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Jo: Welcome to the latest episode in the Allen & Overy podcast series "*In Credit*" where we discuss a range of retail finance topics. My name is Joanne Owens and I'm counsel in the Allen & Overy financial services regulatory group. I'm joined by senior associate Victoria Ferres and also associate Sophie Skeet.

In this episode we are going to take a look at the impact that the current coronavirus pandemic has had on the consumer lending sector, focusing particularly on the various guidance published by the FCA in recent weeks including the announcement made by the FCA on 19 November to ensure that continued support is available to consumers during the latest lockdown. Given the flurry of activity here this podcast may be slightly longer than usual but we hope that you'll bear with us!

Sophie: Of course, the guidance covers a wide range of secured and unsecured lending sectors, but for the purposes of this podcast we will focus on consumer credit lending only. This excludes mortgage lending and some of the detail that applies to overdrafts.

Jo: Otherwise we'll never cover it all! There has been an incredible number of publications coming out from the FCA and our aim is to keep the podcast as concise as possible. Of course, if anyone would like us to cover other forms of consumer finance on a separate podcast, please do reach out.

Vicky: Ok, well even without mortgages there is still a lot to get through so let's crack on.

The coronavirus pandemic has dealt the UK economy a sharp blow. Supporting customers in need has therefore been a key area of focus for the FCA over the past months. As Jo mentioned, the FCA has been busy implementing and updating guidance for a variety of unsecured lending products to introduce the ability for customers in need to obtain payment deferrals. The intention was to give customers the breathing space they need to overcome the challenges of the pandemic. Record numbers of customers have taken advantage of these measures, with requests for payment deferrals coming in right up until the original expiration date of the guidance on 31 October 2020.

Naturally, as we approach the end of the original payment deferral periods, industry and FCA focus turned to exit strategies. To that end, the FCA published finalised additional guidance in relation to credit products. We wanted to take a closer look at that guidance in this podcast.

Sophie: That sounds like a lot of publications. Let's take a step back and do a quick run-through of what we have in the credit space:

- In April 2020, the FCA published package of measures to support consumers through the pandemic. This package was subsequently updated in July 2020. It included separate guidance related to loans, overdrafts, credit cards, motor finance, high-cost short-term credit and buy now pay later credit.
- That guidance was originally going to expire on 31 October 2020. However, on 19 November the FCA published further product specific guidance which extends the period for applications for payment deferrals to 31 March 2021. We'll refer to this product specific guidance, together with its various updates, as the "**Initial Guidance**".
- At the end of September, the FCA published additional guidance that supplements the Initial Guidance and which is a combined form of guidance for different unsecured credit products. For example, this additional guidance includes information about motor finance related repossessions as well as overdrafts. This guidance was also updated on 19 November 2020. We'll refer to it as the "**Additional Guidance**".
- The FCA also published a feedback statement on 19 November 2020 in relation to the 5 November guidance consultation.

Jo: Thanks Sophie. As we mentioned, we really want to focus this podcast on the Additional Guidance but it is worth spending a couple of minutes discussing the FCA's recent changes to the Initial Guidance which came into force on 25 November. These changes have been prompted by the latest lockdown which started on 5 November. Instead of the Initial Guidance expiring on 31 October as intended, the application period for payment deferrals has now been extended to 31 March 2021.

So let's quickly run through some of the key points. Under the updated Initial Guidance, those customers who have not yet had a payment deferral will be eligible to apply for one up to a total of six months. If borrowers who have not yet taken a deferral think that they need a full six months of deferrals, they should apply in good time before their February 2021 payment (to cover a full six months of payments, from February to July 2021 inclusive).

Vicky: Customers who previously or currently have a payment deferral will be eligible to apply until 31 March 2021 for a further deferral, as long as the total length of deferrals does not exceed a maximum of six months. After 31 March 2021, customers will be entitled to extend ongoing payment deferrals, but only where these deferrals cover consecutive payments. One of the main points from the updated Initial Guidance is that firms should not provide new or further payment deferrals which extend beyond 31 July 2021.

