2 April 2020, the UK Financial Conduct Authority (“**FCA**”) proposed a number of temporary measures designed to support users of certain consumer credit products during the adverse economic conditions in the UK generated by the COVID-19 pandemic. Following a very short consultation period, the FCA published its final guidance¹ for firms on 9 April 2020.

The FCA’s guidance only applies where consumers are already experiencing, or reasonably expected to experience, temporary payment difficulties as a result of the COVID-19 pandemic. Where a customer was in pre-existing financial difficulty, the FCA’s existing forbearance rules and guidance in the Consumer Credit section of the FCA’s Handbook (“**CONC**”) will 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.

The guidance explains and gives context to Principle 6 of the FCA’s Principles for Business (“*A firm must pay due regard to the interests of its customers and treat them fairly*”). The FCA states that the guidance is potentially relevant to enforcement cases and will likely 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.

The key aspect of the final guidance, in respect of personal loans and credit cards, is that firms should provide a three-month payment deferral in most cases where requested by a borrower. The FCA has, however, made a number of significant changes and clarifications to the guidance consulted on last week. Alongside the guidance, the FCA also published a feedback statement, available [here](#), explaining its views on the responses to the consultation. This

¹ The FCA temporary guidance for credit cards is available [here](#), guidance for personal loans [here](#) and guidance for overdrafts [here](#).

Cadwalader, Wickersham & Taft LLP (Cadwalader) is a registered limited liability partnership established under the laws of the State of New York. The personal liability of our partners is limited to the extent provided in such laws. Additional information is available upon request or at [www.cadwalader.com](#). A list of our partners, who are Solicitors or Registered Foreign Lawyers in England and Wales, is available for inspection at the above address. Regulated by the Solicitors Regulation Authority.

This memorandum has been prepared by Cadwalader for informational purposes only and does not constitute advertising or solicitation and should not be used or taken as legal advice. Those seeking legal advice should contact a member of the Firm or legal counsel licensed in their jurisdiction. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship. Confidential information should not be sent to Cadwalader without first communicating directly with a member of the Firm about establishing an attorney-client relationship. ©2020 Cadwalader, Wickersham & Taft LLP. All rights reserved.

memorandum highlights the key differences between the proposals of 2 April 2020 and the final guidance.

Scope of Application of Personal Loan Guidance

In relation to “personal loans”, the FCA have clarified that a “personal loan” refers to a regulated credit agreement, secured (other than on land) or unsecured; including a guarantor loan, a logbook loan (secured by Bill of Sale), home collected credit or a loan issued by a Community Development Finance Institution. The personal loans guidance does not apply to business loans, high-cost short-term credit agreement, buy now pay later agreements, hire purchase agreements (including motor finance), peer to peer agreements, pawnbroking agreements, premium finance, credit card and other retail revolving credit agreement or overdraft. That said, the regulator has made clear it will act in relation to high cost credit and motor finance in the coming days, while credit card and overdrafts are covered by other revised FCA temporary guidance.

Timing

The measures in the guidance should be brought into effect no later than 14 April 2020, to give firms an opportunity to amend their systems and documentation. Firms are free, however, to implement these measures sooner, at any time from 9 April, if they wish, and the FCA would welcome firms doing so. To facilitate this, the changes to CONC rules come into effect on 9 April 2020.

Ability to Refuse Requests for a Deferral

The guidance for both personal loans and credit cards states that “*A firm should grant the customer a payment deferral for three months unless the firm determines (acting reasonably) that it is obviously not in the customer’s interests to do so*”. There is further detail on how firms might be able to reach the conclusion that deferral would be “obviously not in a customer’s best interests”, referring to an assessment of the customer’s need for temporary support and the longer term effects of the payment deferral on a customer’s financial situation. The FCA gives an example of a situation where a deferral would be obviously not in a customer’s best interest: where granting a payment deferral would give the firms’ customers a greater overall debt burden compared to other solutions available (that might involve reduced or waived interest for example) that could equally meet customers’ needs and that burden would be clearly unsustainable.

Alternative Measures

Where the firm has determined that a 3 month payment deferral is not considered appropriate, firms should offer other ways to provide temporary relief to the customer, “*without unreasonable delay*”. The guidance does not prevent firms from providing more favourable forms of assistance (e.g. a longer payment deferral) if deemed appropriate.

Additional CONC Rule Changes and the Need to Investigate a Customer’s Circumstances

In relation to both personal loans and credit cards, the FCA have clarified that there is no expectation under the 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. This is a change from the original guidance which referred to firms being able to make enquiries to determine whether a deferral serves a customer's best interests. This seems to leave as the position that a firm can only make the determination as to whether a deferral would be "obviously not in a customer's best interest" (referred to above) based on existing information it holds in relation to a customer and should not ask for financial information or evidence of COVID-19 related financial hardship. To ensure customers are offered quick support, the FCA has confirmed in its feedback statement that firms can consider whether the offering of a payment deferral period is in customers' best interests at a book/cohort level, rather than having individual conversations with customers about their circumstances. The FCA will also disapply CONC 6.7.18R and CONC 6.7.19R (consumer credit rules relating to refinancing of customer's debt) to allow for the scheme.

Timing for Applications for Deferral

The FCA have clarified that customers do not have to apply immediately for a payment deferral – the FCA said they should be able to request a payment deferral at any point in the three months from the date of application of the guidance. This means that payment deferrals could run beyond 14 July 2020.

Impact on Credit Status and Firms' Operational Difficulties

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, or where they have entered into a similar temporary payment deferral arrangement with their lender as a result of the coronavirus situation which has resulted in a worsening arrears status being reported, the FCA expects firms to work with customers and Credit Reference Agencies to ensure that any necessary rectifications are made to credit files to ensure no worsening arrears status is recorded during the payment deferral period. Firms will also have to ensure no default or arrears charges are levied in relation to payments missed in these circumstances.

Indulgences and Waivers

For credit card lenders using indulgences or waivers to give customers a payment deferral under this guidance, the FCA expects such firms to also give these customers indulgences or waivers to relieve the customers from any potentially adverse consequences arising under the contract from non-payment during the payment deferral (for example in relation to fees and charges and 0% interest deals).

No Card Suspensions

Credit card customers whose payments have been deferred under this guidance should not have the use of their cards or credit facility suspended except where the firm acts in accordance with its obligations under section 98A of the Consumer Credit Act 1974, for example in the event of fraud.

* * *

If you have any questions, please feel free to contact any of the following Cadwalader attorneys.

Suzanne Bell	+44 (0) 20 7170 8549	suzanne.bell@cwt.com
Robert Cannon	+44 (0) 20 7170 8735	robert.cannon@cwt.com
Stephen Day	+44 (0) 20 7170 8535	stephen.day@cwt.com
David Quirolo	+44 (0) 20 7170 8635	david.quirolo@cwt.com
Michael Sholem	+44 (0) 20 7170 8545	michael.sholem@cwt.com