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

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Background

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. These proposals provide guidance to FCA regulated providers of credit cards, retail revolving credit facilities, arranged overdrafts and personal loans. The FCA decided to consult for an unusually short period on these proposals, with the consultation closing at 9:00 a.m. on 6 April 2020. The FCA intends for these measures to come into effect on 9 April 2020.

This memorandum focuses on the FCA's proposals for firms providing personal loans and credit cards under the UK's regulated consumer credit regime.

The FCA's General Approach to COVID-19 and Consumer Credit

The FCA's proposed 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 proposed guidance is designed to explain and give 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.

New Guidance Proposed for Personal Loans, Credit Cards and Revolving Credit Facilities

The proposed guidance suggests the key action firms should take during the crisis is to allow for payment deferrals by a consumer.

In the context of personal loans, a 'payment deferral' is defined as an arrangement under which a consumer credit firm permits the borrower to make no payments under their regulated credit agreement for a specified period without being considered to be in arrears.

In the context of credit cards and revolving credit agreements, a 'payment deferral' means an arrangement under which a firm permits the customer to make no payments (or a token payment not exceeding a £1 where firms' system will not allow a zero payment) under their credit card or revolving credit agreement for a specified period without being considered to be in arrears.

Two separate but similar sets of guidance provide the regulator's expectations in respect of payment deferrals for both types of consumer credit, including the following key aspects:

- Where a customer is experiencing, or reasonably expects to experience, temporary payment difficulties as a result of circumstances relating to COVID-19 (*e.g.*, a reduction in household income), and wishes to receive a payment deferral, a firm should grant the customer a payment deferral for a recommended period of **3 months** (although a firm may grant a payment deferral of fewer than 3 months in certain circumstances – see below).
- The FCA does not expect that firm to investigate the circumstances surrounding a request for deferral (although firms can choose to make enquiries necessary to determine whether a payment deferral serves a customer's best interests). This is an area of the proposed guidance which may need to be refined – it is not clear whether a firm will be entitled to ask for proof of the COVID-19 related circumstances *e.g.*, a wage slip evidencing reduced hours or reduced pay after a customer requests a payment deferral.
- Firms will need to make clear on their websites and in other communications to customers that payment deferrals are available. Even where a customer has not requested a deferral, if a firm receives from the customer information that he or she is experiencing or could reasonably expect to experience, temporary payment difficulties as a result of circumstances relating to COVID-19, the firm should ask whether the customer wishes it to consider granting a payment deferral.
- Firms will need to give customers adequate information about the implications of a payment deferral, including the consequences of interest that is accrued during this period and its effect on the balance due under the agreement and on future payments.
- Firms may continue to charge interest during the 3-month deferral period. If the consumer is unable to resume payments at the end of this period because of payment difficulties at that time, they should contact the firm. The firm should work with the customer to resolve these difficulties in advance of payments being missed.

- A firm may decide to put in place an option other than a 3-month payment deferral, providing it is appropriate to do so in the individual circumstances of the case and the firm reasonably considers it needs to do this to treat the customer fairly. This could include a payment deferral of fewer than 3 months if, for example, the expected loss of income is for a shorter period, or accepting a sum below the normal payment due if, for example, the loss of income is partial.
- Firms should ensure that there is no negative impact on the customer's credit file because of the payment deferral. In particular, the account of the customer should not be recorded as having any form of detrimental arrears.
- Firms are not permitted to charge any fee or charge to the customer in connection with the granting of a payment deferral.

Specific Provisions Relating to Credit Cards and Revolving Credit Facilities

- To allow for payment deferrals, the FCA rules in CONC 6.7.5R (which require a firm to set a minimum repayment amount equal to at least the interest, fees and charges that have been applied to the account, plus one percentage of the amount outstanding) will not apply if the firm decides to vary its contracts in order to follow this guidance. The FCA proposing to amend CONC 6.7.5R through secondary legislation[1] to address this.
- The FCA also proposes to suspend the 'persistent debt' remedies provisions in CONC 6.7.27R to 6.7.40G for certain customers. These provisions relate to a situation where a customer is over time paying more in interest, fees and charges than they are paying off their balance and requires firms to engage with the customer at specified intervals. The suspension will apply in respect of a customer, who the firm has allowed to defer repayments for the duration set out in this guidance, for the period of the deferment. The provisions will again start to apply in respect of these customers after the deferment period ends.
- In the light of Principle 6 of the FCA's Principle for Businesses, the proposed guidance suggests firms should review their pricing and interest strategies to consider whether they are consistent with the obligation to treat customers fairly in the light of the exceptional circumstances arising out of COVID-19. According to the FCA, interest rates for these types of products should not pose unjustifiable burdens on these consumers who may be experiencing payment difficulties. Note that the proposed guidance stops short of requiring card lenders to reduce interest rates during the pandemic and recognises that firms will sometimes charge much higher rates for cards which are usually marketed or offered to low income customers or those with poor credit ratings. That said, the clear regulatory expectation is that firms should consider whether it is in line with Principle 6 to maintain such higher rates during the COVID-19 pandemic.

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[1] Consumer Credit (Temporary COVID-19 Support Measures) Order 2020.

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

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