Sophie: So from 31 July 2021 all payment deferrals should have ended?

Jo: Correct.

Sophie: Are there still provisions in the Initial Guidance to take account of scenarios where a payment deferral may not be in the customer's interest?

Jo: There are. Lenders may still assess that a payment deferral is obviously not in a customer's interest. In such cases, the lender should instead provide tailored support appropriate to the customer's circumstances under the tailored support guidance which we will discuss shortly. In addition, consumers who have already had six months of payment deferrals or who are in arrears or receiving tailored support, will not be eligible for a further payment deferral. Instead, firms will provide tailored support appropriate to their circumstances. This may include the option to defer further payments.

Vicky: That leads on nicely to looking at the more tailored support which is provided for under the Additional Guidance. Jo, how would you say the Additional Guidance builds on the Initial Guidance?

Jo: Well, all of the guidance applies in relation to exceptional circumstances arising out of the coronavirus pandemic. But the focus of the Additional Guidance is the provision of more tailored support to ensure that firms are not applying a "one-size fits all" approach to those who are, or who find themselves, in payment difficulties as a result of Covid-19 and who will not be entitled to further support under the Initial Guidance. The Additional Guidance is not intended to impose prescriptive requirements on firms.

The principle is that firms must treat customers with forbearance and due consideration. What constitutes appropriate forbearance should be considered in the context of the individual customer circumstances. Firms can look to use automation or digital tools to help them engage with their customers, collect information about individual circumstances, offer a range of appropriate forbearance options and get customer agreement to the same. It's also important that firms seek to engage with customers prior to payments being missed.

Sophie: But what about vulnerable customers? Isn't it the case that increasing numbers of customers will require more tailored treatment as a result of the pandemic?

Vicky: Correct. Firms must consider customer vulnerability and should ensure that if they use automated or digital methods that there is the possibility of manual intervention. Customers should also be able to ask for support through a non-digital channel if they want it. Vulnerability remains a priority focus for the FCA, even more so given the emotional, physical and financial impact that the pandemic is having. To achieve effective communication, firms will need to take all of these factors into account. It's likely that a range of communication channels will be appropriate, and where possible firms should give customers the ability to switch between them.

Jo: Many firms will probably have been speaking to customers prior to the publication and amendment of the Additional Guidance, but they'll have to review their approach for customers who are unable to resume payments. Firms will need to reconcile their previous approach with that provided for in the Additional Guidance and ensure that the outcomes for customers are consistent with that Guidance.

Sophie: So it's clear that the content and channels of customer communications are key. Timing too will be important. Firms must take reasonable steps to contact their customers in good time before the payment deferral expires and inform the customer of what will happen if they do not respond. This includes providing information about the next payment falling due and how the deferred amounts will be treated if the customer is unable to resume full payments.

There's one thing that's less clear to me though – the Additional Guidance doesn't seem specific on the forbearance options available to firms.

Vicky: No, as Jo mentioned, the Additional Guidance is not prescriptive. The FCA expects firms to be flexible and to employ a full range of long and short-term forbearance options to support customers and to minimise avoidable financial distress and anxiety. The guidance gives a couple of examples. For instance, in the short term, a firm could agree to a further payment deferral (or to receive reduced payments) for a specified period. A firm could also consider waiving or cancelling any further interest or charges, allowing the customer a reasonable time and opportunity to repay the debt (including by deferring payment of arrears), accepting token payments for a reasonable period and agreeing to a repayment plan.

But this list is not exhaustive!

When offering different options to customers, the FCA expects firms to state clearly to the customer how each would affect the total cost of credit and CRA reporting.

Sophie: I'd add that any payment arrangement that is put in place must be sustainable, i.e. it does not adversely affect the ability of the customer to meet essential living expenses and priority debts and gives the customer a reasonable time and opportunity to repay. Customers should not be pressurised to pay more than they can afford or to repay the debt in an unreasonably short period of time. If the customer puts forward a proposal, the firm should only refuse it where the firm can objectively demonstrate that the customer can afford to make higher repayments that are sustainable.

