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 proposed next stage of support for consumer credit and overdraft customers

With the temporary guidance on consumer credit and overdrafts coming to an end on 31 October 2020, the Consumer Panel welcomes the FCA issuing draft guidance to firms. There will be many consumers in financial difficulty beyond the 31 October deadline and it is essential that the FCA acts to help them cope in these extraordinary circumstances.

We would like to reiterate many of the points we made in our response to the additional guidance regarding mortgages, as they are equally applicable here.

We continue to support the FCA emphasising the need for a flexible approach that takes into account the needs of individual consumers. This is especially important for consumers in vulnerable situations, who are likely to be hardest hit by the crisis. This flexibility will allow firms to adapt their approach in response to what is an ever-evolving situation with a high degree of uncertainty. It also allows for the increasing national and regional variation in coronavirus restrictions which means consumers in different parts of the UK are likely to be in very different circumstances.

Customers in vulnerable situations

The draft guidance rightly highlights the importance of identifying consumers who are in vulnerable situations and treating them fairly. Most, if not all, consumers that firms deal with under this guidance will be vulnerable by definition, and firms' approaches should reflect this. There is ample evidence of characteristics (including protected characteristics under the Equalities Act) that strongly correlate with Covid-related difficulty. Therefore, the FCA should consider including a non-exhaustive list of such characteristics in the guidance to increase the likelihood of these groups being identified and receiving good outcomes. The list could include, but should not be limited to: BAME groups, renters, single parents and young adults. We recommend highlighting that geography will increasingly be an indicator of potential vulnerability as we enter a phase of local as well as national social distancing restrictions, which could lead to temporary income drops across specific locations. It is also important for firms to recognise that their actions (or non-actions) can create or exacerbate vulnerability, and work to minimise that risk.[1]

Distinction between pre-pandemic and pandemic-induced financial difficulty

The FCA's guidance draws a distinction between financial difficulty which existed before the coronavirus pandemic and that which has been caused by the pandemic. The guidance

[1] https://www.fca.org.uk/publication/guidance-consultation/gc20-03.pdf

goes on to say that "is not intended to have any relevance in circumstances other than those related to coronavirus". We are concerned that this approach risks unfair outcomes for consumers for two reasons:

- There will be many consumers who were experiencing financial difficulty before the pandemic and whose situation has now been made worse. There is a risk that firms exclude these consumers from the type of support encouraged in the FCA's guidance on the grounds there was existing difficulty. This would lead to unfair outcomes.
- Cause and effect are increasingly difficult to link and this will only become more challenging as time passes. For example, it will be clear that a person who loses their job as a result of not being brought back from furlough has suffered income loss as a result of the coronavirus pandemic. However, some firms will only make redundancies in several months' time after trying to keep their business trading for as long as possible. In this latter circumstance, the causal link between the coronavirus pandemic and a consumer's loss of income is less clear, which could result in them being excluded from the support offered under this guidance.

The FCA should therefore be clearer in directing firms to consider the measures stipulated in the July guidance alongside the CONC-based approaches set out in this guidance consultation. This will help ensure that all consumers continue to get the support they need, when they need it.

Cliff-edge risk
The confirmation that the FCA expects the existing temporary guidance regarding payment deferrals to come to an end on 31 October compounds our significant concern that there will be a financial cliff edge for consumers at this point. There are several points to consider in this regard:

- The support available under the July guidance might still be the best approach for some consumers, especially those for whom the impact of Covid-19 is felt with a time lag, as mentioned above. The additional guidance should make clear that the support set out in the July guidance remains the right option in particular circumstances, and the FCA should require the appropriate credit file treatment in parallel.
- Consumers may turn to other, perhaps high-cost, borrowing in order to resume repayments on their existing credit obligations. This could lead to over indebtedness. The FCA should proactively monitor product sales data alongside consumer payment performance for evidence of this risk crystallising.
- With all support measures being withdrawn at the same time, it may be difficult for consumers to work out which debts they should repay as a priority. We welcome the FCA encouraging firms to consider priority debts when reaching sustainable agreements to repay. The FCA should pay particular attention to firms' compliance with this part of the guidance and remind consumers that debts which could result in imprisonment, loss of housing or essential services (including utilities) should be repaid as a priority.
- Consumers in financial difficulty at the point of the cliff-edge may be more susceptible to approaches promoting inappropriate debt solutions. This may exacerbate existing issues around the promotion of Individual Voluntary Agreements (IVAs).

