



Three Month Moratorium on Consumer Credit Debts By Richard Mawrey QC

The Covid-19 crisis has led the Financial Conduct Authority to issue authoritative guidance to consumer credit lenders which will oblige them to grant a three month moratorium on debts and to reduce interest costs.

FCA Guidance

1. The lockdown resulting from the Coronavirus pandemic has resulted in huge numbers of people finding that their income has abruptly dried up. This has two adverse consequences on the credit market: firstly absence of income means that those who are able to borrow may have to do so to keep themselves afloat and secondly, those with existing consumer credit debts will find it difficult, in some cases impossible, to pay the sums due. Clearly there is a limit to the amount the State can pay to replace missing income so that the debtor will be to a large extent on his own. By the same token lenders need to survive the sudden loss of their income stream and will be anxious about their own future. Already one hire-purchase giant, Brighthouse, has gone into administration (though its problems were compounded by outstanding mis-selling claims).
2. In consequence the FCA issued new guidance on 9 April 2020 which comes into force on Tuesday 14 April 2020.

Guidance not rules

3. So far, the FCA is preferring to proceed by guidance rather than by rules. The only rule changes it will carry out will be to CONC. In essence, where indulgence is to be given to debtors during the Covid crisis, the FCA is going to relax the rule that prescribes the minimum payment to be made on credit card statements (CONC 6.7.5R) and to disapply the detailed forbearance rules for dealing with credit card debtors contained in CONC 6.7.27R to 6.7.40G. Apart from that the FCA is merely offering guidance. The rule changes can be found at <http://www.fca.org.uk/publication/guidance-consultation/coronavirus-covid-19-credit-card-instrument-2020.pdf>
4. Do not, however, be fooled by the word 'guidance'. We are talking guidance as it might be offered by Sir Humphrey Appleby or, possibly, Don Corleone. It is, so to speak, guidance that a lender can't refuse. As the FCA puts it 'This guidance sets out our expectation that firms should provide, for a temporary period only, exceptional and immediate support to consumers facing payment difficulties due to circumstances arising out of coronavirus.' The FCA makes it clear that this guidance is based on the famous but amorphous Principle, PRIN 6 'A firm must pay due regard to the interests of its customers and treat them fairly' and follows it up with the quietly veiled menace 'The guidance is potentially relevant to enforcement cases and the FCA may 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.'
5. Given the existence of PRIN 11 which obliges offenders to self-report to the FCA and penalises them further if they don't, it would be a bold lender who decided to disregard the 'guidance'.

Credit card debts

6. The FCA puts the ball in the debtor's court. The debtor who is experiencing financial difficulties should contact the lender and request a deferral. It is quite in order for the lender to check out the debtor's assertions but, if the problems

seem genuine, the lender should grant a payment deferral for three months. The three months is not obligatory. A shorter deferral can be agreed if it likely that the debtor will return to full income in a shorter period.

7. What is envisaged is a deferral not a writing off of the debt. The lender can still charge interest during the period of deferral but if, at the end of the period, the debtor is still in difficulties, then the ordinary rules for forbearance (CONC 6.7.27R *et seq*) will kick in. In those circumstances the FCA would expect that the interest accruing during the three months deferral would be waived.
8. The FCA is clear that such deferrals are not to be entered as adverse items on the debtor's credit record and that no additional charge or fee should be levied for granting the deferral.
9. The FCA recognizes that different credit cards carry different rates of interest with rates rising in inverse proportion to the customer's creditworthiness. Without going so far as to impose any parameters for interest rates, the FCA is using the opportunity created by the crisis to urge lenders to review their interest rates to see whether they really are consistent with PRIN 6.
10. The full text of the guidance can be found:

For lenders: <https://www.fca.org.uk/publications/finalised-guidance/credit-cards-retail-revolving-credit-coronavirus-temporary-guidance-firms>

For debtors: <https://www.fca.org.uk/consumers/coronavirus-information-personal-loans-credit-cards-overdrafts>

Overdrafts

11. The guidance applies to lenders, excluding private banks and credit unions, and includes passported EEA firms. It refers to overdrafts on a customer's 'primary personal current account', thus excluding business or professional accounts.
12. The FCA expects 'that firms provide, for a **temporary** period only, exceptional and immediate support to consumers facing temporary difficulties with their

finances, or who can reasonably expect to face temporary difficulties with their finances, due to circumstances arising out of coronavirus.’ At the same time, it is recognized that ‘overdraft facilities are not an appropriate means to manage long-term financial difficulty and wish to guard against future over-indebtedness.’

13. Where the customer has an arranged overdraft and is in financial difficulties, the guidance proposes that for a period of three months
 - a. No interest should be payable on up to £500 of the balance of the overdraft
 - b. If the overdraft has a limit of more than £500, interest should not be charged on the first £500
 - c. If the limit is up to £500 no interest should be charged
14. New overdrafts should be interest free for the first £500.
15. Rules for overdraft pricing are already set out in the FCA’s document PS19/16. Where a firm is contemplating changing its prices (*a fortiori* increasing its charges) it must consider the impact on existing customers and they must be set in accordance with PRIN 6. The FCA expects that charges will not be less beneficial to the customer than they were before the publication of PS 19/16 in June 2019. PS 19/16 can be located at <https://www.fca.org.uk/publications/policy-statements/ps19-16-high-credit-review-overdrafts>
16. The sting is in the tail: ‘For all firms, they will need to demonstrate to the FCA that the rates they charge are consistent with this guidance’. So lenders need to realise that they cannot hike up overdraft charges for the temporarily cash-strapped.
17. The full guidance on overdrafts can be found at <https://www.fca.org.uk/publications/finalised-guidance/overdrafts-coronavirus-temporary-guidance-firms>

Personal loans

18. The third area of guidance concerns personal loans which means, essentially, all other regulated consumer credit agreements (outside the sphere of credit cards) other than those secured on land. What this guidance does is largely to replicate the provisions for deferral set out in the section on credit cards above.
19. This section can be found at <https://www.fca.org.uk/publications/finalised-guidance/personal-loans-coronavirus-temporary-guidance-firms>

Duration

20. The initial duration of this guidance is expected to be three months but the FCA has indicated that it will keep the situation under review and will extend the provisions should this prove necessary.

Richard B Mawrey QC

Date: 9 April 2020