Financial Services Consumer Panel
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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By email: FCAconsumercredit@fca.org.uk

Dear Sir / Madam

Financial Services Consumer Panel response to consumer credit and coronavirus: additional guidance for firms (November 2020)

The Panel welcomes and supports the FCA's prompt action to provide further guidance for firms to support consumer credit consumers following the announcement of a second national lockdown in England. Payment deferrals proved to be an important lifeline for consumers earlier in the year, with 1.9 million people making use of the scheme[1]. As consumers once again face losing their job or seeing a reduction in their household income – some of whom will not have financially recovered from the first national lockdown – this guidance will provide vital support.

We would like to take this opportunity to remind the FCA of the points made in our response to the updated further guidance for mortgage firms dated 5 November 2020. In particular, we wish to reiterate our comments on the proposed limits applied to payment deferrals:

- **Limits on the number of payment deferrals** - Under the FCA's proposed guidance, no borrower will receive more than two payment deferrals of up to six months in total, even where one or both of those deferrals were shorter than three months. However, we believe that the focus should be on individual consumer circumstances, rather than generic limits. Acknowledging that the FCA is working at speed, and that firms will welcome clear changes from previous guidance, it is crucial that the body of guidance does not become too rigid for the increasingly fluid world it impacts upon. A change of tone, or introductory paragraph would be helpful in setting an expectation that firms need to think more widely about support with each phase of the crisis, and always ask themselves whether they can go further than the guidance. Depending on available evidence, the FCA could go as far as to suggest that it would naturally expect the mix of support offered to consumers to change over time, especially for vulnerable groups, and it will be scrutinising firms' management information accordingly.
  Some consumers may need further deferrals and it is not clear why those who have taken shorter deferrals should lose out compared to those who took a full 3-month deferral. Further, some consumers may have taken an initial 3-month deferral as soon as these measures were announced in March, even though they did not 'need' the deferral at that time. These consumers may now be in a financial position where a further 6-month deferral period is the right thing, but they would be barred from

[1] https://www.ukfinance.org.uk/covid-19-press-releases/lenders-continue-to-support-customers-through-covid-19

doing so under this guidance. Similarly, consumers may have applied for a deferral before the 31 October deadline in fear of losing out on the ability to do so after this date. These consumers will now have used one of their deferrals and so will only be eligible for one more, whereas those who have waited a few days will still have the option of taking two deferrals. The arbitrary limit on the number of deferrals may therefore result in consumer confusion and inconsistent or unfair consumer outcomes.

- **Limit on the total length of deferrals and time they are available –** Under the FCA's proposed guidance, payment deferrals are limited to six months in total and cannot be applied for after 31 January 2021. In our view, this does not allow for the flexibility required during what is an ever-evolving pandemic. The future remains uncertain and is likely to involve significant regional and national variation, for example if England returns to a tiered system of restrictions and the devolved nations continue to take differing approaches. Consumers will continue to experience financial difficulty and need support, but the form of support required, when it is needed and for how long, will differ. It is impossible to say when demand for payment deferrals will end and so the FCA should not impose a time limit on their availability or total duration.

In addition, the FCA do not propose to renew or reinstate the obligation on banks to offer £500 free overdrafts by default. It seems unfair that consumers in difficulty later in the pandemic are denied a forbearance option available to those who were in trouble earlier. We would question whether the FCA's judgement that their proposals do not have equality implications takes fair account of this. We also question how it fits with the FCA's overall expectations of firms in the delivery of good outcomes for vulnerable consumers. We therefore propose that the guidance should include a clear expectation that firms should consider this forbearance option for all consumers seeking support and the FCA should check it is being so considered.

As this guidance comes in to force, it is essential that the FCA uses assertive supervision to proactively monitor firm behaviour to ensure all customers are receiving fair treatment and a consistent level of support. UK Finance has helpfully been publishing data on the take up of payment deferrals, however, it would be useful to have more detail publicly available. For example, the latest data shows that over 75% of consumers who took a deferral have now resumed payments[2] but we would like to know more about the 25% who have not been able to resume payments, for example how many of them have reached a repayment agreement with their lender or been referred to debt advice. This is especially important as Which? research found that between 4.8% and 6.8% of households defaulted on at least one mortgage, rent, loan, credit card or bill repayment in October, with an average estimate of 5.8%[3]. The FCA should also monitor how firms are handling increased levels of customer contact as a result of this guidance. The Which? research showed that more than half (56%) of those who requested a payment deferral earlier in the year had difficulty doing so – with issues including long call wait times, and no responses to email or phone messages.

As the pandemic unfolds on an increasingly prolonged and uncertain trajectory, the FCA and firms are faced with making increasingly difficult judgments in relation to consumers' interests. The guidance includes several helpful pointers, including stipulating that firms should write policies around when further support is unlikely to be in the customer's interests. It is becoming increasingly clear that some very vulnerable consumers will find

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[2] https://www.ukfinance.org.uk/covid-19-press-releases/lenders-continue-to-support-customers-through-covid-19

[3] https://press.which.co.uk/whichpressreleases/which-research-suggests-huge-jump-in-number-of-people-missing-card-and-loan-payments-as-financial-support-cut-back/

themselves with acute shortages of funds, caught between State payment processes, employer or self-employment payment delays, and an inability to access new credit. Continued support from their lender will in many cases be the least bad of a range of unattractive options. We urge FCA to give more prominence to firms' responsibilities towards their most vulnerable customers. For example, they could expand the principles underlying section 5.17 of the consumer credit guidance, which talk about benefit waits and hospital stays as "extenuating circumstances". They could also balance the requirement in para 3.14 regarding refinancing with a requirement that firms review and update their vulnerable customer policies to set out how they will deal with a range of circumstances. Such policies become all the more vital when, as the guidance acknowledges, firms might be relying on less experienced staff to make judgements.

This guidance focuses on existing customers, but we would encourage the FCA to consider firms' treatment of new and prospective customers too. The increased financial pressure on UK households may see more people turn to unsecured credit to plug income gaps. It is therefore important that rigorous affordability assessments are maintained throughout this period to avoid unaffordable lending or unmanageable levels of debt. Firms should be encouraged to refer customers that they decline to potential sources of affordable credit such as credit unions and CDFIs. The FCA should also monitor marketing during this period, particularly the use of targeted advertising. It is easy to imagine a scenario where firms use AdTech to target credit adverts at consumers based on their online searches – perhaps for jobs, money guidance or redundancy information. Similarly, consumers may be targeted as a result of certain characteristics, such as their previous use of credit, some of which may make them vulnerable. This could result in consumers taking out loans they cannot afford. Our research on digital marketing fully sets out our concerns in this area and we would again call on the FCA to conduct further research on targeted advertising and engage with regulated firms and BigTech companies to minimise consumer harm.

Yours sincerely,

Wanda Goldwag
Chair, Financial Services Consumer Panel