Giving consumers time to consider their options
The guidance directs firms to give consumers times to explore their options, including taking debt advice, before reaching any agreement to repay. As firms are working to implement the Breathing Space requirements in time for May 2021[2], many may have started to cement the 60 days of help into their processes. The FCA should encourage firms to think beyond this 60-day period and allow additional time if needed. CONC 7.3

[2] https://www.gov.uk/government/news/breathing-space-to-help-millions-in-debt

requires firms to vary the forbearance period if appropriate and it is important this flexibility is maintained after the Breathing Space scheme is introduced. Additional time will likely be necessary as debt advice capacity is still being built and we may see a period where consumers have to wait more than 60 days for the help they need.

Assertive supervision

As we said in our response to the mortgages guidance, the Panel is not optimistic that firms can be relied upon to 'do the right thing' for consumers. This is why the Panel continues to argue for the FCA to introduce a duty of best interests. In the absence of such a duty, assertive supervision will be essential in ensuring that all consumers are treated fairly and in accordance with the guidance. Where the FCA does identify non-adherence with this guidance, it should take prompt and robust action against a firm, including by using its powers under the Senior Managers and Certification Regime.

As we move to a new phase of more differentiated support for consumers, we think there is a very strong case for FCA to undertake extensive mystery shopping to help inform them of the quality and consistency of the consumer experience over the coming months. It is crucial the FCA has real-time information on the actual experience and outcomes their guidance is delivering for consumers.

We welcome the FCA's commitment to keep the guidance under review depending on how the wider situation develops. The FCA should make it clear that further guidance may be issued if circumstances materially change.

Further comments on specific sections of the guidance are included below at Annex A.

Yours faithfully,

Wanda Goldwag
Chair, Financial Services Consumer Panel

Annex A – Comments on specific sections of the FCA's guidance

SECTION 1 - Consumer Credit and coronavirus: additional guidance for firms:

Paragraph 1.6 encourages firms to 'move on' from the July guidance once it is no longer generally in effect. The Panel believes firms should continue to consider the forbearance options set out in the July guidance. These options might still be the right thing for many consumers who have struggled through the crisis so far and require the same help, just later than others.

Paragraphs 3.6-3.8 create two different categories of arrears: those related to a payment deferral and all other arrears. This presents a challenge for firms in that they will need to explain to consumers that different parts of the same balance will be treated differently. This would likely be very difficult for consumers to understand and may lead to unfair outcomes.

Paragraph 3.13 reminds firms that they must comply with the FCA's rules under CONC 5 and CONC 6 regarding refinancing. We support the FCA's approach in making sure firms promote forbearance over refinancing.

Paragraphs 5.15-5.16 recognise that it might be difficult for a consumer to commit to a longer-term arrangement to pay due to the uncertainty of their current situation. We strongly endorse the approach to supporting consumers through short-term uncertainty when they are unable to commit to a longer-term plan. This is a key part of treating customers fairly. The FCA could also encourage firms to consider continuing as if the July guidance were in place for such consumers, including the approach to credit files.

Paragraph 5.17 reminds firms of their obligation under CONC 7.3.11R to suspend collections activities where a debt counsellor or another person is acting on the consumer's behalf. The Panel continues to believe that collection activities should be suspended even when no debt adviser is involved.

Paragraphs 5.20-5.21 set out some of the debts which may be considered priority debts. The FCA should extend this list, especially if this guidance will be used to train inexperienced staff.

Paragraph 5.22 effectively requires firms to conduct a full income and expenditure assessment. Whilst 5.32 allows firms to use figures previously collected by other firms, it is likely that firms and debt advisers would want to check these figures and so will conduct a full assessment regardless.

Paragraph 5.25 guides firms to accept proposals from customers without undertaking an income and expenditure assessment. The Panel supports this position.

Paragraph 6.1 allows firms to start or continue repossession proceedings against customers with goods under hire purchase, conditional sale and consumer hire agreements. The Panel is concerned this approach could lead to unfair outcomes. The FCA should tell firms that in order to treat customers fairly, they must consider the customer's situation in the round, including the potentially temporary nature of payment difficulties, before starting or resuming repossession proceedings.

SECTION 2 - Overdrafts and coronavirus: additional guidance for firms

In relation to **Paragraph 1.7,** we make the same point as for paragraph 1.6 above.

Paragraphs 5.8-5.11 guide firms to signpost consumers to the range of help available and keep clear records of where they have not offered forbearance measures outlined in the guidance. The Panel is supportive of this approach and encourages the FCA to include these points in its guidance to consumer credit firms.

Paragraph 5.14 guides firms on their approach to refinancing. We are supportive of this, as outlined above in relation to paragraph 5.17 of the consumer credit guidance.

Paragraph 5.17 should also guide firms not to change their refinancing terms without good reason.

Section 6 on debt advice is less detailed than the same section in the consumer credit guidance. There is no clear reason for this. The Panel recommends that this section is consistent across both pieces of guidance.