That said, firms must also keep all arrangements under review and monitor them for signs that they are not sustainable.

Jo: We know that is quite a lot to digest. From an operational perspective, all of what we have just discussed will give rise to huge administrative demands least of all with the updates that have taken place. The FCA recognises that firms may need to recruit additional staff or move staff to different parts of the business in order to engage with and support the high numbers of affected customers. New or re-allocated staff will require additional training and oversight; further changes to systems, controls and policies may also be needed – all on top of existing operational challenges resulting from employees working from home or having to be socially distant or self-isolate.

Vicky: Firms will need to be prepared to deal with the sheer volume of customers that want to engage with them as their payment deferrals come to an end, or as customers find themselves in financial difficulty for the first time. Equally, firms should try to minimise distress or frustration caused by the process, such as unpredictable call waiting times or by customers having repeatedly to explain their circumstances. This may require transparency about call times, offering call backs or pre-booked appointments, and directing customers to online tools and support. It is also important to ensure that clear records are kept of the information provided by the customer and any judgements made by the lender.

Sophie: This ties back in with the vulnerability point we mentioned earlier – firms' processes and communication channels should enable them to spot customer vulnerability. Clear, effective and appropriate policies and procedures will need to be in place for dealing with vulnerable customers, including for directing customers to appropriate debt advice and support.

Jo: Exactly. The Additional Guidance mentions that firms should signpost debt self-help or money guidance tools to customers to help them understand their options and decide which one is appropriate. This highlights the importance of good and effective customer communications, which yield fair outcomes for consumers. Firms will need to assess the fairness of customer outcomes through an end-to-end quality assurance process.

It is also a good time to briefly mention that the FCA is planning to conduct a Retail Lending Forbearance Project in the next few months which follows on from the publication of the Additional Guidance. We don't currently have a great deal of detail on the project, but the intention is that this will be a collaborative process with industry looking at areas such as forbearance customer journeys, automation processes and operational readiness. We also know that the FCA is undertaking a review of unsecured lending and published a call for input on 2 November outlining the questions the FCA is exploring. If you wanted to respond to that call for input, you have until 1 December 2020 to do so.

Vicky: We will keep you updated on the project in the future podcasts. Before we wrap up, it's probably worth spending a few minutes discussing some of the key differences between the Initial Guidance and the Additional Guidance.

The first distinction we wanted to mention relates to when customers will be treated as being in arrears.

Under the Initial Guidance, customers were not considered to be in arrears where they were benefitting from a payment deferral. However, it is important for firms to consider whether deferred amounts should be treated as arrears upon expiry of the deferral period. This will really need to be assessed on a case-by-case basis. For example, there might not be any arrears for the purposes of CONC 7 if the firm granted a payment deferral by using a contractual variation provision in the agreement. The same applies if all the deferred amounts are repaid in full before the end of a deferral period. In other cases, the deferred amounts may constitute arrears under CONC 7.

Sophie: Where deferred amounts are to be treated as arrears, the Additional Guidance expects that firms will clearly communicate this to the customer in writing and before the end of the payment deferral. The customer should be warned that future communications concerning arrears or payment shortfalls on the customer's account will, where relevant, include the deferred amounts.

Jo: This leads us to the second point of difference – CRA reporting. The Additional Guidance expects firms to resume normal CRA reporting once the customer's payment deferral period has ended. However, firms will need to consider the guidance in the context of what has been agreed with individual customers. In addition, it's crucial the firm does not report worsening status to CRAs in respect of the deferred amounts over the payment deferral period. The CRAs have recently updated their Draft CRA Covid-19 Exit Reporting Guidance so we would encourage firms to have a look at that.

Jo: We appreciate that this was a very quick canter through what has essentially been months of discussions with industry in light of the FCA's publications and it's clear there is still more to come in this space. If you do have any questions about what we have covered in this podcast, then please do reach out and we will be happy to chat through some of the more nuanced points on the FCA guidance in more detail.

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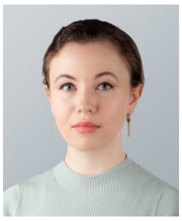

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