

ALLEN & OVERY

- Jo:** Welcome to the Allen and Overy Podcast In Credit.
- Victoria:** It's our first episode.
- Jo:** I know - exciting times! My name is Jo Owens and I'm counsel in Allen & Overy's Financial Services Regulatory Group, I'm joined by Senior Associate Victoria Ferres and also Associate Sophie Skeet, together we focus on retail financial services regulation, particularly in the consumer finance space. As we said this is the first episode in our series of podcasts and we'll be using this forum to discuss a range of topics in retail financial services, whether that's in FCA publication, new case or new legislation.
- Sophie:** But the aim is to keep each podcast short and sweet, so we'll try not to get bogged down in too much detail, we'll provide you with the highlights or key information that we think you would want or need to know.
- Jo:** Exactly and as this is a new podcast series we want to make this as useful to you as we can, so please do reach out to us with any comments or feedback.
- Victoria:** On with the show. So the plan in this first episode is to discuss the FCA's recent finalised guidance on maintaining access to cash for customers. Jo the guidance was published on 14 September and specifically focuses on branch and ATM closures or conversions of ATM's from free-to-use ATM's to pay-to-use ATM's. What's the significance of the FCA's focus on this given where we are with respect to the coronavirus pandemic and the current economy?
- Jo:** It's actually really interesting, access to cash has been a topic of discussion for awhile but the importance of it has been highlighted in recent months as a result of the pandemic. We've seen the combined effects of a sudden public distrust of cash and the more gradual continual shift to digital payments.
- Victoria:** Shops effectively stopped taking cash payments didn't they?
- Jo:** Exactly and there has been a lot of discussion around firms potentially closing branches and ATM's. So whilst many of us might love the increased limit for cashless transactions, there's a real concern that if this shift continues then those who really need access to cash will find themselves excluded. Financial inclusion has been a focus of the FCA for awhile, so the purpose of the guidance is really to provide protection to those who need it most by ensuring that banks look into closed branches or ATM's, we'll think about the cash access needs of their customers before making any decisions.
- Sophie:** Does the guidance apply to all firms?
- Jo:** No, the guidance only applies if two conditions are met, firstly it applies to regulated firms that operate or have agents who operate, branches or cash machines or cash points and who are subject to principle 6, 7 and 11 of the FCA's Principles for Businesses. Secondly those firms will have had to propose or take a decision to close such branches or to convert a free-to-use ATM to pay-to-use.
- Victoria:** But there are quite a few exceptions to the guidance, so without going into too much detail the guidance will not apply in certain scenarios for example the guidance doesn't apply to firms closing ATM's located within their own branch, and that's assuming that the same services can be provided at the counter of that branch. It also doesn't apply in relation to ATM's within a Post Office branch where the same transactions can be conducted under the banking framework agreement. Equally temporary closures or closures of a site that was exclusively established as a pilot or a temporary measure will also be exempt.
- Sophie:** In addition certain elements of the guidance in relation to analysing customer needs and alternatives don't apply where the same firm can continue to meet the needs of its customers through the same type of site and in a similar way. An example would be if a branch is to be closed but the firm can continue to meet customer needs through a nearby branch, this exclusion is intended to capture the following instances, the closure of one of several of the firm's branches in a small area, the relocation of a branch or ATM to a

nearby site or a minor change to the location or duration of a mobile branch stop. Firms will still need to think carefully about what is meant by nearby and will need to communicate the decision to the FCA.

Victoria: Ok, so based on this it seems that FCA's expectation is around insuring that firms consider the impact of their customers of a planned closure of a branch or ATM, or the conversion of a free-to-use ATM to a pay-to-use ATM.

Jo: That's right and also ensuring that firms think about alternative access arrangements were they do close or convert any of these sites.

Sophie: And what's the timing on all of this?

Jo: Well the guidance is already in force it's applied from the 21 September. What this means in practice is that the guidance will apply to decisions to make a branch closure or ATM conversion from that date. However, if a decision has been made before the 21 September, then the FCA expects firms to take account of the guidance to the extent that it is reasonable to do so, and the example given in the guidance is where the firm has already decided that it's going to close a branch, but the closure is not going to happen for at least another 12 weeks. In that instance the FCA states that it may be reasonable for the firm to provide customers with 12 weeks notice of the closure.

Victoria: The guidance also imposes a couple of key obligations which apply even if the firm is only contemplating a closure or conversion in relation to one site. The first is that the FCA expects firms in relation to plan for closures or conversions to make the usual Principle 11 notification at the earliest opportunity via their usual supervisory contact. In particular the guidance makes reference to firms notifying the FCA in good time before the closure or conversion decision has been made by the firm.

Sophie: Just to jump in with a quick point, if the firm is a signatory to the Lending Standard Boards' (LSB) Access to Banking Standard, then it is also required to notify the LSB of the closure or conversion. In this scenario the FCA states that it expects to be notified no later than the date the LSB is informed. The guidance also flags that the FCA has entered into a memorandum of understanding with the LSB; is that the LSB can share information with the FCA on this.

Victoria: Thanks Sophie. The second key obligation also relates to Principle 11 and the ongoing disclosure requirement under it. Specifically the FCA expects firms to keep it informed throughout the process to enable the FCA to monitor whether customers are being treated fairly and this disclosure should cover points such as key decisions, changes to plans, mitigations and alternative arrangements for access.

Jo: And this really highlights the importance of this issue to the FCA, firms are also expected to carry and provide the FCA with a robust analysis of customer needs, impact and alternatives to the proposal, and to inform the FCA of any updates to this analysis throughout the process. This analysis should cover information about how the needs of vulnerable customers will continue to be met as well as any remaining gaps in the firms provision. Note that in this sense vulnerable persons might include SME's or micro-enterprises where these are natural persons. The FCA can ask for more information or for additional analysis to be carried out, were it is dissatisfied with the quality of the analysis undertaken by the firm.

Victoria: So I think that covers the key highlights of the finalised guidance, but just one final point from me. The UK government has said in the 2020 budget that it would introduce legislation to protect access to cash for those who need it. The FCA has made clear that its guidance is not intended to overlap with or to preempt any decisions regarding such legislation and that the FCA will review this guidance within the next 12 months in light of market developments and/or forthcoming legislation and will revise the guidance if appropriate.

Sophie: One to watch out for then. Well I think that brings us to the end of our first episode of In Credit.

Victoria: It does, we really hope you found it useful, and if you do have any questions about what we've covered in this podcast, or any requests on what you would like us to cover in future podcasts then please do reach out to us by phone or email.



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